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

2 (Call to Order of the Court)

3 THE COURT: Be seated. Morning, everyone.

4 (Counsel greet the Court)

5 THE COURT: All right. Should we start?

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

10 Thank you.

11 THE COURT: All right.

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

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

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

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

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

25 THE COURT: Okay.

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

3 THE COURT: All right.

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

7 THE COURT: All right.

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

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

25 THE COURT: Oh.

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

3 THE COURT: Okay. All right.

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

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

9 (No response)

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

11 The agenda for today's hearing was filed at Docket
12 2855. The intent is to go through the matters in the order
13 that they appear on the agenda, unless your Honor has a
14 different order.

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

19 THE COURT: Yes.

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

23 Thank you.

24 THE COURT: Ms. Johnson?

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

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

8 I have here on the screen our case website, which also
9 includes the Court Documents tab. That has been there,
10 traditionally, and covers the full docket in the main case.
11 That remains unchanged, but there is also now a Substantive
12 Motion Practice tab. Following the recommendations of parties
13 and this Court, we've excluded from this tab Certificates of
14 Service, *pro hacs*, interim fee applications, and other routine
15 administrative pleadings. So this filtered docket now only
16 contains substantive pleadings, specific motions for relief,
17 and related objections, replies and orders. The goal here is
18 to make the docket more concise and easier to search, and I
19 think it has achieved that purpose. We have gone from almost
20 2,900 pleadings on the main docket to under 400 on the
21 Substantive Pleading tab, and the functionality of this
22 filtered docket remains the same.

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

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

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

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

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

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

1 hope this is helpful to everyone.

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

6 THE COURT: Yeah.

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

18 THE COURT: Makes sense to me. Right.

19 MS. HARDMAN: Yes, that was the plan.

20 THE COURT: Okay. All right, then.

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

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

1 especially on a procedural motion such as this.

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

5 THE COURT: I would expect nothing less, yeah.

6 MS. HARDMAN: Okay, thank you very much.

7 MS. CALVAR: May I approach?

8 THE COURT: Yes.

9 (Slides presented to your Honor and counsel)

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

17 THE COURT: Oh.

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

20 Oh, would you mind terribly unplugging?

21 MR. SOLANO: I will.

22 MS. HARDMAN: Thank you.

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

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

3 THE COURT: Could you just wait one minute?

4 MS. HARDMAN: Of course.

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

6 MS. HARDMAN: That actually functions?

7 THE COURT: Got one.

8 MS. HARDMAN: Understood.

9 THE COURT: Right. Thank you.

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

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

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

15 THE COURT: Yeah.

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

17 (Pause)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 feet to held to the fire.

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

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

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

21 MS. HARDMAN: Okay, sounds good.

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

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

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

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

10 MS. HARDMAN: So --

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

13 MS. HARDMAN: Exactly.

14 THE COURT: -- can respond.

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

16 THE COURT: Yes.

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

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

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

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

9 All right. The next slide.

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

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

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

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

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

1 a deadline for substantial completion.

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

14 So in order to prevent your Honor from seeing a bunch
15 of motions that are essentially preserving our rights to then
16 have them drop if we reach agreement, our proposal is to have
17 60 days to try and narrow the issues before we even file
18 anything before your Honor. So again, we would prefer 60 days.

19 All right, next slide. Thanks.

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

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

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

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

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

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

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

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

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

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

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

5 THE COURT: Not at this time.

6 MS. HARDMAN: Thanks.

7 THE COURT: Thank you

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

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

17 Is it okay if she hands your Honor a copy?

18 (Slides presented to the Court)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 the case that aren't involved in the appeal.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 So the delay in the adversary proceedings certainly

1 isn't laid at our door.

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

20 So first, they would have to establish what is the
21 debtors' estimated liability for asbestos claims. And once you
22 have that number, are the debtors' existing assets insufficient
23 to meet that obligation? In order to do that, they would have
24 to prove that the existing assets, including insurance, the
25 \$270 million Qualified Settlement Fund, and other value that

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

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

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

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

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

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

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

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

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

6 THE COURT: Not at this time. Thank you.

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

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

13 THE COURT: Yes. Yes.

14 (Slides presented to the Court)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 I will, you know, I did truly find Ms. Hardman's slide
16 presentation helpful. There are a couple of things we don't
17 have an issue on. The disagreements on a CMO, if we're going
18 to go that way, are time and scope. For example, on her Slide
19 3, this was our proposal before we filed the motion to stay,
20 that we have a right to file a motion to stay. I don't need
21 that anymore. We filed our motion to stay, your Honor. We'll
22 decide it one way or the other.

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

1 for the amount of information they want. If they want to scale
2 their requests considerably down or square, you know, slim down
3 39 custodians that they've demanded we do, then we can talk.
4 But given what they've asked us to do, six months is
5 appropriate.

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

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

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

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

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

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

10 THE COURT: All right. Thank you.

11 MR. HIRST: Thank you.

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

13 THE COURT: Yes, I think so.

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

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

19 THE COURT: All right.

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

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

25 THE COURT: Sure.

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

7 So if your Honor would permit us to approach?

8 THE COURT: Yes.

9 MS. HARDMAN: Thank you.

10 (Slides presented to the Court)

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

15 THE COURT: Right.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Honor for confirmation, which, as we all know, in the Chapter
2 11 context requires that the entire matter has been presented
3 to you, and it only can get confirmed, if the plan is in good
4 faith, is somehow able to skirt this divestiture principle.
5 Your Honor, you've heard a lot about folks taking, you know,
6 differing positions or conflicting positions. Happy to have
7 them take alternative positions. We just simply don't agree
8 that that's the case. If the divestiture rule is going to
9 apply to us, it would apply to the estimation proceeding as
10 well. Because the facts underlying estimation that gets you to
11 confirmation are the same that the ones, same as the ones that
12 underlie the adversary proceedings.

13 If you would like a laugh, there is a graphic on Slide
14 9 of two faces and talking. It can be us. It could be them.
15 I'm not casting aspersions. We just like to include some, some
16 levity in our, in our slides, your Honor.

17 THE COURT: Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 week to some of those custodians.

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

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

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

24 So with that, your Honor, I will rest.

25 THE COURT: All right.

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

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

5 Thank you.

6 THE COURT: All right. Thank you.

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

9 MS. HARDMAN: Absolutely.

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

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

13 AFTER RECESS

14 (Call to Order of the Court)

15 THE COURT: All right. Please sit down.

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

20 MS. HARDMAN: That would have been hilarious.

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

24 Ms. Sieg.

25 MS. SIEG: Thank you, Judge.

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

3 MS. SIEG: Maybe he heard his ears burning.

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

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

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

18 I'm sorry. Were you --

19 THE COURT: No, no.

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

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

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

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

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

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

11 We're certainly not seeking a stay to infinity. What
12 we are seeking and, and what we put in our papers, we suggested
13 60 days after your Honor issues an estimation opinion, and I
14 certainly don't expect, and didn't expect when we drafted that
15 that your Honor would take until infinity to rule. You've been
16 very clear that we're not doing that in this case.

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

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

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

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

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

11 THE COURT: All right. Thank you.

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

14 THE COURT: Wow.

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

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

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

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

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

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

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

1 THE COURT: Just looking through my notes.

2 (Pause)

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

4 MR. HIRST: Thank you, your Honor.

5 THE COURT: So what's the, what is the plan for today?

6 How long do we think everything is going to take?

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

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

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

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

21 MS. HARDMAN: To understand that.

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

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

1 THE COURT: Right.

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

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

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

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

21 THE COURT: Right. What are we thinking on?

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

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

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

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

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

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

10 THE COURT: All right.

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

13 THE COURT: Right. Okay.

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

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

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

1 trial and estimation before.

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

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

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

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

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

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

17 Let me pull up that order.

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

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

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

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

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

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

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

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

20 THE COURT: What --

21 MS. HARDMAN: -- is up to you.

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

25 MR. HIRST: Wasn't me.

1 MS. HARDMAN: We had struck it.

2 THE COURT: You struck it.

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

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

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

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

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

14 MS. HARDMAN: Yes.

15 THE COURT: Doesn't that -- yeah.

16 MS. HARDMAN: We're fine with that.

17 THE COURT: Yeah.

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

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

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

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

3 THE COURT: Right.

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

12 Right, Carrie?

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

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

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

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

23 MS. HARDMAN: I don't know --

24 MR. HIRST: -- we intentionally did it.

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

1 somebody who actually --

2 MR. HIRST: Yes.

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

5 THE COURT: Right.

6 MS. HARDMAN: So I'm --

7 MR. HIRST: Yeah. The estimation --

8 MS. HARDMAN: -- trying my best.

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

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

20 THE COURT: Right.

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

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

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

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

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

9 MS. HARDMAN: Yeah.

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

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

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

16 It's up to you, Carrie.

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

19 MS. HARDMAN: Right, anyway.

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

22 MS. HARDMAN: So that's next week.

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

24 THE COURT: So --

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

1 hearing --

2 THE COURT: Right.

3 MR. HIRST: -- as well.

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

6 THE COURT: Right, right.

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

9 THE COURT: Ms. Ramsey?

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

12 THE COURT: Right.

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

14 MR. HIRST: Okay. That's fine.

15 THE COURT: Ms. Ramsey?

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

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

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

1 anyway, for -- about how much time?

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

4 THE COURT: Yeah.

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

7 MS. HARDMAN: Which is?

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

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

14 MR. HIRST: Yeah.

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

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

19 MS. HARDMAN: -- just to suggest --

20 THE COURT: -- there days before.

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

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

23 MS. HARDMAN: That's fine.

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

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

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

5 THE COURTROOM DEPUTY: December 16th.

6 MS. HARDMAN: Is the hearing date, right?

7 THE COURTROOM DEPUTY: For --

8 MR. HIRST: So it means --

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

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

12 MR. HIRST: Is that Thanksgiving?

13 MS. HARDMAN: -- motion practice?

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

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

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

20 THE COURT: Yeah.

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

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

24 MR. HIRST: Yeah.

25 MS. HARDMAN: That way, we have --

1 THE COURT: -- Thanksgiving.

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

4 MS. HARDMAN: Or --

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

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

12 THE COURT: Look at this, everyone.

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

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

18 MR. HIRST: Yeah.

19 THE COURT: -- everything?

20 MS. HARDMAN: Yes, your Honor.

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

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

6 What's happening on the phone?

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

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

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

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

25 THE COURT: Okay.

1 MS. SIEG: Thank you.

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

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

8 THE COURT: Okay.

9 MR. HIRST: -- from now.

10 THE COURT: Right.

11 MR. HIRST: And just set it there.

12 THE COURT: So it's --

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

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

16 MS. SIEG: Thank you, Judge.

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

21 MS. HARDMAN: Yes, your Honor --

22 THE COURT: All right.

23 MS. HARDMAN: -- will do.

24 THE COURT: All right.

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

1 just take a break?

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

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

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

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

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

12 THE COURT: What?

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

15 THE COURT: Okay.

16 MR. ERENS: Okay.

17 THE COURT: All right.

18 MR. ERENS: That's fine.

19 THE COURT: Go for it.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 In any event, your Honor already ruled at the August

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

12 "It was suggested at argument it is because these are
13 complex cases and the claimants have to rely on their
14 individual counsel for bankruptcy experience. Mass
15 tort cases are certainly unique and undoubtedly
16 present complex and complicated issues, but from the
17 perspective of committee member participation, mass
18 tort cases are no more or less complex than other
19 types of bankruptcy cases. And they are no more or
20 less complex than patent infringement cases, medical
21 malpractice cases, or even the underlying asbestos
22 cases in which individuals serve as jurors every day
23 in this country and make decisions unaided by counsel
24 in the jury room.

25 Bottom line" -- this is Judge Silverstein talking,

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

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

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

14 THE COURT: All right. Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 THE COURT: Mr. Erens.

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

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

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

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

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

11 So this case has never been about whether claimants
12 are dying without compensation. This case has always been
13 about what is a fair resolution, a fair and final resolution of
14 these debtors' liabilities. And in 2021, these debtors put
15 half a billion dollars on the table, more than half a billion
16 dollars on the table in an agreement. We didn't force this
17 plan down on anybody. It was a negotiated resolution with the
18 Future Claimants' Representative who represents, again, about
19 75 to 80 percent of the liability, half a billion dollars, even
20 though it's our position, and we've said this repeatedly, that
21 it's unlikely that our products, encapsulated gaskets where the
22 asbestos was encapsulated inside a gasket, we don't believe
23 that caused, probably, any or, if any, very little harm to any
24 claimant, as opposed to the "big dusties," the insulation
25 companies and, and the like.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 524(g) that have confirmed with a capped plan.

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

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

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

1 representative of the futures.

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

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

12 THE COURT: No.

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

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

16 THE COURT And certainly not on a 2004.

17 MR. ERENS: Right. The, the authority is not the case
18 law, your Honor. The authority is the Rule. The Rule says
19 2004 discovery can be issued on any matter that involves the
20 administration of the case, the formulation of the plan, or
21 other matters affecting the case. *Prima facie*, these requests
22 satisfy that standard.

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

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

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

7 MR. ERENS: Not at all.

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

12 MR. ERENS: Right.

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

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

16 THE COURT: Right.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 Thank you.

22 THE COURT: Mr. Maclay?

23 MR. MACLAY: Thank you, your Honor.

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

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

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

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

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

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

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

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

4 You heard just more pure speculation that attorneys
5 are found through Google, that there are higher fees in the
6 tort system. All these *ad hominem* attacks on, on PI lawyers
7 are irrelevant to the motion, and they're unsubstantiated, your
8 Honor. And I would, as someone who actually kind of knows how
9 all this works 'cause I've been in many of these cases over the
10 last number of years -- my firm has been in them for about
11 40 -- when you get sick, it's usually 'cause you've been
12 exposed because of your work in a factory, because of your work
13 with a product, etc., etc. And what do you think you do when
14 you realize you, you only have a few years left to live? Do
15 you just go into Google to see who's going to support your
16 family through the, the compensation you're owed? No. You
17 talk to the other people in a similar situation. You talk to
18 your fellow union members, you talk to your fellow factory
19 workers, you talk to the fellow people who are on that ship
20 with you in the Navy. That's the actual way that people find
21 their lawyers, not that it's relevant at all to this. We've
22 gone way far afield from anything relevant.

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

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

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

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

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

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

1 philosophical or legal justification for treating asbestos
2 victims differently.

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

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

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

5 (Pause)

6 MR. MACLAY: Oh, thank you.

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

15 THE COURT: So, so let me clarify.

16 MR. MACLAY: Yes.

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

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

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

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

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

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

12 THE COURT: So we need to know.

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

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

23 MR. MACLAY: Sure.

24 THE COURT: There's no communication needed.

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

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

7 THE COURT: Yeah.

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

13 THE COURT: And so why did you do that?

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

17 THE COURT: But they should have already done that.

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

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

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

8 MR. MACLAY: Yeah.

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

12 MR. MACLAY: Right.

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

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

15 THE COURT: Right.

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

18 THE COURT: Right.

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

25 THE COURT: Right.

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

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

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

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

13 MR. MACLAY: Right.

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

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

19 THE COURT: Right.

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

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

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

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

19 THE COURT: Right.

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

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

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

12 THE COURT: Right.

13 MR. MACLAY: And, and so for --

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

17 MR. MACLAY: Right.

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

21 MR. MACLAY: It did.

22 THE COURT: Yeah.

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

25 THE COURT: Oh.

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

2 THE COURT: No one's blaming --

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

4 THE COURT: I think everyone --

5 MR. MACLAY: Right.

6 THE COURT: -- in here --

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

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

20 THE COURT: Anything further, Mr. Erens?

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

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

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

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

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

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

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

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

1 these facts.

2 Thank you, your Honor.

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

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

8 Thank you, Judge.

9 THE COURT: Anything else?

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

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

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

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

22 MS. HARDMAN: Thank you, your Honor.

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

24 AFTER RECESS

25 (Call to Order of the Court)

1 THE COURT: All right.

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

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

7 MS. RAMSEY: Thank you, your Honor.

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

10 THE COURT: Okay, yeah.

11 MR. ERENS: Before you do that.

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

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

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

25 THE COURT: That was my intention.

1 MR. ERENS: Okay.

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

3 MR. ERENS: Okay.

4 THE COURT: -- continuing.

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

8 THE COURT: Well, if she had --

9 MR. ERENS: -- Antideficiency Act.

10 THE COURT: Oh.

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

12 THE COURT: Yeah.

13 MR. ERENS: We, we heard --

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

18 MR. ERENS: Right.

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

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

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

3 MR. ERENS: Okay. Thank you.

4 THE COURT: All right.

5 MR. ERENS: Thank you.

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

8 Before when your Honor had asked if the 19th was okay,
9 moving from the previously scheduled 20th date, it was. I did
10 not realize that this hearing was going to be continued to the
11 19th and since then, the Purdue confirmation hearing is
12 currently scheduled to end on the 19th. I think it is likely
13 that it will end before that, in which case, I'll just, you
14 know, come down from New York to here. But there's some chance
15 I'll still be stuck in the Purdue confirmation hearing on the
16 19th.

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

19 THE COURT: Right.

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

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

24 MR. MACLAY: Sure.

25 THE COURT: -- or --

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

4 THE COURT: Right.

5 MR. MACLAY: -- or something different.

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

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

12 THE COURT: Right.

13 MR. MACLAY: That's all.

14 THE COURT: Okay.

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

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

21 MR. ERENS: Right.

22 THE COURT: Right.

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

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

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

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

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

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

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

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

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

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

20 THE COURTROOM DEPUTY: December 17th.

21 THE COURT: 17th.

22 MR. ERENS: 17th.

23 THE COURT: 17th.

24 THE COURTROOM DEPUTY: December 17th.

25 THE COURT: 17th.

1 THE COURTROOM DEPUTY: Okay.

2 MR. ERENS: Okay.

3 THE COURT: All right.

4 All right.

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

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

12 MS. RAMSEY: I'm just reluctant --

13 MR. ERENS: We're --

14 MS. RAMSEY: -- speaking for them --

15 MR. ERENS: Yeah. We're --

16 MS. RAMSEY: -- and agreeing without --

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

19 THE COURT: Okay.

20 MR. ERENS: That's fine.

21 THE COURT: All right.

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

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

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

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

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

15 THE COURT: Okay.

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

17 MR. MACLAY: Yes.

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

20 THE COURT: Back to the 20th.

21 THE COURTROOM DEPUTY: Back to the 20th?

22 THE COURT: Yes.

23 THE COURTROOM DEPUTY: Okay.

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

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

3 MR. ERENS: Okay.

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

7 THE COURT: Yes.

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

9 THE COURT: November 20th.

10 MR. ERENS: November 20th.

11 THE COURTROOM DEPUTY: Okay. November 20th.

12 THE COURT: And there'll be an application.

13 THE COURTROOM DEPUTY: Okay.

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

15 THE COURTROOM DEPUTY: Thank you.

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

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

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

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

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

1 THE COURT: Sure.

2 MS. RAMSEY: Thank you.

3 (Slides presented to the Court)

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

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

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

25 I go through that background because the Committee

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

7 This motion concerns what happens with the preliminary
8 expert reports, now that the parties have them. At the April
9 15th hearing, the Court stated that its intention was to follow
10 what typically would be done with initial reports. And the
11 Court also observed that such reports typically would not be
12 filed on the docket and that the purpose of the initial expert
13 reports was "to facilitate communications and negotiations
14 between the parties." The Court directed that the initial
15 expert reports be exchanged and in doing so, struck out
16 language that had been proposed by the debtors that would have
17 required that those reports be submitted to the Court.

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

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

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

16 Both the FCR and the debtors argue that the agreed
17 protective order governing confidential information, which was
18 entered by the Bankruptcy Court at Docket No. 345 on September
19 23rd of 2020, sufficiently addresses any needs for
20 confidentiality or protection of the initial expert reports.
21 But it doesn't. And the reason it doesn't is that the
22 protective order protects what is defined in the protective
23 order as, quote unquote, confidential information. That is
24 defined in the protective order as "information, documents, or
25 things produced or provided (formally or informally) by the

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

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

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

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

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

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

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

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

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

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

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

13 If I can have the next slide, please.

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

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

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

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

1 work for a very good reason.

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

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

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

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

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

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

18 If I can go to our proposed language.

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

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

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

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

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

1 sufficient time to engage in a dialogue.

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

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

1 expert opinions.

2 And with that, your Honor, that's my presentation.

3 Unless the Court has questions, I'll save the rest for rebuttal

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

6 MS. RAMSEY: Okay. Thank you.

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

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

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

1 expert report to the Court."

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

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

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

1 I'll get to them in a minute. This is about preventing a
2 party, if it thinks it's proper, to put in this case an expert
3 report, but what we believe is relevant information in front of
4 the Court. Rule 26 certainly doesn't supply it. And your
5 Honor said when you ordered these reports, "We're going to
6 follow Rule 26." It's when you overruled my request that we
7 file them on the docket or submit them directly to you. And
8 you correctly pointed out that's not what Rule 26 says. Rule
9 26 says you exchange them.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 If I could just take one second, your Honor.

6 THE COURT: Sure.

7 (Pause)

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

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

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

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

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

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

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

1 Honor's determination of the Rule 2004 motion.

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

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

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

15 Thank you.

16 THE COURT: Thank you.

17 All right. So Ms. Ramsey?

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

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

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

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

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

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

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

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

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

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

1 7026 provides that the time to disclose expert testimony is at
2 least 90 days before the date set for trial.

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

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

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

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

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

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

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

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

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

1 Our expert really needs that.

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

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

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

16 Hold on. I'm sorry.

17 (Pause)

18 MS. RAMSEY: Yes.

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

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

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

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

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

13 MS. RAMSEY: What's the email?

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

16 Thank you.

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

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

20 MS. RAMSEY: September 16th. All right.

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

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

6 THE COURT: Not at the moment.

7 I think Mr. Hirst wanted to say something.

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

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

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

21 That's all I have, your Honor.

22 THE COURT: Anything more on this?

23 MR. ROSENBERG: No, your Honor.

24 MS. RAMSEY: No, your Honor.

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

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

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

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

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

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

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

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

17 THE COURT: Yeah, yeah.

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

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

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

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

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

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

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

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

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

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

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

17 MS. RAMSEY: So --

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

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

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

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

4 MS. RAMSEY: Not the database information.

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

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

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

23 MS. RAMSEY: It's experienced paranoid.

24 THE COURT: Yeah.

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

1 certainly --

2 THE COURT: I mean --

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

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

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

14 THE COURT: Right.

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

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

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

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

5 MS. RAMSEY: -- will be helpful --

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

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

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

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

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

3 MS. RAMSEY: And --

4 THE COURT: And --

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

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

15 MS. RAMSEY: Thank you. Yeah.

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

20 But for me to sort of give this blanket, you know, you
21 know, yeah, I'm protecting myself. Yeah, I think that -- so
22 the motion is, is denied. And I, you know, they can share it
23 with their insurance company, you know, so.

24 And so just as, as comments again here, just where I
25 am, you know, the reason even, I know everyone's constantly

1 telling me back in my, in your papers what I said, as far as
2 when I talk about my -- I viewed early on, I view my job as
3 estimation here is because there's an appeal going forward.
4 And my view was I'm not going to just sit and wait, right? We
5 need to go ahead and do estimation, so. And you know, to a
6 certain extent, we're doing, going to do that a little bit with
7 APs. I do want to see kind of what's happening. But you know,
8 if leave to appeal is denied, you know, you know, then that,
9 yeah, we need to -- so it's, it's equal. And so, you know,
10 just want to get the work done.

11 I know there are so many distractions, and I know
12 everyone is so, I mean, it's hard not to be distracted, even
13 for myself, you know. There's just so many issues. You're
14 like, what about this and what about that, you know. But at
15 the end of the day, you know, we either want to have
16 information to get to a plan or we want to find out that we're
17 never going to get there. But I want to make progress in, in
18 both of those directions, so. And not just spin our wheels.
19 So that's where I am.

20 So is there anything further?

21 MR. ERENS: No further business, your Honor. The
22 debtors will prepare an order, share it with the ACC and the
23 FCR denying the motion, and then, once it's agreed to, upload
24 it.

25 THE COURT: Right.

1 And so we'll see each other in November. Some of us,
2 anyway.

3 MR. ERENS: Same time, the 9:30 start?

4 THE COURT: 9:30.

5 Is that working for everyone? Works for me.

6 MR. ROSENBERG: Yes, your Honor.

7 THE COURT: Okay. On the 20th.

8 MR. HIRST: 20th, right.

9 THE COURT: Okay, right.

10 All right. Thank you.

11 MR. ERENS: Thank you.

12 MS. RAMSEY: Thank you.

13 (Proceedings concluded at 3:08 p.m.)

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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