UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

IN RE:	:	Case No. 20-30608 (LMJ) (Jointly Administered)
ALDRICH PUMP LLC, *et al.*,	:	
Debtors,	:	Chapter 11
	:	Charlotte, North Carolina
	:	Thursday, October 23, 2025 9:34 a.m.
	:	
OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS,	:	AP 21-03029 (LMJ)
Plaintiff,	:	
v.	:	
ALDRICH PUMP LLC, MURRAY BOILER LLC, TRANE TECHNOLOGIES COMPANY LLC, and TRANE U.S. INC.,	:	
Defendants,	:	
OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS, on behalf of the estates of Aldrich Pump LLC and Murray Boiler LLC,	:	AP 22-03028 (LMJ)
Plaintiff,	:	
v.	:	
INGERSOLL-RAND GLOBAL HOLDING COMPANY LIMITED, TRANE TECHNOLOGIES HOLDCO INC., TRANE TECHNOLOGIES COMPANY LLC, TRANE INC., TUI HOLDINGS INC., TRANE U.S. INC., and MURRAY BOILER HOLDINGS LLC,	:	
Defendants,	:	

OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS, on behalf of the estates of Aldrich Pump LLC and Murray Boiler LLC,	AP 22-03029 (LMJ)
Plaintiff,	
v.	
TRANE TECHNOLOGIES PLC, INGERSOLL-RAND GLOBAL HOLDING COMPANY LIMITED, TRANE TECHNOLOGIES HOLDCO INC., TRANE TECHNOLOGIES COMPANY LLC, TRANE INC., TUI HOLDINGS INC., TRANE U.S. INC., MURRAY BOILER HOLDINGS LLC, SARA BROWN, RICHARD DAUDELIN, MARC DUFOUR, HEATHER HOWLETT, CHRISTOPHER KUEHN, MICHAEL LAMACH, RAY PITTARD, DAVID REGNERY, AMY ROEDER, ALLAN TANANBAUM, EVAN TURTZ, MANILO VALDES, and ROBERT ZAFARI,	
Defendants.	

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

Audio Operator: COURT PERSONNEL

Transcript prepared by: JANICE RUSSELL TRANSCRIPTS
1418 Red Fox Circle
Severance, CO 80550
(757) 422-9089
trussell31@tdsmail.com

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APPEARANCES:

For the Debtors/Defendants:	Rayburn Cooper & Durham, P.A. BY: JOHN R. MILLER, JR., ESQ. C. RICHARD RAYBURN, JR., ESQ. 227 West Trade St., Suite 1200 Charlotte, NC 28202
	Jones Day BY: BRAD B. ERENS, ESQ. AMANDA P. JOHNSON, ESQ. MORGAN R. HIRST, ESQ. 110 North Wacker Dr., Suite 4800 Chicago, IL 60606
	Evert Weathersby Houff BY: C. MICHAEL EVERT, JR., ESQ. 3455 Peachtree Road NE, Ste. 1550 Atlanta, GA 30326
	Evert Weathersby Houff BY: CLARE M. MAISANO, ESQ. 111 South Calvert St., Suite 1910 Baltimore, MD 21202
For Defendants, Trane Technologies Company LLC and Trane U. S. Inc.:	McGuireWoods, LLP BY: BRADLEY R. KUTROW, ESQ. 201 North Tryon St., Suite 3000 Charlotte, NC 28202
	McGuireWoods, LLP BY: K. ELIZABETH SIEG, ESQ. 800 East Canal Street Richmond, VA 23219-3916
	McCarter & English, LLP BY: GREGORY J. MASCITTI, ESQ. 825 Eighth Avenue, 31st Floor New York, NY 10019
For the Plaintiff, ACC:	Hamilton Stephens BY: ROBERT A. COX, JR., ESQ. 525 North Tryon St., Suite 1400 Charlotte, NC 28202
	Robinson & Cole LLP BY: NATALIE D. RAMSEY, ESQ. 1201 N. Market Street, Suite 1406 Wilmington, DE 19801

APPEARANCES (continued):

For the Plaintiff, ACC:

Robinson & Cole LLP
BY: RACHEL J. MAUCERI, ESQ.
1650 Market Street, Suite 3600
Philadelphia, PA 19103

Robinson & Cole LLP
BY: ANNECCA H. SMITH, ESQ.
One State Street
Hartford, CT 06103

Caplin & Drysdale, Chartered
BY: KEVIN C. MACLAY, ESQ.
SERAFINA CONCANNON, ESQ.
JACK SOLANO, ESQ.
One Thomas Circle, N.W.,
Washington, DC 20005

Winston & Strawn LLP
BY: CARRIE V. HARDMAN, ESQ.
CRISTINA I. CALVAR, ESQ.
200 Park Avenue
New York, NY 10166-4193

For the FCR:

Orrick Herrington
BY: MICHAEL ROSENBERG, ESQ.
353 N. Clark St., Ste. 3600
Chicago, IL 60654

Grier Wright Martinez PA
BY: A. COTTEN WRIGHT, ESQ.
BENJAMIN D. RHODES, ESQ.
521 E. Morehead St, Suite 440
Charlotte, NC 28202

For Fiduciary Duty Defendants:

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

ALSO PRESENT:

JOSEPH GRIER, FCR
Grier Wright Martinez PA
521 E. Morehead St, Suite 440
Charlotte, NC 28202

P R O C E E D I N G S

(Call to Order of the Court)

THE COURT: Be seated. Morning, everyone.

(Counsel greet the Court)

THE COURT: All right. Should we start?

MR. ERENS: Thank you, your Honor. Brad Erens, E-R-E-N-S of Jones Day on behalf of the debtors. I think, as I've done in prior court hearings, I'll just let others introduce themselves.

Thank you.

THE COURT: All right.

MS. JOHNSON: Amanda Johnson from Jones Day on behalf of the debtors.

MR. HIRST: And good morning, your Honor. Morgan Hirst from Jones Day on behalf of the debtors as well.

MR. MILLER: Good morning, your Honor. Jack Miller, Rayburn Cooper & Durham, along with Rick Rayburn, on behalf of the debtors.

MS. MAISANO: Morning, your Honor. Clare Maisano from Evert Weathersby Houff on behalf of the debtors. My partner, Michael Evert, is with me.

MS. SIEG: Morning, your Honor. Beth Sieg of McGuireWoods for the Non-Debtor Affiliates, together with my partner, Brad Kutrow.

THE COURT: Okay.

MS. SIEG: And my co-counsel, Greg Mascitti, from McCarter & English.

THE COURT: All right.

MR. PHILLIPS: Your Honor, Jim Phillips from Brooks Pierce on behalf of the Fiduciary Duty Defendants, with my colleague, Agustin Martinez.

THE COURT: All right.

MS. HARDMAN: Good morning, your Honor. Carrie Hardman from Winston & Strawn on behalf of the Committee. And I will try to do this as quickly as I can, your Honor. Christina Calvar from Winston & Strawn as well; Mr. Kevin Maclay from Caplin & Drysdale, along with Serafina Concannon as well from Caplin & and Drysdale; you have Rob Cox from Hamilton Stephens Steele & Martin; you have Natalie Ramsey -- oh, I'm sorry. I'm doing this out of order. I'll come back to you, sir -- Natalie Ramsey, Rachel Mauceri, and Annecca Smith from Robinson & Cole. And then last but not least, Jack Solano from Caplin & Drysdale as well.

MR. ROSENBERG: Good morning, your Honor. Mike Rosenberg from Orrick on behalf of the FCR. I'm here with the FCR, Mr. Grier, alongside Ms. Cotten Wright and Mr. Benjamin Rhodes from the Grier Wright Martinez firm. I'll add that Mr. Guy apologizes he can't be here today. He's stranded in Colombia, South America.

THE COURT: Oh.

MR. ROSENBERG: But I understand help is on the way, we hope.

THE COURT: Okay. All right.

MR. ERENS: Thank you, your Honor. I don't know if there are any appearances on the phone. I know there are some people on the phone.

THE COURT: I'm not -- is there anyone on the phone who'd like to note their appearance?

(No response)

MR. ERENS: Okay. All right. Thank you, your Honor.

The agenda for today's hearing was filed at Docket 2855. The intent is to go through the matters in the order that they appear on the agenda, unless your Honor has a different order.

We do have one request, one housekeeping item to start with. You may recall at the August hearing there was some discussion about streamlining the non-official docket, so to speak, the claims agent docket.

THE COURT: Yes.

MR. ERENS: We did do, we did do some work on that, and Ms. Johnson from my office can explain that over a couple of minutes.

Thank you.

THE COURT: Ms. Johnson?

MS. JOHNSON: Good morning. Oh, I'm so sorry.

So as Mr. Erens mentioned, when we were last before you in August you mentioned, and I believe other parties agreed, that it would be useful to have a filtered docket, given the number of pleadings filed to date in these cases. We're happy to report that following that hearing we worked with our claims agent to create a new filtered docket option on the case website.

I have here on the screen our case website, which also includes the Court Documents tab. That has been there, traditionally, and covers the full docket in the main case. That remains unchanged, but there is also now a Substantive Motion Practice tab. Following the recommendations of parties and this Court, we've excluded from this tab Certificates of Service, *pro hacs*, interim fee applications, and other routine administrative pleadings. So this filtered docket now only contains substantive pleadings, specific motions for relief, and related objections, replies and orders. The goal here is to make the docket more concise and easier to search, and I think it has achieved that purpose. We have gone from almost 2,900 pleadings on the main docket to under 400 on the Substantive Pleading tab, and the functionality of this filtered docket remains the same.

So to give a quick example, if I wanted to access the case status reports from our first hearing before your Honor in October, on the main case tab, if I entered status into the

document search tab, traditionally to date, you would have to scroll past various Certificates of Service, monthly operating reports, and continue to go for quite a while until you find the right pleadings. Under the Substantive Motion Practice tab, however, I replicate the search. You'll see the briefs are right here (indicating).

Three quick notes about this filtered docket. (1) we have not repeated this process for the adversary proceedings. Our thinking there was the pleadings were far less voluminous. So it was not necessary, but we're happy to do so if the Court prefers; (2) because it's a bit more complicated than the automated process of pleadings appearing on the original case website after they're filed, there may be a slight delay of about a day or two before pleadings are moved from this main case docket tab to the Substantive Pleading tab; (3) determining what is and isn't substantive was a bit of an iterative process. So to the extent the Court or the clerks or other parties would like us to move or add things to the Substantive Pleading tab, we're happy to do so.

So that's it, your Honor. Our hope is that this will make findings pleasier, finding pleadings easier and navigating the docket more efficient for all parties and the Court.

Thank you. And obviously, if you have any questions, I'm happy to answer them.

THE COURT: All right. Thank you, Ms. Johnson. I

hope this is helpful to everyone.

MR. HIRST: Your Honor, we do have one last housekeeping announcement, I guess. Ms. Hardman, myself, and Ms. Sieg got on the phone yesterday. The first two things on the docket are really interrelated --

THE COURT: Yeah.

MR. HIRST: -- the motion to the CMO in the adversaries and the motion to stay. And so we, I think, agreed to make things a little more economical. And so we're not arguing things separately. Ms. Hardman's going to start on behalf of the ACC, argue their CMO motion. She may very well touch on responding to our stay motion. Then Ms. Sieg'll go, arguing, largely, the stay motion. I'll come in with a little bit on the stay and the, the response to the ACC CMO motion. Ms. Hardman'll get to reply. And if we have anything to say on the end, we can do so, if that's okay with your Honor, if that format works for --

THE COURT: Makes sense to me. Right.

MS. HARDMAN: Yes, that was the plan.

THE COURT: Okay. All right, then.

MS. HARDMAN: Thank you, your Honor. Carrie Hardman from Winston & Strawn again, on behalf of the Committee.

By, by pure virtue of history here and muscle memory, we've prepared a set of slides, your Honor. Whether they're helpful or not, I don't know, remains to be seen, perhaps,

especially on a procedural motion such as this.

But that being said, we've done it. So I guess to not have our work go to waste, your Honor, if we may present a set of slides to your Honor.

THE COURT: I would expect nothing less, yeah.

MS. HARDMAN: Okay, thank you very much.

MS. CALVAR: May I approach?

THE COURT: Yes.

(Slides presented to your Honor and counsel)

MS. HARDMAN: And I think, your Honor, as I mentioned, my very substantive Vanna White here, Ms. Calvar, has not been before your Honor yet in this case and the last time we were here, actually, I believe Mr. Neier was with me when we provided you a brief overview of the adversary proceedings. Mr. Neier has since retired and sends his regards from Nantucket.

THE COURT: Oh.

MS. HARDMAN: So I will intend to be rather brief on our opening motion and, as Mr. Hirst mentioned --

Oh, would you mind terribly unplugging?

MR. SOLANO: I will.

MS. HARDMAN: Thank you.

-- I plan to, essentially, go over our motion here, your Honor, Mr. Hirst and Ms. Sieg will go over their motion and, perhaps, responses to mine, and then I plan to respond to

their motion practice. So because they're interrelated, I may save some of my powder for a response, your Honor.

THE COURT: Could you just wait one minute?

MS. HARDMAN: Of course.

THE COURT: I am looking for a pen that --

MS. HARDMAN: That actually functions?

THE COURT: Got one.

MS. HARDMAN: Understood.

THE COURT: Right. Thank you.

MS. HARDMAN: We need a chance to connect, anyway, to the extent that -- okay, hold on. I just have to highlight all of these. That's, perhaps, why it's happening.

THE COURT: All right. All set, whenever you are.

MS. HARDMAN: We're having technical difficulties --

THE COURT: Yeah.

MS. HARDMAN: -- on our end as well.

(Pause)

MS. HARDMAN: All right. That's the extent of my technical support for the day. All right.

Since I was last before your Honor in person, we were, we were and are continuing to work through the discovery issues in the adversary proceedings with all the parties involved. The discovery was served on defendants. Discovery was served on us as well. We've received responses and objections. They've received ours. We've sent a list of custodians. We've

been exchanging search terms, responses, and analyses. We've met and conferred on some gating issues as to those responses and objections. And we also began what I would call the line item, which is going through each response one by one. As is often the case, there have been, understandably been some frustrating moments. I imagine Mr. Hirst and Ms. Sieg will say the same thing. Some of these are articulated in our pleadings, but, from our perspective, I'd like to focus on some other germane issues before your Honor today, particularly this motion practice. So I will try to spare you some of that colorful rhetoric today.

So while we've reached an understanding on a number of issues, we still have some outstanding. And we've got a few that we think, have deemed that are likely ripe for court adjudication in the near term. And because of that, and then to avoid any further delay on any party's side, we thought it best to proceed with amendments to the CMO to try to move things along.

As you heard, your Honor, throughout these cases, we have heard, your Honor -- excuse me -- throughout these cases that they need to proceed and that your perspective is that dates and deadlines do help you get there. So we also agree that the entirety of the cases should proceed. So we proposed the CMO as a starting point. That's what we've said in our motion practice. We met with defendants and were very clear

that we laid out these dates all the way through trial as a way to motivate all parties to proceed. Defendants noted the tight timelines that we had proposed, asked us to delay the filing for about a month or so so that we could see if we could come to agreement on at least some of those provisions and if we had disputed terms, we would deal with those, then.

Having heard defendants' reactions, we loosened the timelines a bit in the version we filed before your Honor. It seems defendants still think those timelines are too tight, but I'll get to those points in a moment. Of course, our proposed CMO has some provisions for some natural leeway based on motion practice, if needed. That was intended to kind of acknowledge that things may change. But as noted in our motion, even if your Honor thought we should make adjustments here or there, the proposal was intended to serve as a step to get there.

So from those discussions and based on the convening versions filed, I think it's clear we do have some agreements on approach relative to the CMO through certain aspects of fact discovery, at least. And even since the motions for today, since the motions that were filed for today's hearing, your Honor, we continue to exchange communications between the parties to further our positions on custodians and search terms. I believe we received a response from defendants, I believe it was last week, on some of these issues, and we're anticipating responding either today or tomorrow to some of

those issues, now that we've had a chance to review them. So movement is currently being made among the parties to narrow the issues in discovery in the adversaries.

So given all that, it appears that the timing is right, from our perspective, to enter a CMO in the adversaries. We do think it's consistent with what we interpreted your Honor to say in this case and what Judge Whitley had previously ruled all along, including the period after the motion to dismiss was filed.

But before we get into defendants' responses to our motion, we thought it worth noting here that the adversaries are intended to stress test the defendants' assertions in the Chapter 11 cases. The debtors' and the defendants' positions as to their pre-petition actions, all being on the up and up, is something that, as the Court well knows, is nearly always stress tested in one way or another in a Chapter 11 case. Committees are formed. That's why we have powers under 1103, in the first place. It was why we were also granted standing from an estate perspective. And yet, we received significant pushback as to what essentially is a stress-testing exercise.

So in response to our motion, defendants responded not by just objecting to our motion, but also filing a motion to stay and for 2004 discovery about issues related to the adversaries and other things. So taking the objections to our motion first, there's a host of satellite issues that are

ancillary to the relief requested here by this motion, which is a simple CMO. You can see them sort of laid out here as to what we believe the bullet points are of the, the objections. There's a claim that the Court lacks jurisdiction over these adversaries. And this point about a lack of jurisdiction raises a theme, from our position. We notice that these points are raised and it's almost often a point that maybe the claims that the defendants pursuing might suffer from as well. Said simply, the claim in the motion to stay, which we'll get to shortly, itself isn't ripe, given that there isn't a pending appeal.

That all said -- I'll go into that a bit -- but the concise issue on this response is that those issues are not, not ripe now. And so claims of, of ripeness and lack of jurisdiction haven't yet even vested, if they even apply.

So similar to that, this issue about ripeness, it gets to the point about claims that are in the adversaries are not ripe and may never be ripe, was the argument made by defendants. That, that presumes that estimation will moot our adversaries. We don't take the position or agree that that is necessarily true, but defendants' position is essentially asking the Court to permit them that opportunity to moot the adversary proceedings. In any Chapter 11 context, from our perspective, the estimation process for plan procedures or the estimation of claims to get to a plan is, essentially, an

entirely separate process from any adversaries related to fraudulent transfer or fiduciary duty or subcon. And I don't know why they would be tied now for any other reason.

I'll get into this in some detail later, but of course, we have mentioned as, *ad nauseam* in our papers that Judge Whitley has ruled on these issues multiple times already and we think that this is an ask for a reconsideration of those rulings, which we don't think is appropriate.

The third, here, is a claim that in order for us to amend our CMO, the plaintiff must demonstrate that the adversary proceedings will advance these cases and provide a tangible benefit to the estate. As noted in our pleadings, these two standards are not the standards to amend a CMO and don't think that they should be new law established here, your Honor, for simply amending a currently present CMO.

And then, there's two arguments that were asserted as well that are, essentially, alternative positions, from the defendants' perspective. Even if the adversaries should proceed, defendants' estimation should go first. Our pleadings address this, of course, which I'll discuss a little bit later in our response to the motion to stay. But said simply, having *seriatim* adjudication of these two issues.

So estimation for a number of years and then the adversary proceedings will severely prejudice the adversary proceeding process. And truly, the, the balance here of, of

pursuing the continued path of both matters does not necessarily have the same impact with respect to estimation for the debtors as well. Witnesses and issues will all hang in the balance for years in our adversaries, and it would be inefficient and highly prejudicial to us.

Finally, the second alternative argument is, if your Honor is inclined to amend the CMO, the Court should adopt the defendants' version. I'll get to this in a moment.

So to add to this wall of spaghetti arguments, the defendants argue that discovery is needed to confirm that the Committee had authority to file the adversaries, in the first place. I will defer to Mr. Maclay and Ms. Ramsey to delve into the bulk of the 2004 motion, but I will say from our neck of the woods your Honor has determined that the Committee had three members the last time we were before you and that they, I will say, that they support the decisions that were made to file the adversary proceedings.

So I'm not sure, from our perspective, on that slice of the 2004 that we believe there's much more to discuss there, but happy to address it in substance as we get to it, your Honor.

So back to this list. We certainly dispute the defendants' positions on these issues. And I will do more in response to the motion to stay, your Honor. And I know defendants wish to present their motion at their opening

argument as well. So I want to give them a chance to do that. So I will plan to keep to my motion now, your Honor, and respond to their motion in kind.

So what you have from us is a motion for a CMO. To permit a stay would break precedent that has been proceeding in this court and in these cases. In fact, just like in Bestwall, where there's a motion to dismiss on appeal, this motion to dismiss filed more than two years ago doesn't change that this bankruptcy case should proceed, including the adversaries. Our position is that everything in these cases should move forward. Judge Whitley noted it is advisable to reach a resolution, everything, everyone, all at once, not a delay one and proceed in a lengthy *seriatim* way with the other. In fact, if we were to do so, taking estimation first, again will have a detrimental effect on the discovery that we seek from the adversaries. Of course, any matter involving fact witnesses generally, delay is prejudicial as memories fade and employees and company, employees at the company will leave and witnesses become unavailable over time. I don't think I need to get into what unavailable necessarily means. We don't need to have that morbid conversation, your Honor.

But the likely same reasons are, are present for why estimation should proceed as well. And we're not disputing that here. We believe that the only way to move these cases, including the adversaries, forward is for both sides parties'

feet to held to the fire.

So our proposal is to work within the universe of the defendants' second alternative argument and proceed with entering an amended CMO. Even if we disagree with their version, we propose to work through those outstanding items, litigate those, and just move forward, your Honor. We've included both a redline between our proposed CMO and the defendants' in our reply. I am happy to provide copies if anybody needs a hard copy of that. It was Exhibit A to our reply, and I explained our position on each of those in our reply to try and move those issues forward, your Honor.

So unless your Honor prefers otherwise -- and I will pause for this -- I was going to fly quickly through those issues in the CMO, but I recognize that there may be a, you may prefer an opportunity to hear from other parties before I do that. So I will pause a moment to see if you have a preference on going forward with those, those edits or if we should pause and let the other parties address their positions.

THE COURT: Why don't you just go ahead and go forward with your edits?

MS. HARDMAN: Okay, sounds good.

So next on the slide deck here, your Honor. Taking them as they appear in the redline, which is, again, Exhibit A to our reply -- I just went in that order. It seemed easiest -- there was a request to include -- and again, your

Honor, at this -- I -- what I will also say, for Mr. Hirst and Ms. Sieg's sake, is that the version that we attached to our reply attaches their version of the CMO that was attached to their opposition. I understand for the purposes of the record they provided you the version they sent to us. They did not make any edits to try and move closer. And they may have some.

So I, I also want to be conscious that they may say, "We're okay with this issue."

THE COURT: Right. That's why I --

MS. HARDMAN: So --

THE COURT: -- figured if you go ahead and go through and say and they --

MS. HARDMAN: Exactly.

THE COURT: -- can respond.

MS. HARDMAN: Here's my two cents and then --

THE COURT: Yes.

MS. HARDMAN: -- they may say this is a nonissue and then we can cross it off. Of course.

So essentially, there is a request here based on the edits for the, the language for the motion to stay to be inputted. Our thoughts on this is that this is, essentially, express permission to continue to file motions to stay throughout the adversary proceedings. That would be consistent with some of the arguments made in both the motion to stay as well as their response to our pleadings that there's an

intention to, perhaps, raise this issue again and again and again. Your Honor, I am not suggesting that parties with very good grounds to seek a stay in the future shouldn't be able to do that. I'm just saying we don't need to provide express permission for continued attempts to stay these adversary proceedings.

All right. So our proposal is simply to remove the language.

All right. The next slide.

On the deadline for substantial completion of production of documents, you will see that we had proposed three, they proposed six. In this case, taking the adversary proceedings specifically, we have an amount of discovery that was completed in the preliminary injunction, which has been made ripe in these actions. These documents are present in our adversary. We know that other documents have been identified because the defendants have at least run the hit reports on those issues. And we do see a light at the end of the tunnel on search terms as well as custodians at this point.

So from our perspective, we expect all this time that has elapsed, that the documents have been collected and are beginning to be reviewed from what at least defendants know and agree they will be producing. So we don't expect that three months would be such a burdensome request. Should, however, defendants demonstrate a burden, like, for example, they tell

us that this search string or these documents require ten million documents to be reviewed, we're happy to just, to discuss or justify a revisit of that issue later, if need be. But at this point, given we don't know that universe, we're also talking in a hypothetical and see no reason to set up at the outset a delayed production deadline.

So for the next piece, which is just on the bottom of that slide, on the reverse position, defendants want a shorter timeframe for us to be able to file motions to compel. We would like 60 days from the end of the completion of productions and privilege logs. And we, and they would like us to have 30 days. As your Honor no doubt knows, in discovery sometimes the most sensitive documents need to be escalated to multiple team members. They get reviewed even by clients sometimes to ensure, ensure no privilege or other protection is revealed. And no truer would be the case here, your Honor, where judge Whitley has determined that these transactions we're investigating were run by lawyers. So there's an added layer of privilege concern here.

So when threading that needle, it's often the case that the most sensitive documents are left for last. As we all lawyers know too well and as the Court has noted, we are most responsive when you give us a deadline. So with no aspersions from this glasshouse over here, your Honor, it's entirely feasible that these productions would come right at the end of

a deadline for substantial completion.

So to pair that with the possibility that there could be significant documents towards the end of production in both size and substance produced on the eve of a deadline, the Committee thinks that 60 days is reasonable for us to have a chance to review all of the documents produced, analyze them, determine what might be missing. We need to meet and confer to indicate that we think something's missing. Defendants may determine that, "You're right and I have more to provide to you," which obviates the need for a motion to compel, your Honor. We want a chance to do all of those things and doing that within 30 days and then filing our motions would be almost impractical, from our perspective.

So in order to prevent your Honor from seeing a bunch of motions that are essentially preserving our rights to then have them drop if we reach agreement, our proposal is to have 60 days to try and narrow the issues before we even file anything before your Honor. So again, we would prefer 60 days.

All right, next slide. Thanks.

Okay. I'm not going to go over this in a ton of detail -- it's more demonstrative -- for everybody's sake. What it largely demonstrates is we've got a few disputes that I just went over in terms of dates and deadlines. And then you see the third line. It says, "The close of all fact or non-expert discovery." We've had a date. We've put in some dates.

If they're too tight for the Court's perspective, we're happy to, to talk about that. But we thought the dates and deadlines are better than having nothing at all. Because what that does, having nothing at all, having a "we will meet and confer," or "we will have a conference before your Honor to even discuss future dates and deadlines," all that does is provide, essentially, a no deadline area where we end up in a morass of discovery that we don't necessarily need.

So from our perspective, we think that there should be some dates, and we had proposed a number of line items for that and happy to walk through what might make sense, or, if you declare that we need to go make those dates with, amongst the parties, we're happy to do that as well.

And then as last but certainly not least -- oh, no. I'm sorry. One, one last one. Okay.

So these provisions right here, your Honor, as I mentioned earlier, address, essentially, they tie into the big dates and deadlines. We have dates and deadlines with provisions that we had included to say, okay, if motion practice requires you to extend some of these, let's talk about that. And it kind of provides a way for us to be practical about the dates and deadlines we've put in. It's basically two schools of thought. Either we all meet and confer at the end of a date certain, which is what defendants have suggested, or we've said, here's some dates which only get moved if some

things happen. Motion practice gets filed and is pending and hasn't been adjudicated yet. We're still in the throes of doing that. Those types of issues would be the only reason to, to further delay. And your Honor, largely, the concept, from our perspective, was to take into consideration what your Honor has said in other contexts in this case to make sure that we're keeping all parties' feet to the fire.

And finally, this is the one that Mr. Hirst and Ms. Sieg brought to my attention. And your Honor, I will *mea culpa* in front of you. So we put in some language that we understand is from the Middle District's standing order. I also understand that this District actually has a Local Rule that -- your Honor, we're happy to do whatever you prefer. Either we put in the language that you typically have from your own District, or we put in language with respect to what the Middle -- excuse me -- what the Western District has in the Local Rules. We don't have a preference. And I thank Mr. Hirst for bringing this to my attention. We double checked and agreed.

So we have this here to say we're happy to do whatever your Honor prefers with respect to these provisions.

So overall, your Honor, from our perspective, the edits to the CMO are surmountable today one way or the other, however your Honor prefers. We'd simply like to move forward with our adversary proceedings and request that the motion be granted. Again, we think it's in line with moving the entire

case forward and with the decisions that have already been made in this case.

And with that, your Honor, I will rest on the opening with respect to this, unless you have questions.

THE COURT: Not at this time.

MS. HARDMAN: Thanks.

THE COURT: Thank you

MS. SIEG: Good morning, your Honor. For the record, Beth Sieg of McGuireWoods for the Non-Debtor Affiliates. We filed the joint motion to stay with the debtors. And I'll focus my remarks this morning on the reasons why we collectively think a stay would be appropriate for your Honor to consider.

And I do have, like Ms. Hardman, it would feel a little bit odd not to have any slides, but I'm not going to put mine on the screen. Ms. Johnson is handing them out.

Is it okay if she hands your Honor a copy?

(Slides presented to the Court)

MS. SIEG: Your Honor, I think we were here almost exactly a year ago for the first status conference with you, and we've made more progress in these cases in that time with the benefit of your guidance and oversight of the cases than we have in many years. And we think we could use your Honor's input on how we deal with these adversaries going forward. We're very cognizant that the Court has told all the parties,

"We're going to move forward. We're not moving backwards." We recognize and even put in our joint motion that a prior request for a stay was requested and denied at that time. But I'd like to walk through some of the changing landscape that has caused us to think it would be appropriate as you're looking at the menu of options, whether it's CMO or a brief stay, as, as we also suggest, we wanted to let your Honor know about the changed circumstances that really brought us here this morning.

There was, as you know, the preliminary injunction decision was in August of 2021. The Court, Judge Whitley at that time, did recognize that the divisional merger might be vulnerable to creditor remedies if funding failed. That was, No. 1, a preliminary finding. And it expressly turned on contingencies about enforcement and honoring of that funding. And that'll impact -- I'll come back to that in a moment on the ripeness issue.

But in connection with the PI proceeding, the parties engaged in a substantial amount of discovery that's almost unheard of at a preliminary injunction phase. In fact, it took almost a year between the filing of the PI motion and the decision on the, on the PI itself. In that time, the parties conducted extensive discovery on what we've all referred to as Project Omega, the debtors' financials, all of the same issues that are still at issue in the pending discovery requests in the adversary proceeding. There were more than 22 depositions,

production of more than 10,000 documents, 94,000 pages. Every key witness involved in Project Omega has already been deposed in that regard.

After that PI proceeding, time passed in the cases. In January of 2022, the Court considered the Committee's request for derivative standing to pursue the claims that they are now asserting in the adversary proceedings. The derivative standing order was entered in April of 2022. The Court allowed at that time the Committee to pursue what they asserted were, were going to be colorable claims. Judge Whitley -- and you see this in the portions of the transcripts that we've cited in our briefs -- at that time, he felt like it was appropriate to let the parties proceed on two paths and declined to sort of put his finger on the scale of, of which path should go forward. That was before the Committee has changed its position and started to pursue aggressively their dismissal strategy. And in fact, they are still appealing, attempting to appeal the dismissal opinion that came out in December of 2023 where Judge Whitley rejected the Committee's, what we call in our brief, the air quote, Texas Two Step, New Debtor Syndrome dismissal theories, found that the debtors were eligible to be in Chapter 11 and the undisputed capacity to fund obligations, of the NDAs to fund obligations under the funding agreements. The ACC is still appealing that decision and in fact, over the course of the last month has filed a brief in the district

court continuing to pursue not just jurisdictional challenges, as they suggest in their opposition, but full merits challenges to the appropriateness of the Texas Two Step, as they call it.

After or during the appeal, your Honor, we had a hearing in front of you this past March where you decided the estimation was going to be the focus to try to move money to claimants quickly, and you directed the parties to focus on progressing the estimation, deliverables, and deadlines. During all of that process and since the, since the APs were commenced in 2021 and 2022, eventually there was a discovery order entered in April of 2023. Since that time, they've largely been dormant, or maybe a better word is "lackadaisical." But in any event, they have not been, quickly progressed. There has not been a routine cadence between the parties on discovery issues, case management, scheduling issues. It is true that the, the defendants have all decided to continue to engage the ACC when they do surface because, of course, we don't, we don't have the ability to grant ourselves a stay.

So we know we had to come to you. We can't just unilaterally stop what our obligations are under the, the Federal Rules. But we do think the time has come for your Honor to figure out what we're going to do in the adversaries. The Committee, again, it's our perception that they have been not aggressively pursuing the claims. And so it was quite a

surprise in August of 2025, where they had been silent for more than five months at that time, that they suddenly proposed a CMO, the CMO that you heard Ms. Hardman describe, and I'll leave the responses to the specific CMO provisions to Mr. Hirst. But that was certainly a surprise to all of the defendants.

The, the gist of their proposed CMO, at least as currently drafted, would likely have the Court adjudicating the claims in the adversary proceedings before the estimation proceeding. In that same letter, though, the ACC also took the position that responding to discovery requests on the amount of the debtors' current and future asbestos liabilities would be premature until after the deadlines pass in the estimation trial.

So again, to us, that looks like two inconsistent positions and really requires the Court to take a look at this juncture in the case do we focus on estimation for the next few months and let's get that at least behind us in terms of the deadlines that have been set. Of course, no trial is set yet. The parties are working very hard on that.

So that's why we're here again. And we do think that it's appropriate to consider it. Even though Judge Whitley did previously deny a stay, we think that has changed.

I will, your Honor, address three issues on the stay. There's really sort of two big reasons we think a stay is

appropriate, whether you're applying divestiture-type case law or you're applying a discretionary stay. The divestiture issue is really interesting, and I know that your Honor has read all of the briefs. I'm not going to spend a lot of time repeating the back and forth on the divestiture issue. A lot of it is in the eye of the beholder on the scope of the issues that are involved in the appeal versus what is involved in the adversaries. But what we do know, because the Committee didn't dispute it, that the dismissal motion and the subsequent appeals involve the exact same contentions as the Texas Two-Step contentions in the adversary complaints. And I've put on the slide a replication of Exhibit B to our joint motion that, side by side, shows, your Honor, that the Texas Two-Step contentions in the complaints are virtually identical to the theories that they continue to actively press on the appeal. And what's clear in the case law in the Fourth Circuit and elsewhere is that the divestiture rule is designed to ensure that a bankruptcy court, while an appeal is, is pending, whether it's an appeal of an interlocutory order or not, that the bankruptcy court, No. 1, isn't hamstrung. The whole case doesn't have to come to a halt. And that's certainly not what the defendants argued in their motion, even though the Committee suggests that's what we're asking for. We're really not. We recognize the divestiture rule is a functional rule, and it allows your Honor to continue proceeding with aspects of

the case that aren't involved in the appeal.

But the bottom line is the claims asserted in the adversary proceeding are identical in substance to the claims that they're asserting in the, in the appeal. The Committee responds and says, "Well, but this is just an instance of alternative pleading. And also in our appeal, we're focused on purely jurisdictional issues." This really isn't alternative pleading, your Honor. This isn't two different legal theories arising out of the same set of facts. It's two diametrically opposed set of facts and two different legal theories.

But at bottom, the central issue is the same, the propriety of what they call the Texas Two Step. And you heard the Committee this morning suggest that what we're really after is trying to, you know, time out, run out the clock on the adversaries so that they become mooted by the appeal. Well, that sort of begs the question, If that is possible, they're the same issues. And your Honor doesn't have to decide that today, what the law of the case will be. A lot of that is going to depend on what the ultimate outcome of those appeals are.

But it's obvious that the appeals, at least right now, potentially could have an impact on the adversary proceedings and vice versa. If your Honor were to make findings around the sufficiency of the debtors' assets, the propriety of the Texas Two Step, all of those issues are involved in the appeals. And

regardless of whether you look at the divestiture rule as a, quote unquote, jurisdictional issue or simply a mandatory rule based on binding case law, you get to the same conclusion. And the Committee, one of the arguments they make, "Well, at least as of right now, the appeal isn't technically pending in the district court because it hasn't granted leave yet." Well, that's really not, that doesn't move the needle on how your Honor should rule. Judge Beyer addressed this issue in the Bestwall case and said, "Look, for, for practical purposes, even though the motion for leave is still pending, I'm not going to decide the same issue that's involved in the appeal." And we think that's what your Honor should do here and pause these cases so that there isn't an effect on the appeal that would be difficult to unwind.

Your Honor, I don't need to spend a lot of time on this point, but the, the Committee pointed out, "Well," you know, "aren't the debtors being a bit hypocritical because they're here saying the adversaries shouldn't proceed, but they want estimation to proceed." And that's just a function of how the divestiture rule works. The issue in the, in the estimation proceeding is the amount of the debtors' current and future asbestos liability. That's -- it is an issue that's related to the adversaries, and your Honor is going to eventually have to decide that. But that doesn't mean that your Honor, the estimation proceeding is so closely related to

the issue on appeal that you would have to stay that as well. No one is arguing that.

Again, we, we do think that continuing with the adversaries would unduly interfere with the appeals, depending on how that court and, and the future potential Fourth Circuit, again, might rule on those issues. The case law is clear. It's laid out in the briefs and I don't need to hammer on that too much. And one of the reasons for that is, apart from divestiture, your Honor has wide latitude over managing your own docket and deciding what case management decisions are appropriate. The applicable standard here is not a stay pending appeal type standard. We have plenty of authority to that point in our reply brief. We're not appealing anything. We're asking your order, your Honor to exercise the authority granted to you under existing case law dealing with discretionary stays. And also Section 105. That section clearly gives you the power to do these kind of case management decisions.

And it's also not a request for reconsideration under Rule 59 and 60. There's no final judgment that we are asking to be reconsidered. Those frameworks simply don't apply. And there's a discussion of the City of Annapolis case in our reply that makes that clear. It's really just a strawman that they put up to try to incorporate the same standards that would apply if we were seeking reconsideration under those Rules.

And I will note, it's interesting the Committee is seeking in, in two motions before your Honor today to make case management changes to prior orders. And they don't suggest that their own motions are subject to Rules 59 and 60. So it really is, it's an argument that I don't think the Court should spend much time on.

The bottom line is that when you look at the potential hardship to the defendants versus the potential prejudice to the Committee on the stay issues, we think it really weighs in favor of a brief stay, not an indefinite stay, not a forever stay, but a brief stay. And I'll talk at the end about, you know, your Honor, we've suggested the duration of the stay, that we think it should be 60 days after your Honor enters an estimation opinion. You can choose, you know, there are other inflection points that might be appropriate for you to consider. But what we're trying to do is is just get some good, common sense guidance from you.

So if we were to continue in the adversary proceedings, the defendants are going to continue to face -- and the estates is really the critical issue -- it's going to face substantial unnecessary litigation expense and divert from what should be everyone's priority here, is getting to estimation, finally. Let, let's do what we can to get there and then sort the rest of this out. The run rate on the expenses in the APs would escalate dramatically if we have this

kind of truncated schedule that they are asking for. Privilege logs, you heard about, discovery-related motions practice. The discovery plan calls for, potentially, up to 40 depositions, expert reports, expert discovery, preparing for trial, all, and what we really should be doing is focusing on estimation. Because, of course, we need the asbestos liability number to fully adjudicate the asserted claims that they have pending in the adversaries.

On the other side, the potential hardship to the Committee from a brief stay, we don't think is as prejudicial as they do. Again, they have a different view on that. But our position to your Honor, what I would say, is that the ACC is actively litigating their challenge to the propriety of the Texas Two Step. They already have that process underway in their chosen path now, which is the appeal. They are also advancing their defenses and theories in the estimation trial. Extensive discovery has already been taken at the PI stage, as I mentioned, and any delay here would be interim and not forever. It would just make good sense.

There are other claims and we've discussed these in our, or other arguments. We've discussed these in our reply that we think the prejudice is minimal, also, because of the nature of the claims at issue. And I know that we have a very divergent view on the merits of the claims as the Committee, but some of the key gating issues that are at play with these

claims are important contexts to consider here. There -- I would be remiss if I didn't point out, again, the Fourth Circuit has never endorsed derivative standing for committees. That is an issue that will eventually have to be resolved in the litigation on the merits. There are preemption in law-of-the-case issues. Your Honor doesn't have to discuss, resolve those today, but they exist and they're serious impediments to the claims.

We've also cited significant authority in our brief that the filing of the bankruptcy case itself is not a transfer. That's pretty obvious. It's the bankruptcy filings, not the actual divisive merger, that the Committee really complains about. And there is plenty of authority that filing a bankruptcy case isn't the kind of delay that is typically remedied through a fraudulent transfer claim. It is not a hinder-and-delay situation, particularly if, as we expect, the finding that filing the case was for an appropriate purpose. There's no doubt that that kind of finding would have an impact on the ultimate merits of those claims and the actual fraudulent intent element.

And again, I will just note, to be clear, we don't think the defendants have been the source of the delay in the adversary proceedings. These are their claims. We respond to them when they surface, as we're required to do.

So the delay in the adversary proceedings certainly

isn't laid at our door.

And in addition, the ripeness issue, you know, this is bound up with all of the other reasons why estimation should come first. And I know Mr. Hirst is going to talk about that in his remarks, too. But I will say, I, I think I heard Ms. Hardman say this morning that our ripeness argument isn't ripe. So I guess double ripeness makes it even less ripe, I guess. But the point is, all of the allegations in these three complaints that we're seeking to stay, they all have common allegations. And we've referred to it shorthand as the "insufficient assets contention." That really depends on determining what the liabilities are. And we've laid out -- there are a series -- I put these in the slides just to make sure that I didn't forget any of them. There are several contingencies that have to happen. And again, Judge Whitley has recognized that from the beginning, that there are several contingencies potentially involved. But you don't even get to the funding agreements until you first get through two of the other conditions that the Committee would first have to prove.

So first, they would have to establish what is the debtors' estimated liability for asbestos claims. And once you have that number, are the debtors' existing assets insufficient to meet that obligation? In order to do that, they would have to prove that the existing assets, including insurance, the $270 million Qualified Settlement Fund, and other value that

exists at the subsidiaries at this point, they would have to show that all of those assets are less than the amount of the liability that you determine in the estimation proceeding, which, of course, hasn't happened yet. We and the debtors think those assets are going to be more than sufficient. We think you can look at that today and determine it. There's a plan on file with the Court and has been for several years that sets the, with the agreement of the FCR, that values the asbestos claims at 545 million.

So we think it's, it's clear on the face of the record in this case that the existing assets will be sufficient. If your Honor determines at, at a later point that they aren't, they, the Committee would still have to show that the NDAs aren't funding or will in the future refuse to fund their obligations under the funding agreement. And you can't prove that until it happens. That's a pretty basic point.

So we think that there are key issues that make the substance of their claims not ripe for adjudication today. Your Honor couldn't decide today any of those issues because the events just haven't happened yet to support those claims.

Now we could have -- ripeness is an issue that could be appropriate for dispositive motions practice. But as we said in our joint motion, that's not going to serve the interest of getting us closer to estimation. That's the goal. The question for us is, does this course of action get us

closer to estimation or not? And if not, let's deal with that later. That's why we came to your Honor, asking to put some common sense into the schedule that we have in this case.

The Committee made a curious point to, to try to assert, I think, that the amount of the debtors' asbestos liabilities isn't at issue necessarily in the adversary proceedings. They describe their theory there as a nuanced theory, that the, the claims they're really trying to assert are that the divisive merger put the entire enterprise's assets beyond the reach of the debtors. Well, that's not in their pleadings. That's not in the current claims. What they -- the claims are causes of action that have required elements, and those claims require them to prove that assets are insufficient. And so we think the nuance point, to, to the extent we or your Honor understands what the nuance is that they're trying to assert, we think it's not a reason to front load these, the adjudication of the adversary proceedings.

So again, your Honor, on this record, we think whether you do it because of divestiture reasons or just your inherent power to control the docket, we think a stay should be on the menu of options that you're considering. And I would point your Honor again to the -- and I know you've read the briefs -- but the Matter of Baldwin case that we cite in our brief is, it really could have been drafted for this case. The court in that case decided, eventually, to stay all the

adversary proceedings and try to get everyone focused on resolving the case. And we think it's time for a similar brief standstill.

And unless your Honor has any questions for me, I will cede the podium to Mr. Hirst.

THE COURT: Not at this time. Thank you.

MR. HIRST: Good morning again, your Honor. Morgan Hirst for the debtors.

And 'cause I didn't want to feel left out, I have a packet as well, although Ms. Hardman's packet was almost close enough that I didn't need to use it. But I am going to, if I can approach.

THE COURT: Yes. Yes.

(Slides presented to the Court)

MR. HIRST: And like Ms. Sieg, I'm actually not going to show those, although I may talk about it briefly. And I may actually go back to the presentation Ms. Hardman provided as well 'cause I actually do think it's helpful in trying to narrow this down.

Like Ms. Sieg said, I'm just going to focus on the CMO motion. The debtors, obviously, fully join as parties to the motion to stay.

One thing I do want to address upfront is there was a, a mention in one of the Committee's briefs that by engaging in these CMO negotiations, we were implying we didn't really

believe in a stay or didn't think a stay was appropriate, or something to that effect. And, and that couldn't be further from the truth. We engaged in CMO negotiations, your Honor, because the case is not stayed. The case is, is pending, and we wanted to figure out if there was a way to move forward on it. The reason we, in part, eventually did the stay was based on the CMO negotiations. The parties had, clearly, some fundamental disagreements on how these adversary cases should work.

And really, the, the disagreements, I think, flow into two central areas. One, the scope of a CMO that would be entered, and then two, the timelines that would be entered. And so Ms. Hardman is right. There's actually a number of things -- I'll, I'll, maybe at the end, try and point them out -- there's a number of things that are either nonissues or could be, I think, worked out pretty quickly. But the two that can't are the scope of the CMO to be entered and the timelines.

And what do I mean by scope? And this really gets down, your Honor, to my chart that I just handed up. It was the one thing Ms. Hardman was missing in her chart, but she didn't consult me before she did hers, so. She did a nice job of laying out, and I agree with her, on what the disagreements between our proposal and their proposal is. The third thing I put in, though, on Slide 3 was your CMO that you entered on our motion in the estimation case. And the reason that is

important is 'cause of the format. Ms. Sieg mentioned it. We were surprised in August when, having not heard and spoken to the ACC on the adversary cases since March, we got a proposal with a CMO that at the time included a trial date in the adversary CMOs for June. That's since been extended out to October now under their proposal that's before the Court. And it, it certainly surprised us. And I'll go through where we are in discovery in a minute. But the Committee in their brief accuses us of, of trying to put estimation in front and ensure that estimation will be tried in front of the adversary cases and trying to artificially do that.

First of all, we absolutely believe that estimation should be tried before the adversary cases. We think, No. 1, that the adversary cases are going to rely in some large part on what our liabilities are determined to be. And that's what we're doing in estimation.

Two, we've been prosecuting these estimation cases, and your Honor knows it. You've heard us the last six months and you've been managing these cases. And we just exchanged expert reports and we've produced now, we're up to 700,000 pages as of this week since your Honor took over in claims file discovery. Those estimation cases are moving forward.

We put forward a CMO, your Honor, that wouldn't have put the estimation case in front of the adversaries. It put them together. It put the timeline for fact discovery in the

adversaries to be very similar to the timeline that's already entered in the estimation CMOs. The only party that's trying to artificially jump the, the line here is the Committee. The Committee -- and I'm going to join Ms. Hardman. I'm not going to cast aspersions as to whose fault it is -- but it is undeniable. And your Honor hasn't heard anything about those cases since you took the bench last October. The adversary cases have languished for well over a year. We've had very little back and forth. We don't even have agreed document custodians, an agreement on who we're collecting documents from yet. And yet, the ACC wants to put forward a schedule that would try the case in a year from now. That would ensure that would absolutely happen before estimation.

So if anybody is trying to artificially arrange things here, we think it's the Committee by putting forward a proposal in a case that has largely languished to jump in front of the estimation case. And that's our single biggest issue on a scope side. We think that the appropriate course, if we're going to enter a CMO today, your Honor, and not stay the cases, is to set written discovery deadlines in the adversary cases. That's exactly what you did in the estimation cases, then we can see where we are and move forward. It will still hold, to follow Ms. Hardman's quote, "parties' feet to the fire" by setting dates by which document production needs to be done. It's exactly what you've done in the estimation case and it's

held our feet to the fire in getting that case moving forward.

So that's, from a scope perspective, what we proposed.

Now let me talk the, the second issue, which is the timing perspective. Where we are at in the adversary cases is, as you've heard, there was a lot of discovery done in 2020 and early 2021 in the preliminary injunction setting. And the reason that applies to the adversary is because the issues are very similar. It's an attack on the corporate restructuring. And so the documents produced at that time, the depositions taken on, at that time were largely about the corporate restructuring and lots of document discovery about that, the debtors' and the Non-Debtor Affiliates' financial statements and so on. And so we produced about 90 plus thousand pages of documents between the defendants at that time. I believe there were a total of 20 depositions, of which I believe 17 were corporate officers, employees, executives of either the debtors or the NDAs.

But that is not enough, in the ACC's mind. What the ACC has proposed in these adversary cases is that we collect documents from 39 different document custodians. Now I think nine of those overlap with what was already done, but they want us to collect from 30 more document custodians. They want us to go back and collect from the other nine using more expansive search terms and more expansive date ranges, okay? We have done and we have shared with them, as Ms. Hardman, I think,

reflected on, back in March we shared with them what they call hit reports. That's, you run the search terms against custodians. Here's what you get and rough justice, depending on whose, whose number is going to be used -- 'cause we've agreed to do 22 custodians. We have a difference of opinion between 17 -- we're talking well over a million documents are going to be reviewed to do their document review that they propose we do. They now propose that be done in three months. And they propose we do expert discovery right after and, and actually interim. And they propose we get all this ready for a trial in a year.

And that's just not reasonable, your Honor. It's not reasonable, No. 1, if you take all the history of the case out, we need more than three months to review the documents they want us to review. But it's particularly not reasonable when you understand that we have been largely sitting on these cases collectively. And again, we all do have glass houses here, but these cases haven't moved forward for three years. And so why all of a sudden are we on this race, this super fast-track schedule to the finish line? If your Honor is not inclined to stay these cases, we agree a CMO should be entered and we propose a CMO with tight, tight restrictions. No. 1, we would suggest that the custodians issue gets resolved in the next week, or we file motion practice to have your Honor decide it at the November omnibus. That will get the custodians issue

dealt with and we can start actually reviewing them. We propose six months from that date where custodians are agreed, for which we get to review what I believe are going to be north of a million documents based on the search term reports and produce them. That is an appropriate schedule. We don't think your Honor should yet be setting expert discovery schedules. We don't think your Honor should be setting dispositive motion schedules. We don't think your Honor should be setting trial schedules when we are really in the infancy here of these cases. And so that's our major issue with timeline.

All we are trying to do, your Honor, and all we proposed was to set the schedule here up very similarly to the schedule you've approved in the estimation cases. We think the ACC is trying to jump the line.

I will, you know, I did truly find Ms. Hardman's slide presentation helpful. There are a couple of things we don't have an issue on. The disagreements on a CMO, if we're going to go that way, are time and scope. For example, on her Slide 3, this was our proposal before we filed the motion to stay, that we have a right to file a motion to stay. I don't need that anymore. We filed our motion to stay, your Honor. We'll decide it one way or the other.

Slide 4. The first box on Ms. Hardman's Slide 4 is the, the three month/six month thing. I've explained to you why we believe six months is going to be an aggressive timeline

for the amount of information they want. If they want to scale their requests considerably down or square, you know, slim down 39 custodians that they've demanded we do, then we can talk. But given what they've asked us to do, six months is appropriate.

I have no issue with the second box on No. 4. They want, I believe, 60 days after production is complete to have a chance to review and file a motion to compel. God bless them, your Honor. Let them have 60 days. It doesn't bother me at all.

Page 5, obviously, is the deadlines. And you know, like I said, I was almost not going to hand up my thing, but the one thing missing on page 5 is what is on my slideshow at page 3, which is the estimation CMO. I think that's the box that really is helpful because you'll see our estimation CMO is very similar to what we proposed here. It's not trying to get estimation in front of the line, even though I think it should be. It's trying to put those on the same track. The ACC's proposal is trying to ensure these adversary cases, which have languished forever, go way in front of estimation.

And then Slide, Slide 6, I suspect, is language we can work out. We thought we were -- what we proposed in Slide 6 was in order to aggressively manage the process and set firm deadlines by which, if something didn't happen, your Honor would rule on it to keep us going forward. I suspect Ms.

Hardman and I could get in a room and figure that one out.

And then Slide 7 of hers, she mentioned we did raise the Western District Local Rule. I know they had found the Middle District form. We would suggest the Western District Rule applies, even though your Honor is, of course, from the Middle District, simply because we are in the Western District.

So absent that, your Honor, and absent any questions you might have, we would suggest the proposed CMO that we had attached to our opposition be the CMO that's entered.

THE COURT: All right. Thank you.

MR. HIRST: Thank you.

MS. HARDMAN: I think it's me, your Honor --

THE COURT: Yes, I think so.

MS. HARDMAN: -- seeing no one else stand up and shout.

Your Honor, thank you for hearing from me again on these issues. I have a number of slides, essentially, as a response.

THE COURT: All right.

MS. HARDMAN: I will tell you I'm probably not going to go through, like, half of them, but there are a few slides that might be helpful just to respond to some of the points.

So if your Honor would indulge us, I do want to circulate them.

THE COURT: Sure.

MS. HARDMAN: I may go very quickly through them. I'm actually inclined to not show them because then, if we're put, if I'm asking Ms. Calvar to go forward and backward every two seconds, it's a little bit difficult for folks to follow along. So I may say, "Hey, on Slide 4, your Honor, this is what I was talking about," similar to what Mr. Hirst just did.

So if your Honor would permit us to approach?

THE COURT: Yes.

MS. HARDMAN: Thank you.

(Slides presented to the Court)

MS. HARDMAN: So your Honor, I will do my best to short circuit my sort of big overall presentation because I think we have the issue that some of this is overlapping with both the responses to my CMO motion --

THE COURT: Right.

MS. HARDMAN: -- as well as their request of the motion to stay. So I will try to keep it as brief as I can. I do also want to respond to some of the points that were made today, your Honor, in person. And the way that Mr. Neier taught me to do that is to do it by Post-it Notes. So you see a small stack. I will go through them. And I apologize if they are all out of order. I tried my best to put them in some semblance.

So your Honor, in our briefs, we've laid out chapter and verse on our position with respect to the motion to stay.

Your Honor, defendants seek a motion to stay pending the appellate adjudication of the Committee's motion to dismiss that's currently at a stage of a motion for leave to appeal before the district court. This, just for context, your Honor, Judge Whitley himself had actually invited the parties to certify this. There's some language at a hearing, where I recall distinctly being there, where he indicated, you know, "I think this is going to need to get decided by somebody farther up the chain," essentially. And so he made a strongly worded request for us to do that based on the Carolin standard. And I understand that that is exactly what we did.

With respect to that appeal, I -- I -- it hasn't vested yet. So I want to call it a potential appeal, your Honor. That is really what it is. It's currently pending as a motion for leave. It's not fully pending. It's not fully vested. So looking at this at a base level, your Honor, the motion to stay, from our perspective, is essentially requesting an advisory opinion that if leave is granted, a stay should apply.

So from our perspective as a gating issue, that ripe, ripe argument that I made before still stands, your Honor. There's an accusation that our claims aren't ripe. We are saying you are making the accusation that we believe you are, your claims suffer from. So assuming your Honor is willing to, but assuming your Honor is willing to entertain the stay

request before the appeal is even fully vested, we still submit that that stay is precluded or unwarranted under any applicable standard that, that your Honor may see or consider that applies.

Your Honor, I will be very clear. I do not dispute your inherent powers. I would never do such a thing, but what I will address in a moment, from our perspective, is that part of this analysis necessarily requires a review and consideration about whether the operative set of law and rules that may be present govern that relief. The inherent powers, as I understand them, typically fill gaps where the law doesn't exist, rather than circumvent established standards.

So your Honor, with respect to the facts here, your Honor, Judge Whitley ruled multiple times and in multiple ways that the Committee was authorized and should proceed with its investigation. In fact, some of those comments are found on Slide 2, your Honor, and that we have a chance to stress test defendants' assertions about the pre-petition actions that got them into the bankruptcy case, in the first place. Before even all of that, your Honor, Judge Whitley granted the retention of Winston & Strawn for this very purpose, saying from essentially the beginning that we should have an opportunity to investigate pre-petition action and if claims are warranted, we should be able to pursue them. Then, on January 27th, Judge Whitley did grant estate standing for the Committee. Ms. Sieg mentioned

that this is an issue in the Fourth Circuit, but, your Honor, that standing order was not appealed.

So from our perspective, we are proceeding with standing that was granted before your Honor, and no challenges have been made.

Next, I would say is with respect to the timeline that you may see on Slide 3. Judge Whitley had approved the Committee standing, as I mentioned. With that standing, we began our investigation to pursue causes of action anticipated by both our retention and that standing order. And in the midst of lodging that dispute as to the language -- excuse me -- in the midst of lodging a dispute as to the language of the standing order itself that Judge Whitley approved on January 27th, defendants sought a motion to reconsider or clarify that standing before the order was even entered. Judge Whitley denied that motion to reconsider. He said it wasn't appropriate to enjoin one side and let the other side proceed with their preferred avenue of litigation. And then again, when we file a motion to dismiss, defendants file a motion to withdraw our standing, again attempting to circumvent or undermine these adversary proceedings as they were, as they were proceeding. Judge Whitley, on the same day that he denied the motion to dismiss, he also denied their withdrawal of standing. That, that standing withdrawal request was also based on similar concepts before your Honor now.

You heard, largely, that there are changed circumstances now justifying the request for this stay. I believe there's a focus on these supposed changed circumstances. Because while Ms. Zieg, Ms. Sieg said that Rules 59 and 60 don't apply, the changed standard or changed circumstances looks a lot like, essentially, new evidence or an intervening change in the circumstances here, your Honor. So respectfully, I, I don't think either under 59 or 60 any of the standards have been met, if that applies. The motion to dismiss was filed before the defendants' motion to withdraw, and it began its appellate journey on January 11th of 2024, which you can see here, your Honor.

So from our perspective, there haven't been any changed circumstances since January of 2024.

Slide 4 here, your Honor, is demonstrative, I promise. It just lays out the history of the motion to dismiss and where it's been from an appellate perspective. The point here is from January 2024 to present it has winded its way through the Circuit as well as through the district court, and opposition from the defendants has been lodged every step of the way. Simply filing a consolidated motion for appeal this past August, which is nearly pending, does not rise, again, to the level of changed circumstances.

Putting aside Rules 59 and 60, the next applicable standard that we would consider here, your Honor, is a stay

pending appeal because essentially, that's what it sounds like it is. Folks are, on the defendants' side are treating it as if it is an actual appeal that's pending. And from our perspective, they haven't met the burden to establish a stay pending appeal, which requires a likelihood of success on the merits, balance of irreparable harm, the balance of equities, and the stay needs to be in the public interest. Here, from our perspective, we've heard that, at best, the adversary proceedings can impact the appeal, or, effectively, circumvent the appeal process. We don't agree with that position, of course. What we're proceeding with here, your Honor, are two different, are two different areas of the law.

When we're talking about the likelihood of success on the merits, that would be the likelihood of success of our appeal. Now if the defendants would like to argue in front of your Honor the likelihood of success of our appeal, I would be, I would welcome it. I would be happy to hear how successful we're going to be, but that has not been demonstrated, your Honor. So, so that provision has not been met. That element has not been met.

When we talk about irreparable harm absent a stay, your Honor has heard about the cost and expense of pursuing litigation here, your Honor. What I will say about that is our thought and our procedure with respect to truncating the adversary proceedings was to get them done quicker. I actually

-- I -- I -- we may have a difference of opinion with defendants about whether or not a protracted litigation is more expected than a quicker one. I recognize that quicker can be more difficult sometimes, but as your Honor may be able to see very easily by just simply looking around the room, we don't lack the manpower on any side here, your Honor. It is an unfortunate byproduct of where we are, but the, the parties have sophisticated counsel who can handle this matter depend, no matter what timeline your Honor puts it on.

So with respect to the irreparable harm, from their perspective, the cost and expense of litigation, whether protracted or shortened, I don't think is necessarily irreparable, let alone a harm that should be considered here.

In terms of irreparable harm to us, your Honor, the plaintiffs, of actually staying the matter, I will say that the balance is in our favor or such that the harm would befall us, your Honor. I've mentioned it before. We've talked about witnesses being, coming unavailable, memories fading. And when we're talking about a factual circumstance of something that happened a few years ago with employees that may or may not remain at the company over time -- no, no fault to them. They're welcome to move on with their lives -- but that makes our, our pursuit of our claims difficult, if we just protract the litigation.

And then, of course, the balance of equities. Your

Honor, when you talk about the equities of the matter, investigating and stress testing a pre-petition set of transactions that defendants pursued to get them before your Honor, the equities are such that we should be permitted to simply investigate and stress test that. If there were such an issue with the transactions, it's something for us to consider. If there isn't one, as defendants posit, then our action should not rue the day, I would think.

But the, the response that we've received and the significant pushback demonstrates to us that the harm of equities here is, is more to us than to them, I will say. If, if our, our position is correct and the fraudulent, these were actual fraudulent transfers, from our perspective, the balance of equities is to protect those affected by a fraudulent transfer.

Finally, similarly, a stay of the, is in the, in the public interest. The public interest would be best served by adjudicating whether or not something is an actual fraudulent transfer, your Honor. And so from our perspective, that, that element is met on our side more so than theirs.

All of this said, again, I don't dispute your, your Honor's inherent power to stay. We do just think that that power is a justified exercise, don't think that power is a justified exercise, your Honor, when there are provisions available to qualify for such a stay. In fact, there's some

law under 105(a) that essentially suggests that if there is applicable law or statute, you should be guided by that, instead of using 105(a) to circumvent it. Even under the standards for an inherent stay, there is still the similar concepts of judicial economy, hardship, inequity, and potential prejudice, which I've discussed, your Honor.

There's been a lot made about the divestiture rule.

Oh, I should say, I guess for the sake of it, our slide does reference with respect to the inherent stays the Annapolis case, and I know Ms. Zieg mentioned, Ms. Sieg -- sorry -- mentioned it. The Annapolis case, while we cite it for the basic elements of an inherent stay, it's not in the bankruptcy context. It actually did not involve an appeal in the same matter like this one does, and the stay was sought pending results of a separate case, being the City of Baltimore, was having a similar issue.

So essentially, those, that case and its decision is inapplicable here, your Honor. All right.

Getting to the divestiture piece, I actually am working through my Post-it Notes, your Honor. The divestiture rule. Ms. Sieg said that that divestiture rule is in the eye of the beholder. Your Honor, there are elements or essentially, requirements or factors, whatever you'd like to call them, to establish whether the divestiture rule should apply.

So I don't think there's, essentially, discretion about whether or not the rule applies. Perhaps your Honor, of course, has the discretion whether to apply it in making your own decision, but, from our perspective, you would have to at least establish the elements to get to a divestiture.

From our perspective in terms of a stay, the next attempt here, again, is to, to try this divestiture rule to say your Honor doesn't have jurisdiction over the adversaries. Again, because this appeal is not yet pending, if this claim is not yet ripe, divestiture requires there be a pending appeal. In fact, defendants even admit that this relief under the divestiture principle is premature, stating if the district court rules as such, then this kicks in. And I believe we cite that on Slide 8, your Honor.

So with respect to the motion practice, it's very clear to me that this is an "if then" request. And that's not ripe for your Honor today. Of course, we still dispute that the divestiture rule, even if it did apply, or even if it did, even if it were to be considered, doesn't apply. As has been the case throughout this, these Chapter 11 cases, the Court has not been divested of jurisdiction over issues in the bankruptcy case. If it had, the Court couldn't have ruled on this or other motion practice that has come before it. If that were the case, if the divestiture rule were to apply, you'd see a challenge here to Judge Whitley's ruling on the defendants'

withdrawal motion, which came after the motion to dismiss began its appellate journey. On that score, tis case is no different than other asbestos cases in this District, your Honor. The Bestwall case has been referenced. It continues to proceed despite a motion to dismiss actually pending on the appellate level. Pleadings have been adjudicated since that motion to dismiss was on, on appeal in Bestwall. And it includes allegations that overlap those in the motion to dismiss appeal. And yet, no stay is warranted there, your Honor.

So like I mentioned, the motion for leave to, is still pending, and analysis under the investiture doctrine hasn't ripened yet.

What I will say that I think is a perplexing position to us, your Honor -- I'm not going to talk about alternative facts or alternative legal theories -- but if jurisdiction were divested, so, too, would jurisdiction be divested from the estimation plan proceeding process. It's this latter point that I'm saying is perplexing because defendants essentially say two things. On one hand, the adversary proceedings are, should be stayed because the underlying facts are the same. They say contentions. They're statements of fact. If you look at the, if you look at the chart that they've provided, those are statements of fact. The contentions made are our statements. On the other hand, the estimation proceeding, which is intended to inform a plan, which would be before your

Honor for confirmation, which, as we all know, in the Chapter 11 context requires that the entire matter has been presented to you, and it only can get confirmed, if the plan is in good faith, is somehow able to skirt this divestiture principle. Your Honor, you've heard a lot about folks taking, you know, differing positions or conflicting positions. Happy to have them take alternative positions. We just simply don't agree that that's the case. If the divestiture rule is going to apply to us, it would apply to the estimation proceeding as well. Because the facts underlying estimation that gets you to confirmation are the same that the ones, same as the ones that underlie the adversary proceedings.

If you would like a laugh, there is a graphic on Slide 9 of two faces and talking. It can be us. It could be them. I'm not casting aspersions. We just like to include some, some levity in our, in our slides, your Honor.

THE COURT: Thank you.

MS. HARDMAN: Your Honor, much has been made about this position with respect to funding, access to funding, insolvency, whatever you would like to call it. The defendants are also fluid on this issue when it suits them, your Honor. Either the debtors were insolvent at creation, in which case they generated new debtors, or they weren't, in which case I'm not sure if there's a financial burden to justify bankruptcy here, your Honor. Either way, they've taken alternative

positions. It's not an uncommon occurrence. In fact, defendants have been doing it in these very pleadings. As I mentioned before, your Honor, we should have a stay, but they should not. They've made this point in the motion to withdraw standing where Judge Whitley denied the relief requested. And for whatever it's worth, your Honor, the Federal Rules also permit alternative legal theories on both sides. So I don't think that this is much ado about anything.

That said, the defendants have repeatedly said that estimation must go first because our causes of action are based on contingent future events. That's this sort of funding agreement argument that's been made. Your Honor, to start, any valuation issues have little to no bearing. In fact, I think I need to say no for Ms. Concannon's sake. They have no bearing on the claims for substantive consolidation.

As for the fraudulent transfer claims, the sufficiency of assets delegated to these debtors is determined at the time of that delegation for fraudulent transfer purposes, not currently. I -- I -- honestly, your Honor, it doesn't matter to me if it's current or not. For fraudulent transfer purposes, you look at what was transferred at the time. Subsequent resolution or attempts to resolve don't cure the fact that a fraudulent transfer may have occurred.

Third, and more than that, the Committee's point with respect to fraudulent transfer is not just whether asbestos

creditors received the same value at the exact moment of the fraudulent transfer. It is whether they were hindered, delayed, or defrauded. Clearly, ensuring that assets were placed beyond the reach of creditors, as Judge Whitley noticed, suffices to demonstrate at least a hindrance, if not also a delay or a defrauding. And you will see on Slide 11 that Judge Whitley made such initial findings and theories.

All of that said, your Honor, I think I have said that the relief requested is not yet ripe. They fail to meet the burden for reconsideration. A stay pending appeal, a discretionary stay, and the divestiture rule does not apply.

I have a couple more tiny Post-its, your Honor, if you will bear with me. This largely relates to the actual CMO, I believe.

One moment with respect to the stay. Ms. Zieg said, Ms. Sieg said that a brief stay is not what was requested. I will say, your Honor, in the pleadings, though, there is an indication that this is, could be stayed and potentially mooted in, in, in infinity, essentially, for forever. From our perspective, that's a veiled attempt to move this permanently.

There's also been a point made that I, I want to make clear for the record, your Honor. I do not believe that estimation in any way moots our actions, our adversary proceedings. I don't think that is the same thing. I don't actually believe, even if there's a number put on the table,

that that moots all of our claims. As I've mentioned before, the value part is not part of a number of our claims.

So your Honor, I, I just want to state for the record that that's, that's not the issue.

There was another mention about Bestwall, just to clean this up as well, that there were three separate dismissal motions pursued and no party sought a stay of those aspects. It will -- and with respect to the points that Ms. Sieg mentioned, there were two different motions pending, which is why Judge Beyer had mentioned a denial with respect to some of the progress there. And I think that that has to do with two pending motion practices. And that's not what we have here, your Honor. We're simply trying to go forward in discovery.

So your Honor, with respect to those issues, that is what I will say about that.

There was a mention that Rule 59 or 60 might apply to us, if I'm saying it applies to them. Fair. I don't think it does. If it doesn't apply to them, it doesn't apply to us, your Honor.

I also don't think that our pursuit of discovery is a final order, nor do I think the CMO is a final order, either.

Okay. With respect to the CMO, I will end on a positive note, your Honor, I hope. It sounds like we've made a lot of progress with respect to some of the elements that are, are still, I guess, considered disputes within the CMO. Mr.

Hirst kind of ran through those, and I've checked off a number saying this is not a problem anymore. And that is wonderful.

There was some mention, I think, your Honor, with respect to a tension that I find interesting. There's been a claim that there's been too much delay in our adversary proceedings, thus justifying a stay. But yet, at the same time, too much discovery has been done. So I'm not sure how to square that exactly, your Honor, other than to say there's been a lot of discovery done in the PI and so we're using a lot of that to form the basis of our actions. And your Honor, we've asked them for a number of things. There's been a mention about the custodians not even being agreed to yet. Your Honor, we asked for responses to those issues. Of the 22 or 24 -- we're not sure how many custodians we're talking about at this point -- there were a number that were part of the preliminary injunction already. And so those documents, in theory, are, largely, already part of our process. There's a number that they have agreed to before. We asked for some follow-up with respect to the list of custodians that they disputed. That took quite a bit of time. I would say it was more than five months to get back to us on those issues. I'm not trying to cast aspersions, but months were mentioned about us. And your Honor, I'm trying my best to keep this on the, on the track here, your Honor. And all I will say is we are grateful to have received the withdrawal of some of the objections last

week to some of those custodians.

So we look forward to finalizing the last bit of this list and hopefully, either get those last few in front of you or just move forward, as Mr. Hirst suggested.

I think, your Honor, with that, I think I've covered every Post-it Note. So unless your Honor has questions, our proposal is to finalize the CMO where I think we have very limited disputes left, if your Honor invited us to negotiate terms of any of the dates that remain outstanding.

Your Honor, one last thing I will say about this is when it comes to the dates, as I mentioned before, we proposed all of them because we thought it would help push things along. We are happy to go with whatever dates your Honor is willing to give us in terms of how far along we should go, how many dates we should go out to, how many deadlines we should have. We're happy to do that. This was a proposal, and your Honor has heard the response is stay this. We would like to have some meaningful dates and deadlines to keep feet to the fire. It doesn't have to be all of them. We don't have to decide trial today. We just wanted your Honor to understand that we really want this to go forward. We want to do it expeditiously, and we think that's the best course of action for all parties involved.

So with that, your Honor, I will rest.

THE COURT: All right.

MR. ROSENBERG: Your Honor, Mike Rosenberg for the FCR.

We rest on our joinder to the debtors' motion for stay.

Thank you.

THE COURT: All right. Thank you.

All right. Is it possible to take a break? Or are you --

MS. HARDMAN: Absolutely.

THE COURT: -- like that? Is that -- okay. So like about ten minutes. All right.

(Recess from 11:06 a.m., until 11:16 a.m.)

AFTER RECESS

(Call to Order of the Court)

THE COURT: All right. Please sit down.

I'll start off with a funny coincidence. I walked out into the back hall and ran into Craig Whitley, and he joked that he could just pop in here and sit on the bench and see what your reaction was, so.

MS. HARDMAN: That would have been hilarious.

THE COURT: I thought that might just make your brains all explode. Anyway, he said, he sends his regards. So anyway.

Ms. Sieg.

MS. SIEG: Thank you, Judge.

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

MS. SIEG: Maybe he heard his ears burning.

For the record, Beth Sieg for the Non-Debtor Affiliates.

Briefly, a couple of clarifying points on the stay arguments. No. 1, just so that the Court hears it loud and clear, we think a stay is absolutely appropriate and warranted. The fact that we have simultaneously continued to negotiate with the Committee to try to seek a CMO is because we're very cognizant of your Honor's prior instructions to the Committee that they do the same back when we were working on the estimation CMO.

So I don't want that to suggest in any way that our request for a stay is somehow lesser, or a lesser alternative. We absolutely think that's the first option you should consider.

I'm sorry. Were you --

THE COURT: No, no.

MS. SIEG: A few quick clarifying points. We're obviously not seeking a stay of the dismissal order. The Nondebtors and the debtors very much want these cases to proceed. They are not appealing the dismissal order, and we are not seeking a stay pending an appeal of the dismissal order. We're seeking a stay of closely related issues in the

appeals under the divestiture rule. Maybe I invited some confusion when I said that the divestiture rule involves a little bit of an eye-of-the-beholder concept. To be sure, it is mandatory. It, my comment recognizes the functional nature of that rule. Your Honor has to look at the claims and look at the issues that are involved in the appeal and determine if they're closely related. If they are, divestiture is mandatory, regardless of whether you call it jurisdictional or just pursuant to the case law. That's just how the rule works. And it doesn't function to divest the Court of jurisdiction over all aspects of the bankruptcy case. No one is suggesting that. That's, in fact, the whole purpose of the rule, is to ensure that that doesn't happen in bankruptcy cases that frequently involve interrelated issues.

There was a mention about the timing of the solvency determination and how maybe that is different than what might be an issue in the estimation proceeding. Surely, we're not going to do this twice. We've got to determine what the debtors' asbestos liabilities are. And I will point out, too, if we are talking about looking at solvency at the time of the divisive merger, you can look at the value of the funding agreements based on the performance at that time and continuing ever since.

But you don't need to determine those issues today. I will say the solvency issue, notwithstanding, you know, the

arguments that you heard from Ms. Hardman, solvency is, is 100 percent at issue in all of these claims. On substantive consolidation, solvency bears on the necessity for consolidation. Harm to creditors, same thing. Even with actual fraudulent transfer claims, the issue of solvency will be at play within the, the merits, the, the *prima facie* burden that they have and in terms of the remedy that's available.

So solvency is 100 percent at issue in all of those causes of action, and we don't want that to be lost in the weeds on discussing what types of claims are at issue.

We're certainly not seeking a stay to infinity. What we are seeking and, and what we put in our papers, we suggested 60 days after your Honor issues an estimation opinion, and I certainly don't expect, and didn't expect when we drafted that that your Honor would take until infinity to rule. You've been very clear that we're not doing that in this case.

So in our minds, what we're seeking is not an unlimited stay.

To clarify the point about mooting, I, I may have caused a misunderstanding to Ms. Hardman. The point that she made this morning was with this stay motion we're trying to run out the clock on the adversaries so that, possibly, they become moot depending on what happens, ultimately, on appeals, not -- the argument wasn't even mine to begin with. It was hers. We're not suggesting that estimation might moot the appeals, as

a technical matter. It certainly will inform them and they can't be resolved before estimation, we think, for the reasons we've already talked about. But that was the point that we were making there

And then finally, there was a lot of discussion about Bestwall and allowing the proceedings in Bestwall to continue. I would just note there were no adversaries in Bestwall, or none to my knowledge. So with that clarifying point.

And with that, your Honor, unless you have questions for me, I will turn it to Mr. Hirst.

THE COURT: All right. Thank you.

MR. HIRST: Mr. Miller, apparently, has joined the Government's maintenance team, your Honor, unwittingly.

THE COURT: Wow.

MR. HIRST: Your Honor, I'm going to stand here because I will be that short. Just to be clear, the way we divided up the argument was the Non-Debtor Affiliates argued the stay motion. We argued the CMO. The debtors fully endorse the stay motion and fully join in all the arguments. We think the factors that we laid out in our brief, the Van Laningham factors, which was a case from your District, your Honor, for discretionary stays are all met.

The one factor to speak on is the, the prejudice to us if you don't grant the stay; prejudice to them if you do. Prejudice to us, if you don't grant to stay, is we are on a

third front litigating these things at enormous cost to the estates. And you've heard, Mr. Guy's not here with his charts today, but you've heard it enough and seen it enough. These are expensive cases. You didn't hear the ACC deny this is going to be expensive discovery in the adversary cases to prosecute what are many of the same issues that are already being prosecuted. I think that certainly supports a stay.

On the flipside, the ACC is getting to prosecute the claim they really want to prosecute in these adversary cases, which is whether or not we belong here and whether or not the corporate restructuring was proper under law. They are getting to prosecute that claim. They chose to do it in the motion to dismiss. I certainly didn't pick it. Nobody else behind me did, either.

So we think those factors that Van Laningham laid out, which is for a discretionary stay, which is the standard that we think is, unequivocally, the one before you support a stay. If you don't grant that stay, your Honor, we think the CMO we've presented is the only one that's workable, the only one that's reasonable, and the only one that fits with what your Honor has already done in the estimation case.

So we would ask that be the CMO you enter, if you were to enter a CMO today.

That's all I have, your Honor, unless you have questions for me.

THE COURT: Just looking through my notes.

(Pause)

THE COURT: I don't. I don't. Thank you.

MR. HIRST: Thank you, your Honor.

THE COURT: So what's the, what is the plan for today? How long do we think everything is going to take?

MS. HARDMAN: Excellent question, which I can only answer half of.

So your Honor, I did have a couple of responses, if you would permit me, with respect to the comments that were made.

But to answer your immediate question after that, I think, your Honor, it's entirely your preference if you would intend to want to take a break and rule after that or if you wanted to hear all argument first, then we probably need to speak with the other parties involved as to how long they anticipate their presentations going for the other motion practice.

THE COURT: Right. It would be helpful to me to have some sense of what --

MS. HARDMAN: To understand that.

THE COURT: -- what type of, like, are we talking about three more hours, or what?

MR. ERENS: Your Honor, we have two more motions. The next motion is the 2004 motion --

THE COURT: Right.

MR. ERENS: -- which is debtors' motion. I intend to be extremely brief. I don't expect -- I, I don't know what they're going to argue, but I don't intend to spend much time. We're here for a decision and answers to questions your Honor may have. We think the issues are straightforward and we put them in our moving papers and our reply and we don't need to belabor them, you know.

MR. MACLAY: Your Honor, hi. This is Kevin Maclay from Caplin & Drysdale. I'll be responding to the 2004 primarily, and I would estimate, obviously contingent on what Mr. Erens says, 'cause I'll be responsive to that since it's his motion, but I would anticipate something in the 20-to-30 minute range from me, depending on what I hear from, from him.

THE COURT: All right. And then we also have one more. So I mean, I'm trying to figure out if we're going to fit it all in before lunch or not, but it sounds like probably not, you know.

MS. HARDMAN: in terms of opening argument on those?. I suspect not.

THE COURT: Right. What are we thinking on?

MR. HIRST: It's your motion, so.

MS. HARDMAN: There's another motion, so I don't want --

MS. RAMSEY: Yes. Your Honor, the, the final motion

the Court is going to take up is a motion to amend the CMO or the protective order, and I expect that that will take approximately half an hour for the, for, for the argument on the motion.

MR. HIRST: I, I, I just can't think of that many things to say, usually, but I would be stunned if I go more than five or six minutes in response, your Honor. Although half an hour --

MR. ROSENBERG: Likewise for the FCR, your Honor.

THE COURT: All right.

MR. HIRST: -- is a lot, but I, I still think I'll keep it down to five minutes.

THE COURT: Right. Okay.

All right. I can rule, I'll rule now, if you can bear with me being slightly slow. And then we can maybe either start to hear something or just go ahead and take a break. 'Cause I definitely believe in lunch.

So, so no one will be happy with my, my ruling. So that, that's good, right? Where I fall on this is I think it's premature for a stay because we do have some movement in the district court with Mr., with the permission, the leave to appeal with Judge Volk coming.

That being said, on a very broad picture, just letting you know, I, case management-wise, I'm the one who's making decisions on, on these big issues. I'm going to schedule this

trial and estimation before.

So I do think there's just some big, just the fundamental issues regarding solvency that are, are important and it makes more sense to me when I'm going through what I'm going to need to decide down the road, is to do the estimation trial first and then, if we get there, you know, the AP trials, right? I mean, Judge Volk could decide that, to deny the motion, you know, next week. So that's why the thing is, I, I don't feel like -- I just say it now, right? So that's why I'm saying no one's going to be happy. So that's, that's where I am.

So what seems to make sense to me now is to enter, because in all fairness, I would say the Committee is now doing what the debtor did as far as, you know, throwing up some deadlines to get things started, which is, indeed, what I have, you know, asked for, so is to essentially match a beginning starting deadline.

Something that is bothering me a little bit, certainly about these aggressive deadlines, so it's, it's not going to be, only because with the deadlines for estimation, they are far longer out than what were originally proposed. And I feel like the big issue was that it was impossible. It was too much work to do. We could not get it done in that time. And I think if, if the Committee, in their mind, was at the same time calculating in this work for these APs, it would have been

helpful to say that or not, you know. These things need to be contemplated together.

So going forward, you know, we need to be, the timelines need to align and match in a way that they complement each other. They work together. Also, that, like, we as human beings can feasibly do it, you know. We can't have the trials the same month. No one can do that, right? So, plus there are trials in, you know, the other -- Bestwall, I believe, has a trial date scheduled now. And you know, we just, I mean, it's, it's nice to say we have as much manpower as we need, but there, first of all, is only one me. And you know, second of all, you know, that's, that's a little bit glossing over things, I think, you know. I, you know, so.

So I do take the debtors' or the defendants' proposed deadlines as meaning that it's, that it's possible to do. So then, I would say we go with the six months --

Let me pull up that order.

-- the six months, basically what the, what the defendant has suggested. So we're looking at the six months and then this, but then going with the 60 days. And so, you know, things are starting.

Now bearing in mind that, you know, there's no race. Because what I want to now know is what do you -- what it -- and I'm going to expect to hear from that, you know, is what are people expecting as far as the deadlines for estimation?

Because you know, we need to make sure that this is decided in an order and presented to me in an order that makes sense.

So most of what I'm looking at, this redline version that the, that the ACC provided that has the, the defendants' changes, I would go with that. I do think we should go with the Western District. We -- I don't think there has to be anything if there's a Local Rule about, from the Western District. The reason we have it in our scheduling order is because we don't have a Local Rule. So you know. I don't think there's any reason to, to change that.

Were there other things in that that I'm missing that then we would need to talk about?

MS. HARDMAN: Your Honor, one, I guess one minor point --

And Mr. Hirst, I will absolutely defer if you have an opinion about this.

-- was it just appeared that the very last sentence of the CMO says, "The Court shall retain exclusive jurisdiction." Whatever your preference is, in or out --

THE COURT: What --

MS. HARDMAN: -- is up to you.

THE COURT: What is the -- why are we adding "exclusive"? Who, who was adding that? This was confusing to me.

MR. HIRST: Wasn't me.

MS. HARDMAN: We had struck it.

THE COURT: You struck it.

MS. HARDMAN: And, because we understood from prior experience before your Honor that you do not prefer to have that in there. I don't think they necessarily put it back in. It was stetting an original version of it, I think.

THE COURT: Well, depends is what it adds to. If it's about this order, I have no problem with it being in there.

MR. HIRST: You'll be blessed to hear, your Honor. I have no opinion.

MS. HARDMAN: We don't, either. We're -- it's --

THE COURT: Yeah. I mean, you're talking about my order.

MS. HARDMAN: Yes.

THE COURT: Doesn't that -- yeah.

MS. HARDMAN: We're fine with that.

THE COURT: Yeah.

MS. HARDMAN: Okay, great. Happy to have it in there.

THE COURT: Is there anything else? So I don't know if someone's been calculating in their minds, then, months out. But you know, the way we have the estimation kind of schedule going, we're thinking next summer is when we're getting more dates, right?

MR. HIRST: I mean, the way the CMO that we drafted -- and again, we, we drafted -- Ms. Hardman said the same

thing -- we drafted it as a part of negotiation. We didn't revise it --

THE COURT: Right.

MR. HIRST: -- before we presented it, was approximately six months after we choose custodians, which I think we've set for next week, or else your Honor's going to have to hear about it -- I'm sure she'd be thrilled to hear about that -- but six months from there. And then we set dates. I think there's dates in there as well for motions to compel, which will be 60 days. And I think there's dates in there for privilege logging, which I believe was 30 days after.

Right, Carrie?

MS. HARDMAN: Privilege log, it says 30 days, your Honor. Yes, that, that was not disputed. And then you had just, your Honor, ruled that we would get 60 days to do motions to compel.

MR. HIRST: And then there would be a hearing before your Honor to set the next set of dates.

THE COURT: So is that -- is that -- does that bring us around the same time?

MR. HIRST: That brings us to around the same time as estimation. That's, that's the way --

MS. HARDMAN: I don't know --

MR. HIRST: -- we intentionally did it.

MS. HARDMAN: -- about estimation. I defer to

somebody who actually --

MR. HIRST: Yes.

MS. HARDMAN: Your Honor, respectfully, I'm not part of estimation at all.

THE COURT: Right.

MS. HARDMAN: So I'm --

MR. HIRST: Yeah. The estimation --

MS. HARDMAN: -- trying my best.

MR. HIRST: So for your Honor's recollection, the estimation timeline is claims files are going to be finished being produced in March. We have to answer that really lengthy interrogatory about the suppression cases by June. Then, your Honor, we're at a status report, I think the next month, right, in July. And your Honor is going to set the next set of deadlines. Part of that may be at the end of written discovery. We would think it's over, but the ACC may want to file motions to compel or something.

But that's, it's basically in July. You're going to be --

THE COURT: Right.

MR. HIRST: -- setting deadlines so we can get to the next step of the case. That's what the intention, basically, here is as well.

MS. HARDMAN: And with respect to Mr. Hirst's intention for us to complete the custodian agreement in a week,

we will do our best. We have a response to go to them today or tomorrow where we are narrowing the issue. But there are still a few that are, remain in dispute. So hopefully, we can get there in a week, but --

THE COURT: Is it -- both of you proposed that deadline, so. Right?

MR. HIRST: And I, I proposed it in late September when I was negotiating with them with the idea --

MS. HARDMAN: Yeah.

MR. HIRST: -- that we wouldn't be standing here October 23rd. But yeah, I would hope we can --

THE COURT: I mean, we can move it out a week, but then miss the -- you would probably miss that November hearing date.

MR. HIRST: Hearing. It'll go to December.

It's up to you, Carrie.

THE COURT: It's possible you might miss the November hearing date, anyway.

MS. HARDMAN: Right, anyway.

MR. HIRST: With the November hearing being the 19th is, means we have an October 30 deadline to file motions --

MS. HARDMAN: So that's next week.

MR. HIRST: -- unless we do it on shortened notice.

THE COURT: So --

MR. HIRST: We could push it out to the December

hearing --

THE COURT: Right.

MR. HIRST: -- as well.

MS. HARDMAN: Yeah. This is not aspersion cashing, catching. We just, we received their response last week.

THE COURT: Right, right.

MS. HARDMAN: So we just needed a chance to respond to it. And so --

THE COURT: Ms. Ramsey?

MS. HARDMAN: -- your Honor, I think timing=wise, it'll end up being December --

THE COURT: Right.

MS. HARDMAN: -- that we would talk about that.

MR. HIRST: Okay. That's fine.

THE COURT: Ms. Ramsey?

MS. RAMSEY: Your Honor, I -- I -- and all I was going to add, your Honor -- Natalie Ramsey for the record -- was that with respect to the Court's direction with respect to ordering, we could get the estimation teams and the adversary teams together as part of this dialogue and try to make sure that we're implementing the Court's instruction.

MR. HIRST: I, I'm stuck on the same team for both. So I'll, I'll be there.

THE COURT: So the -- we, we might want to push out the October 30th since it's not going to matter, really,

anyway, for -- about how much time?

MS. HARDMAN: For a deadline to reach agreement on custodians?

THE COURT: Yeah.

MR. HIRST: Why don't we -- what I would suggest is we push it out to, up to the December hearing motion deadline.

MS. HARDMAN: Which is?

MR. HIRST: So that way, if there's an issue, we can have it raised -- and I would hope there's not -- but if there's an issue, we can have it raised before your Honor in December so we can get on with it.

MS. HARDMAN: We -- yeah. We do need time to draft the motion.

MR. HIRST: Yeah.

MS. HARDMAN: So it wouldn't, not that anyone would do this and give us an answer the day before the deadline -- that would never happen, your Honor, of course -- but --

THE COURT: Well, why don't we just do it --

MS. HARDMAN: -- just to suggest --

THE COURT: -- there days before.

MS. HARDMAN: -- to your point about a date, yeah.

THE COURT: We can do it three days before --

MS. HARDMAN: That's fine.

THE COURT: -- whatever that is. What -- does anyone know? Let's see.

MS. HARDMAN: I was going to say, does anyone know the deadline to -- I don't know it offhand, your Honor.

MR. HIRST: We're figuring out when the December hearing is.

THE COURTROOM DEPUTY: December 16th.

MS. HARDMAN: Is the hearing date, right?

THE COURTROOM DEPUTY: For --

MR. HIRST: So it means --

MS. HARDMAN: So November 26th, it looks like is the deadline to file --

THE COURTROOM DEPUTY: Hold on, hold on, hold, hold.

MR. HIRST: Is that Thanksgiving?

MS. HARDMAN: -- motion practice?

MR. MACLAY: Yeah, that's Thanksgiving. Happy Thanksgiving.

THE COURTROOM DEPUTY: Excuse me. December 17th. I'm looking at the 2026 schedule. 2025 is December 17th.

MS. HARDMAN: Yeah. So the 26th -- the 21st, your Honor, which is a Friday, we could reach agreement --

THE COURT: Yeah.

MS. HARDMAN: -- one way or the other.

THE COURT: Before -- that -- it's better to do it before --

MR. HIRST: Yeah.

MS. HARDMAN: That way, we have --

THE COURT: -- Thanksgiving.

MR. HIRST: Why don't we, why don't we even give ourselves --

MS. HARDMAN: Or --

MR. HIRST: -- a few more days so you guys aren't running around in advance. Why don't we say -- 17th's a Friday -- why don't we say the 14th we got to reach an agreement and then you can file the motion. You'll have a whole week to file the motion before the holiday.

MS. HARDMAN: Yeah. That sounds perfectly reasonable, your Honor.

THE COURT: Look at this, everyone.

MS. HARDMAN: Lots of agreement going around, your Honor.

THE COURT: All right. So -- and then we'll have -- so that, then, pushes out -- well, it's, it's just by a month. So it, it should work fine, right --

MR. HIRST: Yeah.

THE COURT: -- everything?

MS. HARDMAN: Yes, your Honor.

THE COURT: So while, you know, everyone can just over, now start thinking about, then, how, if you want to get to your AP trials, how we can get to the estimation trial. Just start thinking how it's all going to work together. But the reason, I mean, I wouldn't say it was my preference, so

not, for estimation set dates, further, more dates. It was that just getting you guys to set even a few dates was like, you know, flying to the moon, it seemed like practically. So, so just saying that is not something that I wanted in and is a practice that I have.

What's happening on the phone?

So I mean, if you'll recall squeezing those dates out of, out of you, you know, was, was difficult. So, so I hope further dates, you know, it's just not going to be that way, to the extent you could even beforehand be thinking about that tentatively. 'Cause, you know, it's all your schedules, too, and certainly my schedule.

So just encourage you to do so. So we're not, we're not sending you to the 341 room again and making you stand there until you decide on things. So that's where --

So then moving to the motion, the defendants' motion to stay, here's why I am. I'm, I'm, I'm willing to continue it, to be honest, if you'd like, to next summer or deny it without prejudice. But I mean, I, I do think, say leave to appeal is granted and you know, who knows what's happening. But I think there are some issues there that could be relevant later.

MS. SIEG: Your Honor, holding it open on the docket and continuing it would, would be perfect, from our end.

THE COURT: Okay.

MS. SIEG: Thank you.

THE COURT: All right. So why don't we do that. I don't know how, what the practice is here, is if you need a date to hold it open or if it just --

MR. HIRST: Generally, your Honor, we pick a date that's, you know, six months -- it's the omnibus hearing date that's six months out --

THE COURT: Okay.

MR. HIRST: -- from now.

THE COURT: Right.

MR. HIRST: And just set it there.

THE COURT: So it's --

MR. HIRST: And then if it needs to be continued again, we just continue it out again.

THE COURT: Okay, perfect. So we'll do that.

MS. SIEG: Thank you, Judge.

THE COURT: All right. So I don't need an order on that, but I do need an amended Case Management Order, if you can just circulate. And when you submit that, I'll assume everyone's agreed to everything, right?

MS. HARDMAN: Yes, your Honor --

THE COURT: All right.

MS. HARDMAN: -- will do.

THE COURT: All right.

So do we want to do some, begin on anything else or

just take a break?

MR. ERENS: It's totally your preference, your Honor. As I indicated, I'll be short, five minutes, maybe. Mr. Maclay indicates he's got more like a half an hour. So it's really a question of -- and then I do want to reply to what he may say.

So we're probably at least 45 minutes for the next motion.

MR. MACLAY: If he's got 5, I can keep it to 20 or, or less. So maybe we can --

THE COURT: Well, I don't want people --

MR. MACLAY: -- work something out here, your Honor.

THE COURT: What?

MR. MACLAY: I said so maybe we can work something out here and try to get this done before lunch.

THE COURT: Okay.

MR. ERENS: Okay.

THE COURT: All right.

MR. ERENS: That's fine.

THE COURT: Go for it.

MR. ERENS: All right. Thank you, your Honor. Again, Brad Erens, E-R-E-N-S, of Jones Day on behalf of the debtors.

As I indicated, your Honor, before, from our standpoint, we're mostly here for a decision, unless your Honor has questions. We've put our arguments and our positions in the papers, the moving papers, as well as the reply, which were

relatively short. We think our position is straightforward and is ready for decision. We do want to, or I do want to emphasize a couple points, however, and I'll be brief on that.

Again, we think it bears emphasis that, from our standpoint, the issues surrounding the requested discovery are serious issues, generally, and in this case. From the debtors' perspective -- I think the FCR will echo this as well -- we believe these cases could have easily resolved in 2021. This case was filed coming off of the Garlock Chapter 11 case in this jurisdiction. The debtors had, effectively, the same product at issue that was at issue in Garlock. Garlock resolved for a $480 million trust. The debtors got a plan on file with the FCR, who represents, we think, roughly, 75 to 80 percent of the liability in this case, i.e., the futures. We put a plan on file in August, or maybe it was September of 2021 for $545 million, larger amount than Garlock even though it covers ten less years of claims. We've made this point before. Garlock filed in 2010. This case filed in 2020.

So the Garlock Trust, since they were out of the tort system starting in 2010, had to cover 2010 going forward. This trust would cover 2020 going forward. So ten more years in the Garlock case, but less money. We invited, and I think this is public record -- someone put this in the public record -- we invited at the time the ACC to participate in those plan negotiations. They declined. So the FCR and the debtors went

forward and put forward our plan. Instead, the ACC, and it was already pursuing this path at the time, pursued a complete litigation strategy in this case. They opposed the PI from the beginning of the case, even though the preliminary injunction had been approved uniformly, effectively, at that time, in asbestos-related cases. That took a year. They lost. They lost on summary judgment, your Honor.

Next, they opposed estimation, even though estimation was routinely, again, granted in cases where there was a dispute on liability and as you saw in the March hearing, your Honor, even though they lost that motion, they continued to argue that estimation shouldn't be pursued, but I think your Honor finally shut that down in March. They opposed all the discovery the debtors requested in estimation, discovery from a variety of sources, including trusts. That took another couple years. They lost on all fronts. The BA filed a motion for mediation. They opposed that. Judge Whitley approved it. They, and this was maybe the strangest portion of the case, the debtors filed a motion for the establishment of a $270 million Qualified Settlement Fund to fund, along with insurance, the plan that was on file solely for the benefit of claimants. It can only be used for the benefit of asbestos claimants. The ACC opposed that motion. Again, it was granted. As you heard, of course, extensively this morning the ACC then filed adversary proceedings for substantive consolidation and

fraudulent transfer, arguing that the debtors were insolvent at the time. They indicated to Judge Whitley that they did not intend to pursue dismissal in this case. And Judge Whitley indicated he would not likely grant dismissal in this case, given the Carolin standards in the Fourth Circuit.

Nonetheless, three years into the case, then the ACC changed its mind and decided it did want to pursue dismissal and completely changed its position, arguing that debtors not only were not insolvent, but were not even financially distressed. Judge Whitley again denied that dismissal motion. That's now on appeal, as you heard. That was the ACC's approach to this case and has been their approach. That has caused five years of delay in this case, your Honor. That has caused the estate to incur tens of millions of dollars in professional fees, untold number of court hours, and untold number of professional fee hours, tens of millions spent by the ACC and tens of millions of dollars spent by other professionals, mostly the debtors' professionals to respond to the ACC's litigation strategy.

At the end of the day, the question on this motion was, or is, is that strategy and all the actions that the ACC has taken or not taken been done with the consent or even a consultation with the actual ACC members? We're on inquiry notice. The answer may be no. We, we don't have discovery. We're asking for discovery. But we put in our papers for the

substitution motion and we put in our papers, again, for this motion what we have learned without the benefit of any discovery, that there are co-chairs of the Committee who didn't even know whether they were on the Committee and the, and the variety of facts we put forth in our pleadings.

Your Honor, these are serious issues. If the Committee has been acting in this manner for five years, causing tens of millions of dollars in fees in these cases without consulting at all the actual committee members, but instead, acting solely on the wishes of tort counsel, who we believe and the Fourth Circuit has indicated may have disabling conflicts, that is a serious matter that we think requires discovery, and that's why we're pursuing this motion.

The ACC has argued it's harassment. Your Honor, it's not harassment. We didn't create this situation -- excuse me -- the ACC did. The ACC has argued that this is burdensome. What we've asked for is not burdensome, your Honor. It's a limited set of interrogatories asking all the same question. For this particular motion, did the ACC members actually participate at all? Were they consulted? Do they know about this? For the plan that I mentioned that was put on file, did the ACC members have this plan or was it never sent to them, things of that nature. And then a limited set of documents that are not privileged, your Honor, and that we think may not even exist. And that's part of the point, your Honor. They

don't exist, they can't be privileged. If they don't exist, it's not burdensome to produce them, but simply documents that indicate whether committee members, the actual committee members, were at ACC meetings or not. And that's all we've asked for. It's very limited, your Honor. It's not burdensome and it's not privileged.

There was a statement made in the ACC's objection. To some extent, I'll characterize it. They may say I'm mischaracterizing it, but effectively, we read it as, your Honor, this is always the way these tort cases operate without input from actual ACC's members. Well, in our reply, your Honor, we, we gave an example of a case that we were involved in that indicates that that's not the case. In the LTL cases, the talc asbestos case that came out of the Johnson & Johnson corporate family, on the first day of that case, we confronted the judge in New Jersey when the case was transferred from this jurisdiction. Melanie Cyganowski, I think former bankruptcy judge from the Eastern District of New York, who's co-counsel to the Committee, made a point to Judge Kaplan -- and we quoted it in our papers -- that in that case, from Day 1, the committee members were actively involved. They were consulted and actively involved in decision making.

So the idea that this is always what happens is not the case, your Honor.

In any event, your Honor already ruled at the August

hearing that the ACC cannot act by full proxy. And Judge Silverstein, as we indicated, had ruled the same thing already in the Cyprus Mine cases. And I want to just conclude by quoting one thing from Judge Silverstein, who I think you know is the, sort of the main asbestos judge in Delaware -- she's got all those asbestos cases -- a quote that I don't think we did put in our papers, but I think is important. She was discussing why it appears to be the case that committee members are not sometimes consulted in these cases. And she said as to an argument that the ACC or somebody made there, maybe it wasn't the ACC, but it was, it was an argument. She said:

> "It was suggested at argument it is because these are complex cases and the claimants have to rely on their individual counsel for bankruptcy experience. Mass tort cases are certainly unique and undoubtedly present complex and complicated issues, but from the perspective of committee member participation, mass tort cases are no more or less complex than other types of bankruptcy cases. And they are no more or less complex than patent infringement cases, medical malpractice cases, or even the underlying asbestos cases in which individuals serve as jurors every day in this country and make decisions unaided by counsel in the jury room.
>
> Bottom line" -- this is Judge Silverstein talking,

obviously -- "I simply don't buy that argument. More importantly, individuals serving on committees bring valuable real life, non-legal perspectives, whether business or personal, to committee deliberations and how a case should proceed."

So your Honor has to, obviously, form your own view on those issues, but that was Judge Silverstein's views that the idea, and this is in the ACC's papers, that these committee members aren't qualified to act as committee members simply is not the case, certainly in Judge Silverstein's view, and I think in the view of most people.

So with that, your Honor, I will rest. I do want to reserve time for response to anything the ACC may have to say.

THE COURT: All right. Thank you.

MR. MACLAY: Good morning, your Honor. My name is Kevin Maclay. I'm from the law firm of Caplin & Drysdale, and I'm here representing the Committee.

Your Honor, I think it's important to take a step back for a minute and look at the big picture. With their controversial Texas Two-Step maneuver, the debtors, which are artificial creatures created by wealthy entities that had no need for bankruptcy to pay their debts, have stranded sick and dying asbestos claimants in bankruptcy without compensation for an extended period of time and that was the plan all along, as I'll get to in a minute. The claimants' rejection of that

maneuver, of that Texas Two-Step maneuver, is the natural and expected effect of the debtors' tactics, as was revealed in discovery with respect to the PI.

No Texas Two-Step case has ever been confirmed. And why is that? Well, it's because the Texas Two Step, your Honor, as Judge Whitley found in numerous ways, is illegitimate. For example, at Docket 308 in this case, the Finding and Conclusions of Law with respect to the PI, paragraph 121, Judge Whitley found that, "These bankruptcies were designed to isolate the asbestos claimants from the overall corporate enterprise and strand them in bankruptcy until such time as they agreed to a Section 524(g) plan." Evidence from the preliminary injunction hearing showed, and the Court found, that the "Project Omega team members expected and planned for a long-term bankruptcy prior to the 2020 Corporate Restructuring, one which they estimated would last for five or more years."

So this theory that you've heard today that this case could have been resolved in 2021, that the years of delay are somehow the fault of the victims here, who are dead and dying and are being precluded from their day in court in the tort system by this artificial creation and bankruptcy, is, is not supported by the record, is the, the most polite way I can say it, your Honor. It's, it's, frankly, in my view, an abomination and perversion of the Bankruptcy Code.

As many cases say, your Honor, including the Robins case that have been cited to you before and to Judge Whitley before, a cardinal principle of bankruptcy law is to provide relief only to those debtors who come into bankruptcy with all of their liabilities and all of their assets. This principle was recently reaffirmed by the Supreme Court itself in the Purdue case. And this Court, Judge Whitley presiding, found that current and future asbestos claimants were materially affected by the Texas Two Step splitting of assets and liabilities. Because of course, your Honor, what the Texas Two Step does, it takes a wealthy corporation, splits it into two, the so-called Goodco and the so-called Badco, and it separates out the asbestos liabilities, then puts them in the Badco. It takes all the other liabilities and puts them into the Goodco with almost all the assets and it pays all those other creditors in full during the pendency of the bankruptcy on an ongoing basis, whereas the asbestos claimants, the disfavored creditor class in this scenario, get paid nothing. That's why Congress has looked into this and had two hearings on it. That's why a bill was proposed in Congress. It is, facially, extremely problematic, to say the least. And what Judge Whitley found on paragraph 173 of his Findings of Fact and Conclusions of Law with respect to the PI was:

"Under the Texas Two Step" -- excuse me -- Under the," paraphrasing Texas Two Step, "the proper question is,

'Were the rights of creditors, here asbestos claimants and holders of future demands, materially affected by the Divisional Merger,'" which is another way of saying the Texas Two Step, your Honor, "'materially affected by the Divisional Merger and its asset and liability allocations?' The preliminary answer to that question would have to be, 'Yes.'"

So the Committee's opposition, your Honor, to the Texas Two-Step bankruptcy maneuvers of the debtors here is certainly warranted and predicted ahead of time by the people behind all of this, who planned it out. And you heard today about the LTL committee and how it operated with individual asbestos claimants being present at the meetings. Well, I'm not on that committee, your Honor. I didn't represent that committee. But I do know one thing, that committee took a dismissal or bust strategy. That committee successfully dismissed that case three separate times when brought by the Jones Day law firm. And so your Honor, the idea that if you included asbestos claimants at the committee meetings, but more directly, that would change the outcome, that would change the analysis, is not only without any foundation whatsoever, but is refuted by their own example. People whose relatives have been killed by a company, people who are themselves dying because of exposure to a company's products are, are not more inclined, your Honor, to knuckle under to the leverage and pressure that

debtors seek to bring upon them through maneuvers such as the Texas Two Step.

So your Honor, in the face of the very legitimate opposition from the Committee to their course of action prior to and during this case, the debtors are now trying to capitalize on the deaths of the people exposed to their products to influence the Constitution and the functioning of the Committee in an attempt, apparently, to engineer an outcome that debtors want. As you have seen from Exhibit 1 to our opposition to this motion, they attempted to influence the Bankruptcy Administrator to keep certain tort counsel off the Committee. And note, your Honor, if you take a look at that letter, it talks exclusively about the law firms, which law firms should be on and which law firms should be off the Committee, not really even a mention of the underlying claimants with any specificity or analysis. It's all about the law firms in the eyes of that letter sent jointly by the debtors and the FCR to the Bankruptcy Administrator. And now, they're attempting to, effectively, harass the debtors and their counsel.

This, this concept that has apparently been discussed in other cases, but we're, of course, in the Aldrich case now, that there's a distinction between the interests of the tort counsel and their clients has no basis whatsoever, just in common sense, much less the record of this case. Your Honor,

claimants' counsel likely work on a contingency fee arrangement where they don't get paid until their asbestos victim clients get paid. And that means, your Honor, they don't get paid as long as this bankruptcy goes on. The leverage that the debtors through the Texas Two Step were attempting to exercise was over both the asbestos victims and their lawyers because no one, your Honor, on the claimants' side is getting paid until this case gets resolved one way or the other, or unless the stay were to be lifted.

So why are the debtors doing what they're doing now? It's because the claimants haven't surrendered to this aggressive bankruptcy tactic that the debtors and their predecessors carried out. But the debtors have no illusion, your Honor, that this plan is something the claimants want. If they thought that it was, they would have put their plan out for a vote. And of course, they've already acknowledged, as is in our papers, that it would fail.

Your Honor, this motion is an abuse and a misuse of Rule 2004. It wouldn't advance these proceedings. In, in fact, it's the opposite. It's a fundamentally backward-looking attempt to relitigate settled issues. There's no need for discovery, your Honor, into whether the committee members delegated meeting attendance to their counsel. They did, as we acknowledged in our paper. And the debtors and the FCR have known that for a long, long time. You heard about the, the

deposition, your Honor, of, of Mr. Overton, but there are a couple things you didn't get emphasized to you by the debtors in their motion about that. That deposition happened almost five years ago. But now, after almost five years, it's suddenly a problem that needs to be addressed by your Honor. And they also failed to note something else, which isn't all that surprising given that he was dying at the time and in fact, died not that long thereafter. Mr. Overton said in his deposition, "I don't remember how it was explained to me. I have an issue with memory loss." It's pretty obvious, your Honor, that they're trying to base a whole lot on inferences and suppositions that the actual record doesn't support, not to mention the fact that in that deposition he was asked about Aldrich and Murray, which are more recently created entities, not Trane or Ingersoll-Rand, the companies that, of course, he would have come across.

But anyway, the point is they knew he had passed away in 2020. An email notified them of that in March of 2021. And the debtors had another reason to know about the deaths of the people on the Committee that they now purport to be surprised by, finding out about those deaths, supposedly. And that's the PIQ questionnaires in this case. And many of those PIQ questionnaires in this case, your Honor, were executed by the executors of the estates of the deceased members of the Committee. And not only that, but in 2021 Committee counsel

emailed debtors' counsel, Davis Wright to Mr. Hirst, who's here in front of you today, June 4th of 2021 to inform him that three committee members had passed away and to discuss the procedure for substituting in new members. As the debtors' own paper says, in May of 2023, the motion to dismiss noted that four of the living claimants appointed to the Committee have died. And they say, "Oh, but it was more than four." Yes, your Honor, it was more than four. But the point being, no one was trying to hide the fact that the members of the Committee were dying from mesothelioma. In fact, it's a disease with a hundred percent fatality rate. They're all going to die, your Honor. And it's, it's sad, and it's something that's well known. And the fact that they're trying to pretend like they didn't know that these people had passed away when they, when they've known for years and years and years and years, this is something, your Honor, a motion to substitute was filed earlier in the DBMP case. It was filed earlier in the Bestwall case, and it should have been filed earlier in this case. It's something that slipped through the cracks, but the debtors and the Committee had been in discussions about it more than, roughly, four years ago, actually, a little bit more than four years ago.

And so it's not a new development, from their knowledge perspective. This is just a cynical attempt to gain leverage over their litigation adversaries and to essentially

blame the victims. And that's just not appropriate here, and it's not productive here. It certainly won't, your Honor, get them closer to a confirmed plan in which 75 percent of their asbestos victims are going to support it. It doesn't get them any closer to that whatsoever. It gets them farther away from it. And I will note, your Honor, that there has been no evidence presented to your Honor that the way the Committee operated here was different from most of the cases over the last 40 years. Because it isn't. It's very much in keeping with those.

But I'll also note something else which is interesting about the, the case and hasn't really been responded to by the debtors here. Their papers, your Honor, acknowledge that corporations can delegate the attendance to the Committee to representatives. And they cite no case for the proposition that individual dying asbestos victims should have less of an ability to delegate to representatives than wealthy corporations. There is zero case support for that distinction to disfavor the dead and dying asbestos victims compared to wealthy corporations. There's zero case support for that. And they've acknowledged that corporations get to do it.

So it's very odd. But nevertheless -- and so therefore, the fact the Committee operated that way, as have almost all committees historically, provides zero legitimate basis for further historical inquiry. But regardless of all of

that, the Committee heard what the Court had to say at the prior hearing. And we've taken steps to ensure greater direct involvement by the individual committee members. They have signed off on each of the filings before this Court today submitted by the Committee. They have reviewed -- and when I say "they," I mean the individual victims -- have reviewed the major strategic decisions, not so easy for some of them when they're undergoing major medical procedures during the time that we're talking about. And the individual members affirmed that they agreed at the time and agree now with each of those decisions. There is simply no basis whatsoever for Rule 2004 discovery here.

Something else to note, your Honor, about what the debtors have been attempting to accomplish here and why it's inappropriate. The debtors reached a deal with the FCR very early in this case, and they, they tell you it was for 545 million. But the problem -- there -- there's -- there are a number of problems with that. One of them, your Honor, is it's a capped fund. So if it were to turn out in the future that the value of the claims of the dead and dying asbestos victims and their widows, widowers, and orphans were more than that amount, they would not be getting paid in full. And potentially, depending on how the future unfolded, might not be getting paid much of anything at all. And when you have a company in a traditional asbestos bankruptcy that is suffering

severe financial distress, you have no choice. There is a cap on the amount of money available to pay those victims. But here, in a Texas Two-Step case with a very wealthy predecessor corporation that can afford to pay all of their victims in full, it is unfair and an abuse of the Bankruptcy Code to cap the liabilities; and therefore, transfer to the victims the risk that the funds will be insufficient.

And we also know from history, your Honor, that estimation proceedings are inherently imprecise, inherently difficult, always wrong, ultimately, and usually, wrong on the low end. In a situation like that, it makes zero sense to say that the Committee should have in 2021 capitulated to the debtors' demands and agreed to their plan. This, this does not benefit the claimants, your Honor, to be subjected to a risk of future nonpayment in the way the debtors' plan inherently would create.

Now turning to the standards that apply to Rule 2004 motions, your Honor, the debtors bear the burden of establishing good cause. This burden is higher when the target of this discovery is a nondebtor and they don't dispute that. Moreover, they don't dispute that this burden grows in relation to the intrusiveness of the discovery sought. And this discovery is intrusive, in part, because a significant portion of the requested information is of a litigation adversary and implicates case strategy and privilege. And we have cited to

you numerous cases with respect to those being valid grounds to defeat a Rule 2004 motion.

And what's even more inappropriate about this motion, your Honor, is their stated goal for it is, effectively, if you take a closer look at their motion, that it's going to convince, ultimately, the end result of it, 75 percent of current claimants to vote for the plan. And that's simply not true. This is a litigation tactic against the interests of those same claimants and the lawyers with whom they've entrusted their well-being. And they're really, effectively, attempting to penalize individual victims for trusting their lawyers and reciting their confidence in their lawyers and choosing to delegate to their lawyers in the same way that corporations do. And accordingly, since that stated goal is unachievable and just facially kind of ridiculous, it's hard to discern what purpose the debtors could have for this discovery other than to harass the Committee. And of course, the cases are legion that harassment is an invalid purpose for Rule 2004 discovery and will not be tolerated in the Rule 2004 discovery context.

And finally, your Honor, we noted in our objection to this motion that the debtors hadn't cited a single case in which a court allowed a debtor to obtain Rule 2004 discovery from a committee, much less discovery this intrusive against a litigation adversary. And they didn't do it in their replies

either, your Honor, not a single case to support the effect of relief that they're seeking here. So not, it's not just that their justification falls through, but their legal basis is nonexistent. And that alone should conclusively resolve the question of whether debtors are entitled to this motion being granted.

A couple other quick points, your Honor. They talk about the Garlock case and how it settled for a certain amount. Your Honor, not only was that a different case with different liability and all sorts of other differences, that was a case of actual financial distress. I mean, I was lead counsel in Garlock, or my firm was, your Honor, and that was a case where it wasn't as if there was an extra billion or two lying around that Garlock could have paid. They paid what was available, given their financial distress. This is a rich corporation, who, who played some games with the Bankruptcy Code, that it may or may not get away with it. But we, of course, say they shouldn't 'cause it's inappropriate, as many people have recognized, including numerous members of Congress, and that's what's caused the delay here.

But just to point to Garlock as somehow we should have capitulated here because Garlock ultimately settled after a long and drawn-out fight is ridiculous. Because this case, unlike Garlock, doesn't have, has -- excuse me -- substantial funds, especially from the predecessor entity, and Garlock

didn't. It's just, it's just a very different situation.

So anyway, with that, your Honor, we oppose.

THE COURT: Mr. Erens.

MR. ERENS: Okay. Thank you, your Honor.

Well, I heard quite a bit there. I would say some of it's, maybe a lot of it's not really relevant to the relief we're asking for, but, if the Committee believes that context and the big picture is relevant, we'll respond to their points.

Mr. Maclay said, and it's a repeated statement by the ACC, that asbestos claimants are dying without compensation. I think, your Honor, we want to make this clear 'cause this comes up, I think, almost every hearing. It is true that asbestos claimants are passing without compensation from these debtors. And I think we put in our status report back last October that it appears based on tort and trust recoveries, that these debtors were about 3 percent of the total compensation. So a plaintiff filed in the, in the tort system and started collecting from trusts. In general, these debtors would have paid 3 percent of the, roughly, we think the average meso claim maybe will recover a million six tort and trust recoveries, okay?

So it's not true that asbestos claimants are dying without compensation. They try to create this picture that people, you know, have this terrible disease, which they do, and they are getting no money Frankly, your Honor, we suppose

that since the plaintiffs sue scores of defendants in the tort system, that our 3 percent, they probably already recovered from other defendants. I can't prove that today. I couldn't prove it without a lot of discovery. It's not the point, though, your Honor. Certainly possible that they've gotten all the compensation they would have, whether we had filed this bankruptcy or not. But the point is they're not dying without compensation. They're, at most, dying without the 3 percent that they would have otherwise gotten from these debtors. And that's what this plan is about.

So this case has never been about whether claimants are dying without compensation. This case has always been about what is a fair resolution, a fair and final resolution of these debtors' liabilities. And in 2021, these debtors put half a billion dollars on the table, more than half a billion dollars on the table in an agreement. We didn't force this plan down on anybody. It was a negotiated resolution with the Future Claimants' Representative who represents, again, about 75 to 80 percent of the liability, half a billion dollars, even though it's our position, and we've said this repeatedly, that it's unlikely that our products, encapsulated gaskets where the asbestos was encapsulated inside a gasket, we don't believe that caused, probably, any or, if any, very little harm to any claimant, as opposed to the "big dusties," the insulation companies and, and the like.

Anyway, there were a lot of statements that Mr. Maclay made about what Judge Whitley said in this case. He said a lot of different things. He could probably tell you more out in the hallway, if he's still in the building. But one of the things Mr. Maclay said was he found these cases to be illegitimate. He didn't find these cases to be illegitimate. He would dismiss the cases. He did not dismiss these cases. He often -- and I don't, you know, have in front of me all the transcripts. This is five years of a case. He made numerous statements that, "Gee, wouldn't it be better if the parties sat down and negotiated, rather than litigated endlessly, that the, that the claimants probably want to be compensated." The claimants probably have little interest in litigation. And that's part of the point of this motion, your Honor. For all we know, these claimants have no idea what is going on in this courtroom and have never been consulted as to what's going on in this courtroom.

Mr. Maclay said that these debtors knew and planned for a case of five years or so and that we are claim, that we are saying it's the fault of the claimants. This is actually what he said. "It's the fault of the claimants that these cases have lasted five years," but that's the exact opposite, your Honor. If it's the fault, it's the fault of plaintiffs' counsel, not the plaintiffs. We want the plaintiffs to actually be involved. As we said, we had one mediation session

in this case. There were no plaintiffs there. There was only tort lawyers and bankruptcy lawyers on the other side.

Next, Mr. Maclay made the point that the LTL case got dismissed. The particular case that we cited did get dismissed. But you know what? The third case, the one in Texas, the creditors' committee, the asbestos committee, supported the plan. They were in full support of the plan. So if you look at that record, presumably the committee didn't support the first plan 'cause there wasn't enough money. But when there was enough money, they supported the plan. Now that case was dismissed for other reasons, but it was supported by the asbestos, or what we call the TCC in that case, the talc committee.

In addition, Mr. Maclay said there's never been a Texas Two-Step case that's been confirmed. Well, obviously, No. 1, it's a fairly new device. But there have been cases that are, effectively, the same as Texas Two-Step cases that have been confirmed as Mr. Guy -- it's too bad he's not here today 'cause we never go through a hearing where Mr. Guy doesn't talk about the Paddock case. But the Paddock case is a case that's identical to a Texas Two-Step case and that was confirmed in Delaware, again in front of Judge Silverstein.

Frankly, the Garlock case isn't that much different. At the end of the Garlock case, Coltec, which was the non-debtor parent, did a transaction that looks kind of like a

divisional merger to get its liabilities in the Chapter 11 and those resolved in the, in that plan.

Mr. Maclay, this is a, this is a little bit lengthy, so I don't want to go too much on a tangent, but Mr. Maclay made an important point which he said, why would the tort lawyers have an interest different than their, than their clients? Aren't they fully aligned? Gee, that seems like a facially, you know, plausible argument. Why -- why would there be, notwithstanding what the Fourth Circuit said about the tort lawyers wanting higher fees in the tort system, but why would there be a difference? Well, your Honor, I don't have time to give you the full 101 on this, but I think it's important to understand that if you're a mesothelioma claimant, you have been diagnosed, and you're like, "I want to sue." You go, what naturally would you do? You go onto Google, right, and say, "What do I do?" Well, you know, if you did that, your Honor, you would find, most likely, a law firm like the Sokolove Law Firm, okay, that advertises on Google, spends millions, if not tens of millions of dollars, for search priority on Google so that that claimant finds that firm. When I say they're a law firm, I think, technically, they are a law firm. They held a law, you know, law degree -- or not law degree -- a law license, okay? But they're just a virtual firm as far as we know. I think they're owned by private equity and they are there to get referrals. They bring that -- they're the first

point of contact for a claimant who wants to sue in the tort system. And what a firm like Sokolove does, okay, is refer that case. 'Cause they don't try cases. It refers that case to all the law firms you've heard about in these cases, all the law firms that "sit" on the creditors' committee, and they're the ones who actually try the cases. And the two firms then split the contingency fee, okay? But your Honor, guess what? If you're Sokolove, okay, and a particular defendant has an asbestos trust and so all you need to do to recover from that asbestos trust is, effectively, file what's like a proof of claim with medical records, why are you going to give a significant portion of that contingency fee to the, to the tort lawyer? You're not, okay?

So that has been what this case has been from Day 1. The tort lawyers do not want this case to be resolved through an asbestos trust because going forward their split of that contingency fee will be dramatically less. That's what these cases are about. And that's why, your Honor, we believe there needs to be discovery to find out what's going on and whether the tort lawyers have completely controlled the Asbestos Committee, not only in not the interest of the debtors, but not in the interest of their own clients. So that answers that question.

There has been, and this was in the papers, and said again today, that why doesn't the debtor just solicit the plan,

okay? Well, your Honor, we did a deal. We invited the ACC to participate. They didn't want to participate. We said then, fine. We need estimation to test the liability set forth in the plan. If the Court believes that the liability here is within the amount of funding in the plan, that seems like a fair plan. You would think that's something the plaintiffs, the actual plaintiffs, would want to know. If we solicited now, they would be voting without that information. We thought that that was not appropriate. We didn't expect this kind of litigation for over five years to delay the case this long, but we did want to get to an estimation so that plaintiffs could actually have a full understanding of all the facts.

Next -- I think I'll skip over that point.

There was a variety of statements that the debtors and maybe the FCR knew who had passed and when. That's not the case, your Honor. Look, I, I don't keep track of, you know, PIQs and the like and when committee members pass and when they don't. Our point is not that, you know, there used to be 11 committee members, and now there's 3, as opposed to, you know, there were 6 at one point in time. Our point is it's appearing to be more and more the case that there was no involvement, period, from any committee members. We think that's the issue here that needs to be discovered.

There was a statement made by Mr. Maclay that the discovery will not get closer to a plan. We actually think the

complete opposite, your Honor. We think if the actual claimants are involved, there's a potential for negotiation. As Judge Whitley said, you would think the claimants want to get paid, okay? The question is, what's a fair amount? As I said, that's what this case is about, or should be about. You would think the claimants would say, "Okay. If the debtor is willing to pay this amount, maybe that's fine." If it's not fine, then we'll continue to negotiate. But actually, negotiating with the people who actually have the interest at stake, as opposed to the potentially conflicted tort lawyers, we think that would be productive in these cases.

Mr. Maclay made a point that there are cases where lawyers sit on committees. I think the example they gave in their papers was the Aearo bankruptcy, which is another mass tort bankruptcy, earplug liability. The example they gave was General Counsel for Blue Cross Blue Shield. Well, your Honor, that is the corporation. The fact that there's a lawyer for the corporation sitting on the committee doesn't prove anything. That is the corporation. Here, our point is we don't think the actual committee members are involved.

Next, Mr. Maclay said that the Committee has now heard the Court, that individual members are, kind of signed off on anything. It was very vague. Your Honor, given the history here, I have to say the following: We need to find out what's been going on because we don't really trust the process going

forward. I think in this kind of situation, there's lots of analogies, not necessarily in bankruptcy. There's lots of analogies to a situation that's gone awry, that has not been functioning properly. You have a school district that's not been properly functioning or a police department that has not been properly functioning. What typically happens in the federal system, there's either replacement of the actors or oversight for some period of time over the actors until there's confidence that the process is going correctly. That is, ultimately, where this may be going. But that's, that's preliminary, right? Right? That's premature. All we want to know right now is what actually occurred so that we can discuss collectively, or your Honor can make the decision of what may be next.

Next, Mr. Maclay talked about a capped plan issue. Again, we think this is kind of going far afield, but he actually said some things that are very interesting that we want to respond to. So No. 1, he said, "Well, here, they're going to do a capped plan. Well, that creates a risk. This is why we" -- "this is why we," whoever "we" is -- we don't know who "we" is -- "oppose the plan." Well, you know, the capped plan goes both ways. We could be overfunding. I think in the Garlock case, values have risen significantly. Mr. Grier is involved in the, the FCR is involved in the Garlock case. Amounts have gone up significantly. Garlock may feel like they

overpaid. Well, you know, it kind of goes both ways, right? That's No. 1. But that's what the estimation is for, your Honor. I mean, again, to inform the parties as to what the Court thinks the liability is, even though it's an estimation.

The cap issue is also interesting because Garlock had, Garlock had a capped plan. Mr. Maclay said or -- sorry -- implied they were wholly insolvent. As far as I know, Garlock was solvent when it confirmed. It may not have been wildly solvent, but it was solvent.

But nonetheless, there have been numerous cases that have confirmed with the support of the plaintiffs' bar. They have been solvent, sometimes wildly solvent. And we put these in our papers in connection with dismissal. I think is an important point in this case. The plaintiffs' bar supported the Chapter 11, 524(g) resolution of the USG bankruptcy. Those debtors had billions of dollars in market capitalization when that case was confirmed. Same thing for W.R. Grace. Mid-Valley is another case that filed where the debtor said on the first day, "We're fully solvent." The plaintiffs' bar supported those cases.

So to now say you can never do a cap case, you never do a capped plan where the debtor is solvent, what they're really saying is, "You can't do it if we don't want you to do it." And that's different. It's not that there's no history. There's a significant history of solvent Chapter 11 cases under

524(g) that have confirmed with a capped plan.

Mr. Maclay said that the problem here in a capped plan is that there may not be enough money. It's interesting that they said that, your Honor. What he's saying is the futures, okay, may not recover what they should. What's interesting, who represents the futures here? It's the Futures' Rep. The ACC does not represent the futures. That's the problem here, your Honor. They think they represent the futures, but they don't, okay? We have an independent FCR approved by Judge Whitley. They have signed off. The Futures' Rep has signed off on a $545 million plan. The Futures' Rep believes that is sufficient funding for futures.

So for the current claimants to come in and say, "No, we oppose the plan because future claimants may not get enough money." That's not their place in this case. Their place is to determine whether the current claimants are going to get enough money. And it's interesting, your Honor, because the current claimants, because they're already current claimants, are the first in line. So do they think $545 million is not enough to cover current claimants? That's absurd, your Honor.

So that's been a problem in this case. Again, the tort lawyers want to control the entire process 'cause the tort lawyers believe they will be the lawyers for the future claimants. They may be, okay, but that's not their role in this case. The Futures' Rep is the, a court-appointed

representative of the futures.

A couple final points, your Honor. Mr. Maclay said the goal of the discovery is to get 75 percent approval. I don't know what that means, your Honor. The goal of the discovery is to figure out what has happened in this governance structure and to figure out what needs to happen going forward.

And then finally, the ACC, or Mr. Maclay indicated there's no single case that they could find which the ACC has had to answer 2004 discovery. That may be true, your Honor. How many cases get written up on 2004 discovery? I mean, judges don't, you don't write --

THE COURT: No.

MR. ERENS: -- an opinion on every single case.

So the fact that there's not a reported decision doesn't mean anything.

THE COURT And certainly not on a 2004.

MR. ERENS: Right. The, the authority is not the case law, your Honor. The authority is the Rule. The Rule says 2004 discovery can be issued on any matter that involves the administration of the case, the formulation of the plan, or other matters affecting the case. *Prima facie*, these requests satisfy that standard.

Unless your Honor has other questions, I will sit down at this point.

THE COURT: No, I do. A little more specific about

what, what is the point of this? Because, you know, we are having, however many new committee members are being appointed, right? So it's not like they're -- if you're -- first of all, I don't think you're -- I could be wrong. I'm not trying to put words in your mouth -- but I don't think you're necessarily blaming the actual committee members, but --

MR. ERENS: Not at all.

THE COURT: Yeah. To, to the extent you're talking about replacement, you know, first of all, that's almost already being done, right? I mean, we have only three that are original, and then some new ones shortly --

MR. ERENS: Right.

THE COURT: -- will be added. So --

MR. ERENS: The, the committee members are not the issue, your Honor.

THE COURT: Right.

MR. ERENS: For all we know, they have no idea they're on the Committee.

THE COURT: So -- and I think the practices of the, I hope the practices of the Committee and the Committee, of, of the members and the attorneys going forward will be adjusted to sort of fit more, at least what I've described as to what I see committee members doing, right?

So, so again, what is, what is the point of this?

MR. ERENS: Your Honor, if we have the same actors

involved going forward, same bankruptcy lawyers, the same tort lawyers and the like, we are not comfortable at all that no matter what people sort of infer -- and they're always careful about their words. They're always vague -- that a proper functioning committee will occur going forward. We need to know what happened first. And it's fairly simple discovery. It's not that complicated. Let's find out what happened first, and then we can decide what may need to happen going forward.

As I said, the other part of this, you know, in a typical situation like this is these are a replacement of the actors. I'm not talking about the committee members. So maybe one proposal is there needs to be guardrails about how, you know, involved these tort lawyers are in this process. They're not the committee members. They're the tort lawyer in the tort case for the committee member, okay? That's their role. And we cited law, including the Dow Corning case, where it starts getting, you know, blurred in terms of conflicts in interest of, you know, whether these tort lawyers are taking on fiduciary obligations and whether they should be Involved, all that kind of stuff.

So maybe that's one thing where they need to be somehow guard railed from the process.

But then going forward, there may need to be some oversight. This is unique, your Honor. Obviously, this has not occurred before. But you know, when's the last time you

were in a case where it turns out the committee members actually on the Committee weren't even involved? I don't think that's ever happened. This may be the first one.

So there may need to be some oversight implemented. Your, your Honor's going to have to make some decisions. And you may decide that nothing should be happening, but I do think it's important to find out what's happened to date.

And the discovery is not burdensome at all. The limited set of documents, limited set of interrogatories. So we all know, not just the debtors, the FCR, the Court, the BA, everybody knows what's happened to date. We can decide what should happen going forward. Otherwise, we're operating in a vacuum, your Honor, unless you just want to assume for purposes of discussion and ruling that committee members have not been involved at all in the case. I mean, the ACC hasn't denied that. All the people who know the answers to the questions we're asking are sitting here in the room.

So we're asking them to answer discovery, but we could proceed just assuming the committee members haven't been involved at all to date.

MR. ROSENBERG: Your Honor, if I may briefly, for the FCR? And, and obviously, Mr. Guy regrets not being here. He would have a field day with some of the misrepresentations about Garlock that were made.

Let's be clear. This is not a universe away from

Garlock. Same product lines, same FCR as in Garlock, same ACC firms that sit on the Garlock committee sit here, at least some of them did. The point is, relief was in, was within reach in Garlock. And the ACC in Garlock took that. It was $480 million that the ACC chose to take. Why is a different decision being made here, is the question?

Same with Paddock, a solvent debtor, your Honor. The ACC chose to accept the plan.

And again, there, there's quite a lot of smoke here. And the, the issue is, should there be a Rule 2004 examination or not? Most of Mr. Maclay's presentation, about 80 percent, was an assault on the Texas Two Step. That had nothing to do with the issues at hand. We submit, your Honor, that we, we do need to know what happens. There's way too much inconsistency across the cases, across the decision making to justify not knowing a little bit more about who knew what when and what the committee members actually knew about approving or not approving this plan.

So I would rest on the arguments we, we made in our briefs and the same arguments that Mr. Erens just made.

Thank you.

THE COURT: Mr. Maclay?

MR. MACLAY: Thank you, your Honor.

Your Honor, it is interesting for people that purport to be here for the benefit of the asbestos victims that their

employers poisoned to say that they're here for the benefit of those victims and then you hear them say, "Oh, we only have 3 percent of the liability owed to these victims across other people who put poisoned those victims. And by the way, our asbestos was encapsulated in gaskets. It didn't really cause harm." If there was any truth or credibility to any of that, your Honor, we wouldn't be here today. They'd still be in the tort system, if it's true that their product was so harmless and, and killed so few people that, that their, the actual liability number is low. But of course, they were paying $95 million a year before the they filed for bankruptcy, your Honor. 'Cause it isn't true. It's not in the record, and, and there's no support for any of that. It's just casting aspersions on the victims. And blaming the victims is a tried and true strategy for mass tort debtors, but it doesn't get any easier to hear every time I hear it. And it certainly doesn't support their request for Rule 2004 discovery. It's just, it's just throwing mud at the victims.

They make this comment that it's better to negotiate. Well, you know, it's an interesting point, your Honor, because Judge Whitley did order a mediation, and that mediation did occur. And for a substantial portion of that mediation, the bankruptcy lawyers were not part of it. It was the tort lawyers, both for the Committee and for the debtors who participated. It happened. I'm -- even to the extent I know

what happened there, I don't want to violate mediation confidentiality, although, frankly, I believe two of the briefs from my adversaries did seem to violate it. But the point being, there were negotiations. They took place, and there is no basis to say that there was any insufficient engagement by the Committee in those discussions. And if you had questions about that, you could ask the mediators.

You heard a very misleading comment that in LTL, the committee reached a deal when the money got high enough, but there's something you didn't hear, your Honor, which is the mesothelioma victims, the kind of victims that you have in this case, were not even part of the third LTL and Red River because they were carved out into a different river entity. And they're still in the tort system now and they were in the tort system then, and they weren't even in that bankruptcy.

So the meso claimants never capitulated, never had leverage exerted over them such that they had to, to agree to a capped fund, even though there was a wealthy entity. The meso claimants passed through that third bankruptcy 'cause they weren't even part of that artificial, artificially created entity, which itself then didn't get confirmed 'cause there wasn't sufficient voting support from the affected victims of, even of the OC and other cancer claimants.

And so the idea that LTL shows, effectively, that, you know, committees support it. The mesos weren't even part of

that case. They were in the tort system 'cause after the first two dismissals, the debtors gave up. Those debtors gave up on those victims.

You heard just more pure speculation that attorneys are found through Google, that there are higher fees in the tort system. All these *ad hominem* attacks on, on PI lawyers are irrelevant to the motion, and they're unsubstantiated, your Honor. And I would, as someone who actually kind of knows how all this works 'cause I've been in many of these cases over the last number of years -- my firm has been in them for about 40 -- when you get sick, it's usually 'cause you've been exposed because of your work in a factory, because of your work with a product, etc., etc. And what do you think you do when you realize you, you only have a few years left to live? Do you just go into Google to see who's going to support your family through the, the compensation you're owed? No. You talk to the other people in a similar situation. You talk to your fellow union members, you talk to your fellow factory workers, you talk to the fellow people who are on that ship with you in the Navy. That's the actual way that people find their lawyers, not that it's relevant at all to this. We've gone way far afield from anything relevant.

But if we're going to hear a bunch of *ad hominem* personal attacks on the lawyers, I feel the need, your Honor, to at least respond, to point out some of the obvious logical

fallacies of the assumptions you're being asked to make to justify what is unjustifiable here.

They say that the, the plaintiffs might want to know the results of the estimation, and it might affect how they vote. You know, Judge Whitley heard that same argument, your Honor. And he noted that in Garlock, after the estimation proceeding, the debtors did promote a plan with the benefit of that estimation proceeding and 99 percent of the claimants voted against that plan. And Judge Whitley said in this courtroom that it seemed to him that, after the estimation, the parties were further apart, rather than closer together.

So I just wanted to, I felt compelled, your Honor, to add a little accuracy to some of the misrepresentations about what Garlock did and what happened in Garlock since I was there.

Your Honor, they talked about how it was the, the General Counsel in Aearo from Blue Cross. Well, that's not exactly right. Alan Halperin is an outside General Counsel. He's an outside counsel. I don't even believe he's an outside General Counsel. And he was not only in Aearo, he's also in Whittaker, Clark Daniels in that role.

So it is -- and, and they don't even deny in their briefs, your Honor, that corporations do routinely appoint people, both inside and outside, to represent them in affairs of the committee. And they never have supported any

philosophical or legal justification for treating asbestos victims differently.

They say with respect to, to Garlock, that the payments have recently gone up for the Garlock Trust. Well, that's true, your Honor, but not because the liability estimation went down. It's true because the overly restrictive procedures previously insisted upon by the FCRs were adjusted so that more people can actually get paid for their injuries. That's why the Garlock payment percentage went up. It's not that the liability estimate went down. So that's also just a very misleading statement.

They talked about how the plaintiffs' bar supported the old cases of Grace and USG. Well, it's interesting that they seem to now be pivoting to the plaintiffs' lawyers are the ones that matter, given the entire thrust of their paper. It's an odd kind of tonal shift. But the reality is, Judge, those were not Texas Two-Step cases. They were cases where the liabilities and the assets all came into the bankruptcy subject to the bankruptcy judge's oversight. This is not that. This is all of the burdens get put on the claimants. All the other victims get to get paid, and all the other creditors get paid in the ordinary course going forward. And, and the debtors keep -- and, and the, the Goodco where all the assets went gets to continue without being under court oversight, able to upstream cash to their affiliates, etc., etc.

So your Honor, we don't think any basis has been shown for this discovery. We don't think their justification for it makes any sense or is appropriate. We don't think the details of it make any sense, and --

(Pause)

MR. MACLAY: Oh, thank you.

And Ms. Ramsey is reminding me, your Honor, to conclude with this very important point. We heard from Mr. Erens, "We don't know if the current three members of the Committee even know that they're on the Committee." Well, I thought I said it, your Honor, but let me say it even more clearly. We have had several meetings with those members. We have gone through each strategic decision that was made in the case, all the ones that they purport to complain about.

THE COURT: So, so let me clarify.

MR. MACLAY: Yes.

THE COURT: I, I understand, and that's excellent that you've done that.

MR. MACLAY: Uh-huh (indicating an affirmative response).

THE COURT: But so I take it you actually don't dispute that they were not involved in decision making previously?

MR. MACLAY: Well, it depends what you mean by "involved in decision making," your Honor. Because --

THE COURT: Were the committee members, direct committee members involved, aside from -- I, I think you've already said that they were involved in mediation -- but in the past few years, have they been involved in the decision-making process of the actions the Committee has taken?

MR. MACLAY: Well, I need to divide that question into two parts, your Honor. Because what I -- there's what I know and there's what I don't know. What I know is they were not present at the committee meetings where these decisions were made. And what I don't know for sure is to what extent they were in consultation with their attorneys.

THE COURT: So we need to know.

MR. MACLAY: Well, do we, your Honor? Because that's the core of the attorney-client privilege between the tort counsel and their clients. And I don't think any court ever has delved into those sorts of communications in a situation like this.

THE COURT: I, I don't, I don't need to know anything about the communications. I'm just asking, have they been, have they been making the decisions? How would we know if they've been making the decisions? It's just a yes or a no. That's --

MR. MACLAY: Sure.

THE COURT: There's no communication needed.

MR. MACLAY: But, but, but what we do know, your Honor

-- but the Committee itself doesn't know that. So this discovery is irrelevant to that point. What the Committee knows, though, is we had several meetings recently to reality test their theory that the, that if those victims had been participating at the actual committee meetings, that that would have changed the outcome.

THE COURT: Yeah.

MR. MACLAY: And one by one, we went through each of the decisions made and one by one they said, "We agree with that." And they got our motion. They read it over, and they said, "We approve the filing of this motion, and we agree," our opposition -- excuse me -- to the motion.

THE COURT: And so why did you do that?

MR. MACLAY: Because of your Honor's comments at the prior hearing. Your Honor made clear that you thought the committee members ---

THE COURT: But they should have already done that.

MR. MACLAY: Well, for 40 years that's been almost never the case, your Honor. Because it's not a matter of disempowering the committee members themselves. It's a matter of empowering them. Traditionally, if you are an asbestos victim and you're dying of a disease and you have selected a lawyer that you trust to represent your interests in the bankruptcy. The degree of delegation, whether you, from your hospital bed with tubes up your nose, attend a committee

meeting. And I've seen that. I saw it in the Cyprus case. I had a committee member who, as she was dying, was attending our committee meetings, lying there trying to keep her eyes open as the tubes were up her nose. And then one day, she was gone 'cause she had passed away. We have traditionally -- "we" meaning the entire --

THE COURT: Which is, let me just say --

MR. MACLAY: Yeah.

THE COURT: -- exactly why I, I said last time. No one should be forced to be on a committee, you know. So I'm sorry that that, that happened for that individual.

MR. MACLAY: Right.

THE COURT: But that's, you know --

MR. MACLAY: But they're all going to die, your Honor.

THE COURT: Right.

MR. MACLAY: 'Cause meso has a 100 percent fatality rate.

THE COURT: Right.

MR. MACLAY: And so we just need to be, I would suggest, your Honor, understanding of that and, and treat that humanely and give them some grace to work through with their own lawyers to what extent they're going to be at the committee meeting versus discuss these things with their, with their lawyers offline. And there's no basis to say --

THE COURT: Right.

MR. MACLAY: -- that second thing hasn't happened.

THE COURT: Okay. So do you -- and I just want to clarify 'cause this is helping. Do you dispute whether or not sort of votes were made or, or decisions were made with the input from tort attorneys there, that there was not a, a corresponding committee member anymore because that committee member had passed away?

MR. MACLAY: I'm sorry, your Honor. I'm just trying to understand.

THE COURT: Have tort -- were essentially -- I assume the decisions were, are made -- were they made with meetings and votes --

MR. MACLAY: Right.

THE COURT: -- right? So were there votes given to attorneys using their proxy for deceased committee members?

MR. MACLAY: Your Honor, my answer to that is I can't, I mean, as you noted earlier, we have three committee members right now who have been --

THE COURT: Right.

MR. MACLAY: -- members the entire time. And for all of these key decisions that are the ones that they focused on in their motion, I'd like to try to constrain the universe so I can be more accurate in my recollections and comments. I don't believe there was any, I, I believe those were all done unanimously.

So in other words, the three people who are on and have always been on, not only have ratified all the decisions now, but at the time there, it wasn't as if lawyers representing clients who had passed on; and therefore, were being represented through their PRs, their personal representatives, were voting one way and then the other ones, you know, the living clients were voting another way. That's not the case. It was always unified, to the best of my recollection, and certainly for these key decisions that they've talked about. So this is all, at best --

THE COURT: And so some lawyers were at the committee meetings that didn't have a, weren't representing a committee member?

MR. MACLAY: There were tort lawyers attending committee meetings after their client had passed away. But think about how this has worked historically, your Honor, and, and please understand why it's worked that way. These clients all are going to die.

THE COURT: Right.

MR. MACLAY: And therefore, you're going to have this period after they pass away before their personal representative gets, goes through the appropriate estate procedures to have the legal authority pursuant to state law to represent their interests. And so traditionally, in, in tens of cases, if not all of them, what happens is that tort lawyer

remains involved so that when that personal representative, which is almost always the person selected by the BA or, in trustee jurisdictions, the trustee comes into effect, there isn't a, a gap period where those interests weren't represented. Because when the BA or the U.S. Trustee selects the committee, they do so, in part, on the basis of law firm to have appropriate breadth, geographically appropriate depth of knowledge, appropriate types of cases.

And so it's certainly always the case that it's, the, the committees are selected originally, your Honor, both based on the firm and by the claimants.

THE COURT: Right.

MR. MACLAY: And, and so for --

THE COURT: And when replacements are selected, I mean, I have looked at dockets in other cases, replacements are selected based on the law firm.

MR. MACLAY: Right.

THE COURT: The, the problem is here --at -- what -- this is the first time I've heard, which I did hear you say, admit that it fell through the cracks.

MR. MACLAY: It did.

THE COURT: Yeah.

MR. MACLAY: That's a hundred percent true. And it's not the victims' fault --

THE COURT: Oh.

MR. MACLAY: -- and it's not the --

THE COURT: No one's blaming --

MR. MACLAY: -- tort counsel's fault.

THE COURT: I think everyone --

MR. MACLAY: Right.

THE COURT: -- in here --

MR. MACLAY: It's also not the tort counsel's fault, your Honor. And the reality is, if anyone could say with any degree of basis that the people who died's lawyers were operating hostilely to the people who were still alive lawyers and those people themselves, you would have heard about it from me. But that isn't the case. They have always been unified, as they have been. And if, if they put their plan to vote, we'll see exactly how unified the constituency overall is, both those who have representatives on the Committee and those who don't.

There is no basis to suggest there's a disunity or a conflict within the Committee such that these issues would affect any decision making whatsoever. There's zero.

THE COURT: Anything further, Mr. Erens?

MR. ERENS: Yes, your Honor. I could respond to a lot of what was said, but I'm not going to 'cause lunch is beckoning.

THE COURT: Please, say what you need to say. I'm not --

MR. ERENS: Okay. I -- I --

THE COURT: I, I don't --I never want anyone to feel like they have been cut off.

MR. ERENS: I'll make the following point, your Honor, maybe two points. What I heard today was an admission by ACC counsel that until recently -- we've been in this case over five years, okay -- for five years no committee member has attended one committee meeting, okay? Whether or not your Honor grants the discovery, that is an absolute scandal, from our perspective. Tens of millions of dollars of fees have been spent in this case by, been enforced by a committee that is dom, not dominated, solely controlled by tort lawyers, who the Fourth Circuit has acknowledged have a conflict of interest, okay? We believe that's a scandal.

There's another scandal, your Honor, okay? So there were a variety of comments made by ACC counsel about the propriety of these cases, okay? We put this in our, in our status report to your Honor in October. There have been studies done on the tort system. The studies indicate that most of the money in the tort system that defendants spend don't go to the claimants. They go to the lawyers, lawyers on both sides. Your Honor, that's not just a tragedy. That's also a scandal, that people who are dying from mesothelioma don't get majority of the money that the defendant pays, that the, most of the money goes to the lawyers.

Your Honor, we believe we built the better mousetrap, effectively. We put this in our first day pleadings. There's no, there's no mystery here. We filed these cases for the benefit of everyone. Obviously, these cases were filed for the benefit of the debtors, okay? I mean, why else would someone file a case? But we put forward a case, okay, a streamlined case where your Honor doesn't have to hear motions to reject contracts, motions for DIP authority, you know, motions for, you know, all the kind of operational issues. We isolated the case to the key issue, the asbestos liability, to set up a trust so that claimants could receive money quickly and efficiently, fairly, and get a final resolution on behalf of these debtors. The debtors get a final resolution. The claimants get a system which is much more fair and efficient. And that's been indicated by numerous circuits, the Third Circuit and the Fourth Circuit, okay?

We negotiated a plan in 2021, a year into the case, with the representative of 75 to 80 percent of those claimants, and we have had one holdout. And it appears to be the case, based on what's been said today and what's just been happening, that that holdout is solely for the pecuniary benefit of tort lawyers, who will get less contingency fees from a trust compared to the tort system. That also is a scandal, your Honor. Whether or not you approve the discovery, our position is something needs to be done about ACC governance because of

these facts.

Thank you, your Honor.

MS. SIEG: Your Honor, just briefly. I'll note for the record -- this is Beth Sieg of McGuireWoods for the NDAs -- we did join in. You don't need to hear from me on any of that.

But we wholeheartedly endorse the arguments made by the debtors and the FCR.

Thank you, Judge.

THE COURT: Anything else?

MR. MACLAY: Just one very quick point, your Honor.

Unfortunately, because of the government shutdown, the Bankruptcy Administrator isn't here today. But as our brief noted, the Bankruptcy Administrator is the one tasked with overseeing a committee's governance, not their litigation adversaries. It's an obvious point. It's in our brief. I just wanted to highlight it. And unfortunately, of course, the BA isn't, isn't able to be here.

MR. ROSENBERG: Nothing further from the FCR, your Honor.

THE COURT: All right. Let's take a lunchbreak of an hour. All right.

MS. HARDMAN: Thank you, your Honor.

(Lunch recess from 12:50 p.m., until 2:00 p.m.)

AFTER RECESS

(Call to Order of the Court)

THE COURT: All right.

So to start off on the 2004 exam, I'm going to continue that motion so the Bankruptcy Administrator can be present.

So we can just move that to next month. I'm sorry if that means people have to come again, but that's where we are.

MS. RAMSEY: Thank you, your Honor.

If, with the Court's permission, I'm going to use the podium.

THE COURT: Okay, yeah.

MR. ERENS: Before you do that.

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

MR. ERENS: 'Cause our understanding, by the way -- I'm not sure anybody can, *per se*, speak for her -- but given the government shutdown, I'm not sure she's allowed to come to hearings, meaning she's got, let's put it this way, constraints on things that she can and can't do, depending on what's absolutely necessary and what's not.

So we don't know if the government shutdown, obviously, is going to continue till November 19th. We all, obviously, hope not. But I think it'd be important to put on the record that she's directed to be here. 'Cause that may actually allow her to say, "I have to be there."

THE COURT: That was my intention.

MR. ERENS: Okay.

THE COURT: So I'll enter an order --

MR. ERENS: Okay.

THE COURT: -- continuing.

MR. ERENS: 'Cause it, it's not totally clear to me, but it may not be that she just couldn't be here. I think she may believe that it's not within her purview, given the --

THE COURT: Well, if she had --

MR. ERENS: -- Antideficiency Act.

THE COURT: Oh.

MR. ERENS: I, I don't know.

THE COURT: Yeah.

MR. ERENS: We, we heard --

THE COURT: I'm not going to get into the weeds on, on what's accepted and not accepted. Believe me, we all back in the Government are spending way too much time thinking about that.

MR. ERENS: Right.

THE COURT: But if she-- if, if there is a sort of core matter, you know, which relates to her, her constitutional duties, or certainly, it's under the Judicial Guide. The Bankruptcy Administrator is, is very much, you know, involved with the Committee, and this is involving the Committee.

So I just, you know, I, I don't feel that I can go forward, really, without her here. She just, she just needs to

be here, so. And if I find out that she cannot on the 19th, we'll, we'll moot it.

MR. ERENS: Okay. Thank you.

THE COURT: All right.

MR. ERENS: Thank you.

MR. MACLAY: Your Honor, if I could just make one quick comment?

Before when your Honor had asked if the 19th was okay, moving from the previously scheduled 20th date, it was. I did not realize that this hearing was going to be continued to the 19th and since then, the Purdue confirmation hearing is currently scheduled to end on the 19th. I think it is likely that it will end before that, in which case, I'll just, you know, come down from New York to here. But there's some chance I'll still be stuck in the Purdue confirmation hearing on the 19th.

I just wanted to alert your Honor to that fact. It may not be a problem, but --

THE COURT: Right.

MR. MACLAY: -- I just wanted to foreshadow the possibility.

THE COURT: So is there anyone else who can cover in your stead --

MR. MACLAY: Sure.

THE COURT: -- or --

MR. MACLAY: Sure. It, it kind of depends, your Honor. If it's going to be continuation of this argument, which I was responsible for --

THE COURT: Right.

MR. MACLAY: -- or something different.

THE COURT: I mean, that's, you know. Are you asking for it not to be on the 19th? Do you want it to be --

MR. MACLAY: No. I'm just highlighting for your Honor that there's this possible conflict, but I don't know for sure if it'll actually be a conflict. I'm hoping that Purdue ends before the 19th.

THE COURT: Right.

MR. MACLAY: That's all.

THE COURT: Okay.

MR. ERENS: The, the other thing, just as a reminder, is under the current order, the BA is to appoint new members, if she's going to appoint new members -- I guess she's not required to -- by the 27th of this month.

THE COURT: Oh, yeah. I mean, she could just not select any new members.

MR. ERENS: Right.

THE COURT: Right.

MR. ERENS: She could do any number of things, but the deadline to do whatever she thinks is appropriate is the 27th.

THE COURT: Right. I mean, so, I mean, I'm fine to

use the December date if people would prefer that. Would you prefer that? Yes. I see some yeses.

MS. RAMSEY: The December date's fine with the Committee, your Honor.

MR. ERENS: If that's what all the parties want to do, that's fine.

THE COURT: There's more likely that we won't even be in the shutdown. But even still, I mean, I don't know that there's any particular need that it needs to be next month, correct?

MR. ERENS: Yeah. I will say the following, your Honor, which is the due date for motions for the November hearing is coming up next week. We don't plan on filing any. I don't know if the Committee does.

So other than this particular matter, there may not be anything on for the 19th.

THE COURT: Okay. So why don't we use the December date, which is --

MR. ERENS: We're told the 16th.

THE COURTROOM DEPUTY: December 17th.

THE COURT: 17th.

MR. ERENS: 17th.

THE COURT: 17th.

THE COURTROOM DEPUTY: December 17th.

THE COURT: 17th.

THE COURTROOM DEPUTY: Okay.

MR. ERENS: Okay.

THE COURT: All right.

All right.

MS. RAMSEY: I, I'm sorry, your Honor. I just, I just received a note from my colleague. There is one matter that we were aware of that was going to be filed for November, and that was an application for approval of certain fees from one of the committee professionals, Verus. They were, I think, very anxious to have that hearing heard. I, I don't --

MR. ERENS: We're, we're fine having that hearing.

MS. RAMSEY: I'm just reluctant --

MR. ERENS: We're --

MS. RAMSEY: -- speaking for them --

MR. ERENS: Yeah. We're --

MS. RAMSEY: -- and agreeing without --

MR. ERENS: Yeah. We're fine to have that hearing on the 19th. That's the only matter up.

THE COURT: Okay.

MR. ERENS: That's fine.

THE COURT: All right.

MS. RAMSEY: And if we can, if we can persuade them to push it to December, your Honor, we will. They're just not here, and I, I'm uncomfortable moving the, what they anticipated to be the date without telling them about it.

MR. ERENS: Okay. So from the debtors' perspective, we're happy to have Verus, November, December, we're happy to have -- well, we actually prefer the discovery be in November, but if it has to be in December, that's fine. Have both hearings, only have one, we're happy to do anything.

THE COURT: So I, not to just throw another wrench into things, but the reason I originally had to move the 19th and 20th, the November date, now has been eliminated because of the government shutdown. So the meeting that I was going to have on the 20th, now they decided they cannot plan it because it's just, we don't know and we don't think by then.

So it is possible I could use the 20th date in November, if that --

MR. ERENS: Yeah. So why don't we do that.

THE COURT: Okay.

MR. ERENS: If that's okay with Mr. Maclay?

MR. MACLAY: Yes.

MR. ERENS: Okay. So we'll move the omnibus in November back to the 20th.

THE COURT: Back to the 20th.

THE COURTROOM DEPUTY: Back to the 20th?

THE COURT: Yes.

THE COURTROOM DEPUTY: Okay.

THE COURT: So I appreciate everyone being flexible on that little move. And then, of course, that was done before, I

mean, we -- the Judiciary has never gone into Phase 2. So this is a, a new experience for us, so. I --

MR. ERENS: Okay.

THE COURTROOM DEPUTY: Can I just get a little clarification? The 2004 examination, we're doing it November the 20th now --

THE COURT: Yes.

THE COURTROOM DEPUTY: -- or December the 17th?

THE COURT: November 20th.

MR. ERENS: November 20th.

THE COURTROOM DEPUTY: Okay. November 20th.

THE COURT: And there'll be an application.

THE COURTROOM DEPUTY: Okay.

THE COURT: So we should have two, two matters.

THE COURTROOM DEPUTY: Thank you.

THE COURT: I can't believe that wasn't clear for you.

All right. So now we just have the motion to amend the Second Amended Case Management Order, correct?

MS. RAMSEY: Correct, your Honor. Thank you. For the record, Natalie Ramsey on behalf of the Committee.

Your Honor, this is our motion, and it's a motion to amend either the estimation CMO or the protective order. We weren't quite sure where it fit best.

Oh, and your Honor, we do have some slides, if I could ask to approach.

THE COURT: Sure.

MS. RAMSEY: Thank you.

(Slides presented to the Court)

MS. RAMSEY: So through this motion, your Honor, the Committee seeks very limited relief. And what we were intending this to do was to ensure that the Federal Rules governing a contested matter are implemented in the process.

As ordered by the Court, the parties, including the Committee, exchanged initial expert reports on Monday, September 15th. And the parties, including the Committee, promptly negotiated PEO redactions, in accordance with the terms of the protective order. And the parties, including the Committee, agreed that the reports could be provided to the principals of the estimation parties as appropriate, with redaction.

By agreement, the parties, including the Committee, then exchanged expert reliance materials on October the 10th. Subsequently, the FCR reached out about some reliance materials that he believed were missing from the Committee's production. And the Committee has started supplementing its reliance materials. A couple of days ago, the debtors reached out to both the Committee and the FCR requesting additional reliance materials from both of their experts, and the Committee is working on that.

I go through that background because the Committee

anticipates that, as is always the process with respect to expert reports and reliance materials, the parties go through these materials. They have questions, they ask for additional back-up support. And we anticipate that that process will continue for a few months and we intend to cooperate fully with respect to that process with the estimation parties.

This motion concerns what happens with the preliminary expert reports, now that the parties have them. At the April 15th hearing, the Court stated that its intention was to follow what typically would be done with initial reports. And the Court also observed that such reports typically would not be filed on the docket and that the purpose of the initial expert reports was "to facilitate communications and negotiations between the parties." The Court directed that the initial expert reports be exchanged and in doing so, struck out language that had been proposed by the debtors that would have required that those reports be submitted to the Court.

But there is wiggle room in how the parties are now interpreting what the Court intended for these reports. The Committee interpreted the Court's intent to be that these reports were to be used exclusively by the parties, not to be shared with the Court until much later in the process, and we would say much later in the process would be at the time that the Court was being presented with the Committee's proffer of expert testimony. The debtors and the FCR interpreted the

Court's remarks to be less restrictive and to leave room for the reports to be shared with the Court and others with the limited restrictions that would apply under the protective order.

The Committee believes that the publications of preliminary expert reports at this stage of the proceeding will be harmful and prejudicial to the process and that they will result in something of a free-for-all prelitigation of the most important expert testimony in an estimation proceeding, the expert testimony on the critical issue of the debtors' estimated Liability. Rule 1 of the Federal Rules and Bankruptcy Rule 1001 provide that the Rules should be "construed, administered, and employed by the Court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding."

Both the FCR and the debtors argue that the agreed protective order governing confidential information, which was entered by the Bankruptcy Court at Docket No. 345 on September 23rd of 2020, sufficiently addresses any needs for confidentiality or protection of the initial expert reports. But it doesn't. And the reason it doesn't is that the protective order protects what is defined in the protective order as, quote unquote, confidential information. That is defined in the protective order as "information, documents, or things produced or provided (formally or informally) by the

disclosing party that such disclosing party or a designating party reasonably believes in good faith contains confidential, proprietary, or commercially sensitive information." That's at paragraph 10 of the protective order.

Section J of the protective order provides that the debtors' asbestos claims database and derivative information in that database is professional eyes only. We're not here about Section J material. All parties agree that that information will remain PEO under the terms of the protective order and no party, to our knowledge, has ever suggested otherwise. However, what we are here about is the confidential designation for the non-PEO information.

Under the protective order, the designating party, the party that asserts that the material that it is providing as confidential, as confidential can waive its own confidential designation at its own will and then it can file that on the public docket and it can share it with other parties, again subject to the PEO restriction, which we're not here to discuss, and we have no reason to believe that any party would do otherwise than to redact that information.

The debtors have said that their insurers have requested the reports and they believe their insurers should have the reports. We have said, why? Why do the insurers need these reports at this stage of the proceeding and we received no explanation, other than they are parties who would be

authorized to receive the Committee's report as signatories to the protective order. So the, the question is, then, who else might ask for these reports? Who else would be, would you be prepared to share them with? And the debtors and the FCR respond by saying, "We intend to follow the protective order," but they will not, they have not agreed not to further share or disseminate this information, even if the insurers were to receive it.

We believe that the initial expert reports should be limited in their use by the parties for the Court's stated intention to facilitate negotiations and not filed or shared or frankly, not subject to characterization or argument to the Court or others at this stage of the case without good cause. We are not here, as the FCR and the debtors argue, seeking a gag order or trying to hide anything. This is contested litigation and these experts were hired for the purpose of delivering opinions at the estimation hearing. In the fullness of time, at the right point in this proceeding, these preliminary reports could be shared through a Daubert motion, through rebuttal testimony, through cross-examination of an expert. These will eventually come to light, but they will come to light at a point when they should come to light, after the conclusion of fact discovery, after the conclusion of expert discovery, after the experts have provided final reports, after rebuttal reports are filed, and after the

parties have an opportunity to engage in Daubert practice. For now, all we're asking is a simple procedural hurdle to publication of these reports. We're asking that a party be required to ask for the consent of all other parties before sharing any, its own or the other parties', initial expert reports. And in the absence of agreement by all parties, if they still wish to proceed, that they come to the Court and ask the Court to share that and establish to the Court a reason that that should happen.

We believe the Committee's reasons for wanting this are compelling. The responsive pleadings of the debtors and the FCR demonstrate the need for an orderly process. They have already started a chaotic and biased assault on the Committee's report while this motion is pending before the Court.

The first point I want to make is that the debtors and FCR want the Court to see the preliminary expert reports because they want the Court to accept the numbers in those reports are meaningful or informative. We don't agree that they are. Both initial reports rely on a substantial number of assumptions and inputs to derive the numbers that they come to and those assumptions and inputs will be the subject of significant dispute.

Second, the debtors and the FCR clearly want the Court to have the Committee's report. Under the protective order on five days' notice, they could file the Committee report. The

only remedy that the protective order gives the Committee in that circumstance is to file an immediate motion on that five-day period to ask the Court to have it filed under seal. But it would be filed, nonetheless, whether under seal, the Court would have access to it. And it's clear from the responses to the Committee's motion that what the debtors and the FCR intend to do is to mount what we believe is a procedurally improper attack on the Committee's expert and the methodology, the underlying assumptions and inputs, and the preliminary conclusions set forth in that initial report. The only purpose could possibly be an attempt to prejudice the Court. And in fact, the assault has already begun.

If I can have the next slide, please.

In their responsive papers, the debtors and the FCR make the following accusations with respect to the initial reports that the Court was not intended to see. And this has been done, by the way, in response to a motion asking that those reports not see the light of day. "The expert reports will demonstrate that the ACC's estimate is improper and unsupportable on its face," the debtors say. "The Committee's report does not appear to be a good faith estimate of the asbestos liabilities," according to the FCR. "It appears that the Committee's estimation expert is not qualified to provide an estimate of the debtors' liabilities," the FCR says. And the debtors say, "The only, albeit unspoken, harm that the ACC

could suffer is the fear that disclosure to the Court will demonstrate that the ACC's estimates are facially unsupportable and improper." This is the kind of rhetoric and the kind of argument that creates, to borrow Ms. Hardman's earlier phrase, "a spaghetti-at-the-wall" litigation tactic that tries to undermine and fight the credibility and the importance of these reports in a way that could continue all the way up to the hearing and is necessarily prejudicial. Because what we are going to end up with, we fear, is at every hearing each side is going to be attacking the merits. In fact, the FCR, even in his response, goes into methodology and makes certain assertions about incidence curves and, and, and developments in the, in the litigation atmosphere.

These are the kinds of issues, and they're incredibly important issues in an estimation proceeding that need to be brought to the attention of the Court on proper motion, once there's a final report. They are very complicated and complex. The Court is going to need to have evidence about what is the right incidence curve and why is this incidence curve better than that one. This should not be done in what is, essentially, the legal equivalent of a food fight.

The premature litigation of these preliminary reports is procedurally inappropriate, and it could cause irreparable harm in connection with this proceeding. That is not how the procedural rules work. And they work that way, the way they

work for a very good reason.

Before the Court reviews these reports, we should complete the process. And for the same reasons, the disclosure to other parties is equally fraught. There's simply no need for the initial expert reports, which are very preliminary and which the Court ordered for the purpose of allowing the parties to talk about estimation matters, should be further publicized at this point.

So we've asked the Court to implement procedures to ensure that the contested matter proceeds in a procedurally appropriate manner, which does not seek to presumptively sway the Court or distract from estimation with further unnecessary collateral litigation.

Your Honor, in their pleading, the, the debtors rely on a case from the Northern District of California, a Google case, which is very distinguishable from this. In that case, the debtors point out, the district court denied a motion by Google to create a higher level of confidentiality restriction for, in connection with the case management order. But that, that case is very different in two ways.

First of all, Google was seeking to do that so that it create a different level in a case management order perspectively so that it could designate whatever material it wanted at that higher-confidentiality level. And the court there found that Google was anticipating, you know, poten, the

potential of future events and that its rationale for changing what is a model form in that jurisdiction for case management orders was based upon supposition and suspicion and not anything concrete. Importantly, at the end of that decision, the court said, "But if you," you know, "this is without prejudice, though. You come back to me if there is specific information that you believe should be subject to this higher level of protection." The only thing we are seeking by this motion is to give higher protection to these initial expert reports.

And again, I want to just re-emphasize this because it apparently got lost in our motion or our proposed language. Because the parties, the debtor and the, debtors and the FCR, continually say, "This is a gag order, they're trying to hide something, they're trying to prevent the Court from ever seeing these," and all of this type of hyperbole. That is not what we have proposed.

If I can go to our proposed language.

What we have proposed, your Honor, is that the initial expert reports won't be filed, providing that a filing may be permitted by the consent of all parties or is ordered by the Court or at the time specified in a scheduling order issued in connection with the estimation proceeding governing the pre-hearing motion practice relating to expert testimony.

So what we're trying to do is bring it into the way

that the Court would normally see these kinds of attacks on an expert's testimony. And we expect to see those attacks. We expect that this Court is going to be presented with significant Daubert motion practice that is going to require the Court to evaluate the credibility of the reports and the credibility of the inputs and the reliability of the methodology that the experts are using. Those issues should be teed up in an appropriate way because this is highly technical, scientific expert, and again, goes to the very heart of the opinion that the Court is going to be asked to reach.

We also provide that our proposal would be that initial expert reports would not be produced, shared, or otherwise disclosed to any person that is not an estimation party, provided that that can be permitted if, again, all parties agree or the Court orders. So if there is a reason that these initial reports really should be delivered and for whatever reason there is not agreement between the party, there is an offramp here.

We also provide a procedure and what we've provided, you know, as our proposal -- and we provided this, you know, to the parties before as we were attempting meet and confers to work these issues out before we brought our motion. So again, our proposal was that ten days' business notice would be provided to all parties of an intent to share or publish or file these reports and that that would give the parties

sufficient time to engage in a dialogue.

We gave an example in our response of one such issue. If, if the debtor said to us, "The insurers want to review these preliminary expert reports because they are in a dialogue to settle their insurance coverage." We would agree to that. I can represent that right now. There are other instances we can imagine where we would say that's a legitimate reason and as long as they are going to treat them as confidential under the protect, the terms of the current protective order, we would agree to that. If we don't agree because they say somebody wants to, from another case, wants to get a copy of all these preliminary expert reports because they want to use it in a totally different context that has nothing to do with this estimation proceeding, we would likely disagree. And if the debtors believe that they can convince the Court that that's an appropriate use, they could come to the Court and ask, or the FCR.

But your Honor, that is, essentially, what our motion is. It's a very straightforward motion. It is limited to a request to provide additional layer of protection to the initial expert reports because they are highly important and sensitive. They are preliminary and we are seeking to ensure that there is not an effort to preview arguments before the Court or try to influence the Court ahead of an appropriately teed-up hearing on the issues of these expert reports and their

expert opinions.

And with that, your Honor, that's my presentation. Unless the Court has questions, I'll save the rest for rebuttal

THE COURT: All right. Yeah, I might have some questions later.

MS. RAMSEY: Okay. Thank you.

MR. HIRST: Good afternoon, your Honor. Again, Morgan Hirst for the debtors. I do not have a presentation this time, and I, I will be short, in part, frankly, your Honor, 'cause I don't want to elevate this motion to a level that I, frankly, don't think it deserves.

This motion is not about filing things on the public docket or publicizing anything. Nobody has any intention of that. This protective order ensures that's not going to happen. This is literally an order, your Honor, to prevent parties in this case from disclosing to the Court, if appropriate, if the party deems it appropriate, matters relevant to the case. I have done this for 25 years. I've never heard of such a thing in a protective order. I asked everybody behind me if they'd ever heard of such a thing. They hadn't.

Now that's hardly precedent, but I bet your Honor has never had a motion like this come in front of her that says, "I'm going to enter an order that says unless the other side agrees, you can't present relevant evidence in this case, an

expert report to the Court."

It's even stranger in a bankruptcy world, your Honor. This is the question of what the liabilities of the debtor are. These are the initial expert reports calculating the liabilities. I would think your Honor frequently knows where the parties' positions are on the liabilities of the debtor that is before it. I find this motion incredibly, unusual is not even the right word. The words we used in our brief were -- and I'm going to kind of model my argument today on that -- unprecedented, unnecessary, and improper.

And let me start with unprecedented. Ms. Ramsey, a number of times, mentioned "proper procedural protections," the "usual procedure," the "usual procedural protections." I think those were phrases I wrote down three times. She didn't name any rule for you or any case that lays out any of those procedural protections, but I guess we're supposed to take her word for what those are. There are none, your Honor.

Ms. Ramsey distinguished one of the cases I cited. She can distinguish them all. You know why? 'Cause there is no case that comes anywhere near this issue, your Honor. Every case that the ACC cited and every case we cited had to do with publication of confidential materials. The idea that you're going to put on a public docket or produce to nonparties what has otherwise been marked confidential. That is not what we're talking about here. And I will put a *caveat* in the insurers.

I'll get to them in a minute. This is about preventing a party, if it thinks it's proper, to put in this case an expert report, but what we believe is relevant information in front of the Court. Rule 26 certainly doesn't supply it. And your Honor said when you ordered these reports, "We're going to follow Rule 26." It's when you overruled my request that we file them on the docket or submit them directly to you. And you correctly pointed out that's not what Rule 26 says. Rule 26 says you exchange them.

But guess what else Rule 26 doesn't say? It doesn't say anything that would support what Ms. Ramsey and the ACC are proposing to you today. No case law, no rules. The one rule that is kind of interesting, we pointed this out in our briefs, are the Local Rules in this District, starting with the district court Local Rules, which has a rule about discovery that's not ordinarily supposed to be filed on the docket. And this is kind of familiar stuff to the commercial litigators in the room. You don't file interrogatory answers, you don't file document requests, and they actually mention expert reports. But there's exceptions, three of them. One of them if there's a court order, or, No. 2, if the materials are needed in court for an in-court proceeding, or (3), if the materials are filed to support or oppose a motion or petition.

So what the ACC is proposing, at least as to the district court Local Rule, is that we wipe that out and take

out those last two things and leave it up to the ACC or apparently, some preorder from your Honor, which would come with no context and no idea as to why you're ordering it, that we can do this. So that's the Western District Local Rule.

The Bankruptcy Local Rule 7026(1) has a similar provision, but they actually don't even bother with expert reports, which lends to the idea that expert reports could be filed if you want it on the docket. The one case the ACC -- and I could sit here, I guess, and distinguish all their cases -- the one case they've cited in reply I found particularly curious was the U.S. ex rel. Davis v. Prince case. That was a case where a protective order was issued, nothing to do with preventing filing in front of the court, filing under seal in front of the court. That was a case where the plaintiff's lawyer had already spoken to the press and made defamatory statements about the other side and was threatening to publish all non-confidential discovery materials on the Internet. And the other side, not surprisingly, you'd probably find out, Judge, the other side said, "We're going to file a motion for protective order on that," has absolutely nothing to do with what we have going on here today. And in fact, in that case, I forgot the, I forgot the upshot. The district court denied the protective order, anyway. It said that they had not met the good faith or the, the good cause standard of Rule 26 to actually issue the protective order.

So that's the unprecedented. Let's get to unnecessary.

It was the debtors, your Honor, who first reached out a few days before the initial expert reports were submitted to talk about confidentiality under our protective order here. And we wanted to create a process by which we ensure that if there was any professional eyes only material, in particular claimants tied to settlement amounts, that that was protected and it was redacted and that it truly only went to the PEO parties.

So we reached out. That process actually worked just fine, as it turned out. Everybody agreed as to what was PEO, and there are some provisions. And I think all three expert reports, which the parties agreed were PEO, they have been redacted such that we now have two versions of the expert reports, one that is PEO, which only goes to a very, very limited set of individuals, and one that has been marked otherwise confidential, which goes to those parties that pursuant to our protective order, which was negotiated heavily 'cause I was involved in it, agreed and entered by Judge Whitley five years ago, can see confidential materials.

That protective order, by the way, has worked just fine for a number of years to protect, with all due respect, information that is far more confidential than the parties' opinions on our asbestos liabilities. It's to protect claimant

information and claimant PPI and things of that nature. If anybody, your Honor, is interested in protecting the confidentiality, to the extent there is some, of estimates of our asbestos liability, your Honor, it's us, and we've done that. And we have a perfectly good protective order with multiple layers of protection that do that. What it means, your Honor, is we cannot -- Ms. Ramsey used the word "publish" a couple times -- we can't publish any of these reports. If we were to provide them to your Honor for whatever reason, we would have to do so under seal.

And so there is no publication that's even been contemplated, discussed, or otherwise. We will live exactly pursuant to the protective order, which is exactly what we've done so far and exactly what we intend to do in the future.

That leads me to improper. The standard for a protective order is whether there is good cause shown. And I believe it's 26(c)(7) -- I have my rule book up here -- that lays out some of the factors. None of them even approach the factors that the ACC is talking about here. But you -- the case law is clear. You have to make a substantial showing of injury. You can't just say, "I'm prejudiced." You can't just say, "I'm embarrassed." You got to show what the injury is.

And the ACC suggested in their reply that the protective order here is necessary to avoid "potential prejudice to the estimation process by court review of the

initial expert reports without the procedural perceptions normally afforded expert testimony." Again, there's those procedural perceptions, which nobody's identified what those are. But the, the entire concept to me is, is bizarre. We need to protect your Honor from being prejudiced in reviewing the initial estimates of ours, the debtors' asbestos liabilities. I, I think your Honor can do that on her own and doesn't need to be shielded from such a thing by some sort of prior restraint.

Ms. Ramsey said in her argument that the debtors want this Court to believe that these initial expert reports were "meaningful and informative," was the words I wrote down, "meaningful and informative." The answer is yes, we do. That was the point. If you recall, your Honor, when I stood up here in March and asked for these to be entered, I did, I mentioned that I was concerned about being sandbagged." It's one of the reasons how we have the supplement set up, that they can supplement these later, but they can't just give us, and I think your Honor used the word a "mirage." We don't want to see a "mirage" of a report. I'm, I'm somewhat fearful that what I just heard from Ms. Ramsey is that's exactly what was intended, that these things shouldn't be meaningful and informative. They shouldn't? Then what was the purpose of doing them for the last six months?

All right. I should turn to the insurers. So we have

had our -- I think your Honor knows. Half of our asbestos liabilities for the debtors have been historically satisfied, the insurers. The insurers have been active participants in this case. I'm not sure if Mr. Roten has been before, your Honor, but he was fairly active, who represents one of the insurers, was here fairly regularly in front of Judge Whitley. When we negotiated the protective order in 2020, part of that included making sure that the insurers were among the defined authorized recipients in that protective order who could see confidential information. What that means is they cannot see the unredacted PEO versions of the reports. They can only see the redacted versions that take out the PEO. And that is, we've been asked for those reports. The ACC suggests that we haven't given them a reason why the insurers want them or why we should give them to them. That's backwards. That's a standard, that's taking the standard and putting it backwards. It's their job to show good cause under Rule 26 as to why the insurers shouldn't get them.

The good cause that -- for the -- if you want to flip the burden on me, which the law doesn't allow, but I'll do it anyway. No. 1, we specifically negotiated for our insurers to be able to see confidential information because they are absolutely relevant to this entire process, particularly on what the estimate that the ACC has and what we have and what the FCR has of our asbestos liability, since that's half of

what the insurers pay. The insurers absolutely have a right to see this, both under the terms of our protective order, which they were involved in negotiating -- "they" being the ACC -- and, and under all standards under Rule 26.

If I could just take one second, your Honor.

THE COURT: Sure.

(Pause)

MR. HIRST: And with that, I think I said five or six minutes, and I was probably three minutes off. The motion should be denied, your Honor.

MR. ROSENBERG: Your Honor, Mike Rosenberg, fairly briefly for the FCR.

As you know, your Honor, this case is on its fifth year. I haven't been on this case as long as many in this courtroom. However, I have seen the movie Groundhog Day, and that feels somewhat like what we're seeing today. To be fair to the ACC, however, they're raising a new argument. So I think it behooves us to rewind back to March.

Aat that time, your Honor, the parties could not agree on the language of the estimation CMO. And so we exchanged redlines. One disputed topic was the circumstances under which the FCR would exchange an initial expert report. And your Honor resolved that. The FCR would participate and exchange an initial expert report, rather than filing it publicly on the docket. What was not disputed, what was not even mentioned, is

what we're arguing here today. Why was there any need for added protections for these expert reports? If the ACC believed that any protections were required, that was the time to raise them, and they did not.

So your Honor, what happened between March and September? And more pointedly, who changed their position? Not the FCR. We've been consistent throughout. And we exchanged our expert materials. And I should correct the record that our reliance materials were exchanged exactly as the Court directed, without docketing the report publicly. The ACC also quotes Mr. Guy. Mr. Guy didn't change his position. They quoted him in, in their motion, but they didn't attach any correspondence. And that's because his correspondence makes clear he was not intending to release the report publicly in any way. I have that correspondence available, but I suspect it's not necessary for your Honor. The debtors didn't change their approach.

So that leaves the ACC, which brings us back to the question. What happened between agreeing to exchange the reports and actually exchanging them that gave the ACC cold feet about the protections that they already negotiated and accepted? And I recognize that the answer to that question, your Honor, may invite speculation. The Fourth Circuit itself has already questioned the ACC's motives in a similar vein. And those questions, your Honor, may be relevant to your

Honor's determination of the Rule 2004 motion.

But your Honor need not make any reasonable inferences to decide this motion. We believe it's very clear. There's no good cause to amend the protective order or the CMO. As the debtors pointed out, it's been governing this case for years without any problem. It provides more than adequate protection for any confidentiality interest the ACC might have. And as the debtors correctly pointed out, it's their liabilities that are at issue.

So the protective order regime in place protects any concern. No change is warranted.

Your Honor, if you have any, any questions, I'd be happy to answer them, but we believe the motion, respectfully, should be denied.

Thank you.

THE COURT: Thank you.

All right. So Ms. Ramsey?

MS. RAMSEY: Yes, your Honor. A couple of things.

So I started by saying we were filing the motion as a potential amendment to the Case Management Order, or the protective order. And what you've heard is a lot of argument about the protective order. Protective order is fine. We -- the -- nobody has contested anything about the protective order, other than we thought when we were seeking these additional protections with respect to the initial expert

reports that it could properly fit within the protective order as a modification. But the other place where it equally would fit and we provided alternative language in our motion is in the Case Management Order where it talks about initial expert reports.

Which brings me to sort of -- so all the focus on protective orders and the standard for protective orders is a little off. Because the protective orders typically talk about the things that you would think a protective order would talk about, the asbestos claims database, business secrets. This is an opinion testimony. It is not the sort of thing that the protective order otherwise even deals with, right? This is, this is an expert report that, that was not, frankly, contemplated.

And so when you look at that, at that order, yes, could it go there? It could, but it equally could go as a modification to the CMO.

Now Mr. Rosenberg says that we've changed our mind and nowhere did we do this. And the Court will remember that there was post-hearing briefing submitted by all three parties and that at that time the Committee argued that the reports should be exchanged through med, the mediator. And the Court did not agree that the reports should be exchanged through the mediator. The reason that we articulated for making that argument at the time was that we believed that these reports

ought to have the highest degree of confidentiality and protection. The Court did not order that they be exchanged through the mediator, but the Court did strike the filing on the public record. And the Court's articulated purpose was, as I said and quoted before, it was "to facilitate communications and negotiations between the parties."

And that's why when I was arguing before I said, "Your Honor, there's wiggle room in that." We understood that what the court was saying is, "I want these reports to be used the way they're normally used and I'm, I'm not going to -- but I, I don't want to see them," you know. "They're not normally filed. I don't want that."

Obviously, when we had these meet and confers, we understood for the first time that the other parties in the case heard something different from the Court. Who's right and who's wrong? Only the Court knows what the Court wanted the parties to understand from its direction. But that is, frankly, what brings us here.

Now we're hearing again, "Oh, this is outrageous. It's, it's incredible." I agree with Mr. Hirst 'cause we went everywhere trying to find anything close to this factual scenario. It is highly unusual. Mr. Hirst said, "I've been practicing for 40 years. I've never -- " I've been practicing for 40 years. I have never seen initial expert reports delivered so far in advance of trial. Under the Rules, Rule

7026 provides that the time to disclose expert testimony is at least 90 days before the date set for trial.

So this is a very unusual circumstance, I think factually, anyway. I have never had these kinds of reports.

And what is more frustrating a little bit is that Mr. Hirst says, "Well, they're supposed to be meaningful. They're supposed to be important." I'm sure they believe they are, that their reports are. We're concerned, your Honor, because we believe that their reports are subject to a very strong, colorable, scientific challenge as to methodology and approach. We believe that there are calculations that, that, on the face of them, look fine. It would take an expert to walk through why those calculations might not be persuasive to the Court. That is what expert testimony, scientific, mathematical, statistical, econometric, evidence is. It is highly technical. And if it were as simple as, gee, everybody agrees on the math, that would be one thing. If -- we could have final expert reports today and we could skip everything else that's going on in estimation, and we could go right into a procedure where the estimation experts deliver their final reports. There are rebuttal reports so the Court can see at least where the challenge is. There could be Daubert motions so the Court could see where the challenge is.

But those are the procedural protections, and those are the way that the, these kinds of reports typically come to

the Court. We have found case law that provides that under Federal Rule 26, "Expert reports should be assumed that at the time their reports are filed to be full knowledge and complete opinions on the issues for which the opinion has been sought." And you're not hearing that. These are preliminary. There are going to be modifications. If these were final expert reports, we would be saying, "Let's move" -- "before the Court," you know, "has access to them, we should have the rebuttal reports, too. We should have Daubert motions." We could have an orderly process where challenges are made and responded to.

And that is the way litigation works. It doesn't work by starting to challenge things indirectly and try to feed the Court perspectives and arguments. This is supposed to be factual based and not just about litigation argument. And that is our concern. Our concern is that this is going to turn into, frankly, a bit of a circus with every single hearing, having someone stand up and say, "Well," you know, "everybody knows that the incidence curve on mesothelioma," and then we're going to have arguments about that. You're going to hear from lawyers as opposed to the experts that are presenting this, this testimony. And again, this goes to the very, very basic part of this entire case.

And what I didn't hear from Mr. Hirst is why, why today? The Court has a process in place. We're going to have a hearing. Everybody's going to see whatever the, they want

the Court to see. We're not trying to protect anything. We're actually equally concerned or maybe more concerned with the Court's access to the other expert reports because of our concerns about whether those reports are reliable. And those are arguments that, that the Court is aware are going to be made. They were made in Garlock. They were made in Bondex. They're going to be made here. And so it was the same expert for, for the debtor.

You have arguments already being made about the qualifications of the Committee's expert. It's not fair for us to be in a position where we're responding to that without some sort of formal motion practice where we can present evidence to the Court and the Court can hear testimony. We're sort of in a, in never, neverland of, of how to manage the arguments unless we have some orderly process.

And what the Court didn't hear, again, except that, an argument that we're somehow reversing the burden, is what, what is the harm? What is the harm to the parties at this stage of the case? The Court said, "Take these. I'm going to give them to you. Use them right now." But what you heard, also, at that time was, well, the -- you mostly heard a focus on the Committee's expert. The Committee uses a methodology that doesn't require as much, we would say. They overstated it -- doesn't require as much of the information that we're still compiling and that's going to be the subject of other things.

Our expert really needs that.

So what we're worried about is a bait and switch that what you're hearing is the, the, the expert for the debtors has the ability to totally change their report and say, "Well, we always told you that we really need this factual information and it's going to change everything." And they made such a big deal about how they could change things based upon facts learned after the, the case. Ours is likely not to change as much based on that.

And so we're, again, going to be in a, an uneven playing field. And that's why, your Honor, again, if the Court intended that these be freely used, the Court will tell us that and we'll go forward, you know, accordingly.

Oh, and the one, one final thing I, I have to -- I'm sorry -- say to the Court.

Hold on. I'm sorry.

(Pause)

MS. RAMSEY: Yes.

So, so we're looking -- your Honor, we're, we're trying to go back through the email correspondence, and I'm not sure we have it all, but I will represent and I'm looking at the email right now -- and I don't know which email Mr. Rosenberg has -- but I'm looking at an email from Mr. Guy that says that he believes that the Court should see at least the Committee's report. He doesn't refer to, to the other reports.

But, but clearly, says it very plainly. And if we get into an email battle, we can present those to the Court. But I think it's, I think it's unnecessary.

But I, I just want to be clear that the representation that we made is supported by, by a direct communication.

And that's all I have, your Honor, unless you have more questions.

MR. ROSENBERG: Your Honor, I, I just want to briefly correct the record. His quote is, "As far as we are concerned, the protective order controls here. We have no immediate intention to blast into the world in the interim." I don't think it behooves anyone's interest to get into --

MS. RAMSEY: What's the email?

MR. ROSENBERG: -- the email back and forth, but if your Honor requires it, we can submit them.

Thank you.

MS. RAMSEY: I'm sorry. Which -- can you identify the email that you're looking at? I'm sorry.

MR. ROSENBERG: September 16th at 10:03 a.m.

MS. RAMSEY: September 16th. All right.

Your Honor, it would take me a little while to find that. What I'm looking at is an email that says, "And yes, the Court should see Andrews report." And before that, an email that says, "I think the Court should see the report soon." And that was as recently as this past weekend.

So your Honor, anyway, to the extent that's relevant, we can, we can get you more information. But, but I think that the, the Court probably has enough of a sense of the concerns and the issues and the arguments that, unless the Court needs more.

THE COURT: Not at the moment.

I think Mr. Hirst wanted to say something.

MR. HIRST: Yeah, I just had two sentences, maybe. Maybe it'll be three. See how quickly I can name that tune.

Point 1 is, Ms. Ramsey said we haven't identified the harm of this unprecedented prior restraint being imposed. Again, that's not our burden under the Rules. The Rules are what prejudice can they show. And I still haven't heard prejudice. They've said "prejudice" a bunch in their briefs. The word was in there a whole bunch of times. I haven't seen it.

At bottom, your Honor, this is an unprecedented effort at restraining the Court from seeing relevant information in the case. There is zero authority. There is zero procedural rules that would support it. It should be denied.

That's all I have, your Honor.

THE COURT: Anything more on this?

MR. ROSENBERG: No, your Honor.

MS. RAMSEY: No, your Honor.

THE COURT: I'm, I'm struggling to understand what the

fear is here as far as, like, what type of -- I mean, I think -- I think -- clear, I didn't want them filed on the docket. I mean, that's just not what's done. And you don't just file a report on the docket. It does give a certain, I don't know, air of, you know, authority when it's just filed just right on the docket, right? So I think we all can see that, so. And that's not going to happen.

I still am not, like, grasping what, I mean, I assume Mr. Guy or, you know, anyone with the Committee, they're not going to just go ahead and file it, even though I said don't do that. And if they do, then we'll deal with it. That's the typical way.

I think, I think that's the issue here is, like, because we don't even know, or I'm not understanding what you're afraid of. You're looking for, essentially, it does appear to me a gatekeeping type of order. And we don't, I mean, that certainly isn't something one typically does. And the most I can gather from you is you're trying to protect me. And that, perhaps, it's too technical for me and perhaps, it might, you know, somehow sway me. But I think, you know, perhaps you're not familiar with routine bankruptcy cases. You're in a totally different level. But day in, day out, what bankruptcy judges do is hear different values. And from, believe me, the beginning of the dispute, you know. They don't wait until the evidentiary hearing before one person's telling

me, "This is worth a million dollars," and the other person's telling me, "It's worth $10 million." I mean, that's just kind of Tuesday for me. I mean, the, and for any bankruptcy judge. I mean, that's what we do, you know.

So I guess I'm just still not -- I'm not -- and maybe it's because I, I can't imagine what kind of, I can't imagine there's any motion currently that would be filed that it should be attached as, I mean, to me, the district court Rule should apply, you know. I mean, and, you know, to the extent this is, perhaps, more district court type of bankruptcy case, you know, 'cause then -- so yeah. To me, to me, that applies, and that makes sense. And if it, if it's relevant and to a pleading that is appropriately filed, it can be attached.

But how am I supposed to prospectively imagine what that is? I don't, I don't know.

MS. RAMSEY: You're not. You're --

THE COURT: Yeah, yeah.

MS. RAMSEY: You're not, your Honor. But, but, but what we, what we would envision in that circumstance is the debtor comes to you and says, "Your Honor, we want to file" -- I'm going to come up with the -- the -- my dream case, which is -- "your Honor, we want to file, attach our expert report. Because we are now prepared to go forward with our plan and we want to use the value that is set forth in the expert report. And we are," you know, "we want to include it in the disclosure

statement," you know, "the fact that we have an expert that has so opined." We would agree to that, but, but let's say we didn't. And, and if they -- if the -- if the debtor came to you and said that, I imagine the Court would say, "Yeah, yeah, that makes" -- I -- I -- "fine, attach your, your pleading. Attach your expert report."

All we're doing is putting a protection in place. And what we are primarily, and, and I will say, with respect to their reports, that is correct, that the Court hears value. They might even hear that somebody's put a value on something. But these, this is the central issue. The debtor will say for this particular estimation proceeding, "This is the central issue." These are preliminary reports, and they are not yet subject to rebuttal reports. And, and we are concerned that you're going to hear this day in and day out until we get to estimation. And we'll have heard so much down the road that it will be, it will be the first time that you're starting to hear context, we'll say.

The district Rule, I assume, applies to expert, final expert reports because initial expert reports aren't always done. Typically, there's, you know -- I, I just haven't seen them before in, in my cases.

So this is a little bit of a changed circumstance, anyway. If the Court is just the only audience and the only thing that's at issue is the Committee report, our only concern

is what you're already saying. We're going to see this every hearing. We're going to see sideways comments about the expert, the report, the methodology. You're going to be fed a constant. The report, the methodology, you're going to be fed a constant string of information.

THE COURT: I mean, I'm getting sideways comments all the time for you guys. I mean, I am. No, I am, you know. You're terrible. So, I mean.

MS. RAMSEY: But do you want that? I mean, we --

THE COURT: No, I tried to be clear. I don't want it, right?

MS. RAMSEY: So we're trying to help you. We're trying to, we're trying to stop it.

THE COURT: Well, that's it. That's -- I mean, it is pretty extraordinary for me to enter an order to protect myself. I mean, that seems, I, I have just --

MS. RAMSEY: So --

THE COURT: -- never heard of such a thing.

MS. RAMSEY: So leave, so leave the Court outside.

The other, the other issue is what happens when it starts being shared more broadly? What, what happens when these reports are now the subject of fodder and we're hearing about the expert reports in Aldrich in the other cases and we're hearing about them in other cases outside of this District? And --

THE COURT: I mean, that's the whole point of confidential information or not confidential information. I mean, I, you know, I, I guess --

MS. RAMSEY: Not the database information.

THE COURT: And there's no jury here for estimation. So you know, I mean, I guess -- yeah. You, you seem to me, like, you're, you're expecting if -- these, maybe, maybe these types of concerns come up when there's going to be a jury trial, but that's, there's no jury pool to taint here. There's, you know, it is -- it -- it is extraordinary relief to act to, to ask for gatekeeping. That's what you're asking. I mean, I do that for, you know, frivolous sovereign citizen filers, you know. That's what we do, not, you know. And, and you certainly, you know, obviously, if someone files something and, as a sort of, you know, perhaps, you know, in a way to sort of try to file the, you know, perhaps not, not substantive and makes up a, makes up a motion to try and get into your paranoid mind --

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

THE COURT: -- you know, and, and attaches it, you know, file a motion to strike.

MS. RAMSEY: It's experienced paranoid.

THE COURT: Yeah.

MS. RAMSEY: But yes, we will. We -- we -- we

certainly --

THE COURT: I mean --

MS. RAMSEY: -- can do that. It'll --

THE COURT: I mean, I think -- but that's, and that's the way litigation goes, right? If it continues and there's problems, then that's when we start to deal with it. But sort of prophylactically saying you can't file certain things is just not something that judges do without some already demonstrated need, so. And you've admitted it's not, it's not confidential. If everyone's on the same page, it's not confidential.

MS. RAMSEY: Yeah, not -- yeah. This is, this is not about the, the database information. That's never been --

THE COURT: Right.

MS. RAMSEY: -- an issue. Everybody agrees that should be kept confidential. There's never been a debate about that. This is, this is really about, about previewing what will be very important expert advice way ahead of the time that the Court will be asked to make these decisions and the potential that that will be argued to affect decisions that the Court will make between now and then.

THE COURT: I mean, I honestly don't even know what authority I would have to do it without showing some -- any, any gatekeeping order I've done has already been because of some past behavior, you know.

MS. RAMSEY: Well, I think even the Court's comments today, and I appreciate them very much --

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

MS. RAMSEY: -- will be helpful --

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

MS. RAMSEY: -- to inform everyone's dealing, how, how the parties deal with these reports going forward. And we may be back to see you. I hate to tell you, but I, I predict that at some point this issue might come back in a different way.

THE COURT: At least it would be, I mean, I don't want the issue to come back. But the thing is, again, not in a context, and for me to just say you can't file something, it's just not what, what we do, you know, for no reason, you know. I, I certainly appreciate your experience, and I'm sure you've seen everything with what, of litigation tactics, I know.

So I, you know, but I don't know what authority I would have to say that something that's not confidential, you know, again, there's no -- the only prejudice I hear from you is talking about me. And so you are asking me to enter an order protecting myself, you know. That means, essentially, I can't do my job, you know. I'm, you know, and, you know, be impartial, which I have, you know, taken an oath to do, so. Now if it becomes a distraction or, and is used, yes,

improperly, filing things, that's something I can deal with in the context, so.

MS. RAMSEY: And --

THE COURT: And --

MS. RAMSEY: And I do believe, your Honor, that what the Court is likely to see, then, is, if this continues, if the, if the argument about these preliminary reports continues to show up in pleadings, what the Committee is likely to feel compelled to do is, is file a motion to strike certain parts of, of pleadings of other parties that characterize, mischaracterize, you know, start to contain argument as opposed to fact.

THE COURT: Yeah. I mean, you're, you're welcome to file, I mean, you, you're entitled to -- not welcome.

MS. RAMSEY: Thank you. Yeah.

THE COURT: I'm not going to go that far. But you're entitled to file anything. And if we have it in a context where something's improperly being used, you know, then I have something before me to rule on.

But for me to sort of give this blanket, you know, you know, yeah, I'm protecting myself. Yeah, I think that -- so the motion is, is denied. And I, you know, they can share it with their insurance company, you know, so.

And so just as, as comments again here, just where I am, you know, the reason even, I know everyone's constantly

telling me back in my, in your papers what I said, as far as when I talk about my -- I viewed early on, I view my job as estimation here is because there's an appeal going forward. And my view was I'm not going to just sit and wait, right? We need to go ahead and do estimation, so. And you know, to a certain extent, we're doing, going to do that a little bit with APs. I do want to see kind of what's happening. But you know, if leave to appeal is denied, you know, you know, then that, yeah, we need to -- so it's, it's equal. And so, you know, just want to get the work done.

I know there are so many distractions, and I know everyone is so, I mean, it's hard not to be distracted, even for myself, you know. There's just so many issues. You're like, what about this and what about that, you know. But at the end of the day, you know, we either want to have information to get to a plan or we want to find out that we're never going to get there. But I want to make progress in, in both of those directions, so. And not just spin our wheels. So that's where I am.

So is there anything further?

MR. ERENS: No further business, your Honor. The debtors will prepare an order, share it with the ACC and the FCR denying the motion, and then, once it's agreed to, upload it.

THE COURT: Right.

And so we'll see each other in November. Some of us, anyway.

MR. ERENS: Same time, the 9:30 start?

THE COURT: 9:30.

Is that working for everyone? Works for me.

MR. ROSENBERG: Yes, your Honor.

THE COURT: Okay. On the 20th.

MR. HIRST: 20th, right.

THE COURT: Okay, right.

All right. Thank you.

MR. ERENS: Thank you.

MS. RAMSEY: Thank you.

(Proceedings concluded at 3:08 p.m.)

CERTIFICATE

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

/s/ *Janice Russell* October 27, 2025

Janice Russell, Transcriber Date