

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

<p>In re</p> <p>ALDRICH PUMP LLC, <i>et al.</i>,¹</p> <p>Debtors.</p>	<p>Chapter 11</p> <p>Case No. 20-30608 (LMJ)</p> <p>(Jointly Administered)</p>
<p>OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS,</p> <p>Plaintiff,</p> <p>v.</p> <p>ALDRICH PUMP LLC, MURRAY BOILER LLC, TRANE TECHNOLOGIES COMPANY LLC, and TRANE U.S. INC.,</p> <p>Defendants.</p>	<p>Adv. Pro. No. 21-03029</p>
<p>OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS, on behalf of the estates of Aldrich Pump LLC and Murray Boiler LLC,</p> <p>Plaintiff,</p> <p>v.</p> <p>INGERSOLL-RAND GLOBAL HOLDING COMPANY LIMITED, TRANE TECHNOLOGIES HOLDCO INC., TRANE TECHNOLOGIES COMPANY LLC, TRANE INC., TUI HOLDINGS INC., TRANE U.S. INC., and MURRAY BOILER HOLDINGS LLC,</p> <p>Defendants.²</p>	<p>Adv. Pro. No. 22-03028</p>

¹ The Debtors are the following entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): Aldrich Pump LLC (2290) and Murray Boiler LLC (0679). The Debtors' address is 800-E Beaty Street, Davidson, North Carolina 28036.

² The Committee notes that the Motion (defined below) was not filed in the fiduciary duty adversary proceeding (Adv. Pro. No. 22-03029). The Committee submits that, because the Second Amended Case Management Order requires that discovery in all three adversary proceedings be deemed lodged in each proceeding, the Motion and this response



**THE COMMITTEE’S OPPOSITION TO DEFENDANTS’
MOTION TO COMPEL THE COMMITTEE TO
PROVIDE ADEQUATE RESPONSES TO DISCOVERY REQUESTS**

The Official Committee of Asbestos Personal Injury Claimants (the “Committee” or “Plaintiff”), by and through its undersigned attorneys, hereby submits this opposition in response to *Defendants’ Motion to Compel the Committee to Provide Adequate Responses to Discovery Requests* (the “Motion”), and states as follows:

PRELIMINARY STATEMENT

1. Setting aside Defendants’ unsupported assertions,³ Plaintiff agrees that discovery is a “two-way street.” But it is not carte blanche for Defendants to demand discovery beyond that afforded by the law, that does not exist, is privileged, or is already in Defendants’ possession.

2. Regurgitating many of the arguments in the Motion to Stay and the 2004 Motion (each defined below), the latter of which the Court denied, the Motion is another improper attempt by Defendants to obtain discovery from individual members of the Committee and their tort

should likewise be lodged in the fiduciary duty adversary proceeding. Adv. Pro. No. 21-03029, ECF No. 197 at 5 (“All discovery conducted after the date of this Order . . . shall be deemed to have occurred in all Adversary Proceedings, including, without limitation, the Fiduciary Duty Proceeding.”).

³ Plaintiff takes umbrage with the multitude of Defendants’ mischaracterizations, including, without limitation: (A) the claim that the Committee believes it is “immune from discovery,” has not agreed to search or produce documents for two years (Mot. ¶ 6), and labeling the Committee’s discovery as “evasive” or “non-compliant” (Mot. 4 & ¶ 8), particularly when (i) the Committee served comprehensive responses totaling ~220 pages in the fraudulent transfer and substantive consolidation proceedings and continues to supplement (*see* Mot., Exs. B-C (Discovery Responses)) and (ii) the Committee’s “possession, custody, and control” extends only to materials generated or received **in a Committee capacity** because, as a derivative plaintiff, it does not have unique documents beyond those referenced in the responses already provided, Defendants’ productions or public sources (*see* Mot., Ex. H (Aug. 7 Letter) at 2 n.1; *Id.*, Ex. F (Nov. 5 Letter) at 2; Dec. 19 Letter at 2; Mot., Ex. G (Oct. 23 Letter) at 18); (B) that the Committee has proceeded “without so much as making any prima facie showing” (Mot. ¶ 37), as if such showing is required for the relief they seek (it is not), and selectively ignoring that the Court granted derivative standing based on colorable claims against the Defendants (*see* Case No. 20-30608, ECF No. 1121); and (C) mischaracterizing the Committee’s pursuit of substantive consolidation as “involuntarily making the NDAs debtors” (Mot. ¶ 4), which is an available remedy under the law. Regardless of the Defendants’ tactics, the Committee’s response herein intends to adhere to the Court’s multiple requests to lessen this type of behavior.

counsel in their *personal* capacities.⁴ This tactic serves no legitimate discovery purpose and can only be viewed as an attempt to generate leverage rather than obtain relevant information. All parties know that the core facts underlying both the claims and the defenses in the above-captioned adversary proceedings (the “Adversary Proceedings”) rest *solely* upon information in Defendants’ possession. Yet Defendants now seek to manufacture an unprecedented and unsupported rule that creditors who agree to serve on a committee—and by extension, their individual tort counsel—are subject to discovery of information unrelated to their Committee work. Defendants identify no authority for such discovery from committee members, and none exists.⁵

3. Regarding valuation issues, as the Court well knows, they will be addressed in due course—consistent with the standard practice in fraudulent transfer cases—with expert input. Despite the Court’s prior endorsement,⁶ Defendants make much ado (again) about the Committee’s alternative arguments on financial distress (Mot. ¶¶ 39-43), while claiming that the Committee’s similar request of Defendants is “wasteful” and “harassing.” *See* Mot. at 3 n.3. In any case, the Committee has provided a fulsome response on that score and welcomes Defendants’ position on whether the Debtors were in financial distress as a result of the corporate restructurings.

4. The Committee has properly objected and responded to each request and provided information where it reasonably exists. Defendants simply dislike the Committee’s answers and wish the Committee had responded differently. But dissatisfaction is not a discovery defect, nor

⁴ To be clear, the Committee has conducted a reasonable search for relevant, responsive, and non-privileged information held by a Committee member *in their capacity as a Committee member*, and their agents in the same capacity, and confirms that it has no responsive information beyond what is already within the possession, custody, or control of Defendants or Debtors. The Committee has thus satisfied its obligations under Federal Rule of Civil Procedure 26.

⁵ Although Defendants cite numerous cases in their Motion, none involve a committee context, let alone compel production of personal-capacity materials from committee members.

⁶ *See infra* ¶ 42.

does it render the responses inadequate. The Committee has satisfied its discovery burden under the applicable Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Federal Rules of Civil Procedure (the “Civil Rules”).⁷

RELEVANT BACKGROUND

A. The Adversary Proceedings

5. On June 18, 2020 (the “Petition Date”), the Debtors filed (i) voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”);⁸ and (ii) a complaint and motion for a temporary restraining order, a preliminary injunction, along with a request for declaratory relief, initiating the preliminary injunction proceeding (“PI Proceeding”).⁹

6. The parties engaged in truncated discovery in connection with the PI Proceeding, and the Court held a three-day hearing on May 5-7, 2021. On August 23, 2021, the Court issued its findings and conclusions granting the preliminary injunction.¹⁰

⁷ Defendants made no attempt to meet and confer on the Plaintiff’s supplemental responses in the SubCon Proceeding and did not even wait for the Committee’s supplemental response in the Fraudulent Transfer Proceeding before filing this Motion, leading Plaintiff to question the Defendants’ motivation in seeking Court intervention of an unripe discovery dispute. Defendants’ rationale in filing this Motion now, without meaningfully conferring, is shown by the Motion’s footnote 2 where Defendants cite to a recent decision in *Love v. Red River Talc, LLC, et al.*, which has nothing to do with the discovery disputes—or even the claims and defenses—at issue here. Plaintiff questions the motives to cite unrelated cases before this Court, if for no other reason than to simply attempt to pre-emptively (and improperly) argue the merits of the Adversary Proceedings.

⁸ See *In re Aldrich Pump LLC*, No. 20 -30608 (JCW) (Bankr. W.D.N.C. June 18, 2020); *In re Murray Boiler LLC*, No. 20-30609 (JCW) (Bankr. W.D.N.C. June 18, 2020) (the “Bankruptcy Cases”).

⁹ See *Debtors’ Complaint for Injunctive and Declaratory Relief (I) Preliminarily Enjoining Certain Actions Against Non-Debtors, or (II) Declaring that the Automatic Stay Applies to Such Actions, and (III) Granting a Temporary Restraining Order Pending a Final Hearing* [Adv. Pro. No. 20-03041, ECF No. 1]; *Motion of the Debtors for an Order (I) Preliminarily Enjoining Certain Actions Against Non-Debtors, or (II) Declaring that the Automatic Stay Applies to Such Actions, and (III) Granting a Temporary Restraining Order Pending a Final Hearing* [Adv. Pro. No. 20-03041, ECF No. 2].

¹⁰ *Findings of Fact and Conclusions of Law Regarding Order: (I) Declaring that the Automatic Stay Applies to Certain Actions Against Non-Debtors, (II) Preliminarily Enjoining Such Actions, and (III) Granting in Part Denying in Part the Motion to Compel* [Adv. Pro. No. 20-03041, ECF No. 308] (“Findings and Conclusions”).

7. On October 18, 2021, the Committee filed the Standing Motion.¹¹ Over Defendants' strenuous opposition,¹² the Court granted the Committee's motion to investigate, commence, and prosecute actions on behalf of the Debtors' estates, with respect to, arising from or otherwise related to the Corporate Restructuring (as defined in the Standing Motion) and the filing of the Bankruptcy Cases.¹³ The Court specifically found that:

- (i) [T]here are colorable claims and . . . the debtor and affiliates can hardly complain that a claimant's fiduciary committee be empowered to examine [the restructuring] transactions and, if appropriate, contest them;
- (ii) The debtor and its professionals, in my opinion, are conflicted here. A lot of the same participants are, were engaged in [those transactions]. The debtor, of course, is controlled by its parents and the affiliated entities and it have an insider relationship. The debtor sought the injunction to prevent the assertion of the causes of action, the ones that the movants want to investigate.

Jan. 27, 2022 Hr'g Tr. at 16:16-17:5.

8. Also on October 18, 2021, the Committee commenced the substantive consolidation proceeding ("SubCon Proceeding") against certain Defendants¹⁴ by filing a complaint¹⁵ and related *Motion for Substantive Consolidation of Debtors' Estates with Certain*

¹¹ *Motion of the Official Committee of Asbestos Personal Injury Claimants for Entry of an Order Granting Leave, Standing, and Authority to Investigate, Commence, Prosecute, and to Settle Certain Causes of Action* [ECF No. 848] (the "Standing Motion").

¹² *See Debtors' Opposition to ACC's Motion for Leave, Standing, and Authority to Investigate, Commence, Prosecute, and Settle Certain Causes of Action* [ECF No. 893], at 1-5 (arguing, among other things, that derivative standing was unnecessary because the "ACC acknowledges that these are 'full-pay' cases given the resources available to the Debtors through the respective funding agreements," that there was a lack of colorable claims, and that granting derivative standing would not benefit the bankruptcy estates); *see also, e.g., The Non-Debtor Affiliates' Objections to the Motion of the Official Committee of Asbestos Personal Injury Claimants for Entry of an Order Granting Leave, Standing, and Authority to Investigate, Commence, Prosecute, and to Settle Certain Causes of Action* [ECF No. 895].

¹³ *Order Granting Motion of The Official Committee of Asbestos Personal Injury Claimants for Entry of an Order Granting Leave, Standing, and Authority to Investigate, Commence, Prosecute, and to Settle Certain Causes of Action* [ECF No. 1121].

¹⁴ The defendants in the SubCon Proceeding are Aldrich Pump LLC, Trane Technologies Company LLC, Murray Boiler LLC, and Trane U.S. Inc.

¹⁵ *Complaint for Substantive Consolidation of Debtors' Estates with Certain Nondebtor Affiliates or, Alternatively, to Reallocate Debtors' Asbestos Liabilities to Those Affiliates* [Adv. Pro. No. 21-03029, ECF No. 1].

Nondebtor Affiliates or, Alternatively, to Reallocate Debtors' Asbestos Liabilities to Those Affiliates (Adv. Pro. No. 21-03029, ECF No. 2).

9. On June 18, 2022, Plaintiff commenced (i) the fraudulent transfer proceeding (“Fraudulent Transfer Proceeding”) by filing a complaint asserting causes of action including, without limitation, actual and constructive fraudulent transfer under federal and applicable state law against certain affiliates of the Debtors;¹⁶ and (ii) the fiduciary duty proceeding by filing a complaint asserting causes of action including, without limitation, breach of fiduciary duty, aiding and abetting a breach of fiduciary duty, and civil conspiracy against certain defendants.¹⁷

B. Defendants’ Written Discovery Requests to the Committee

10. On March 12, 2024, Defendants in the SubCon Proceeding served their First Set of Interrogatories, Requests for Production (“RFP”), and Requests for Admission (“RFA”) on the Committee. That same day, Defendants in the Fraudulent Transfer Proceeding served their First Set of Interrogatories, RFPs, and RFAs on the Committee.

11. On May 28, 2024, the Committee responded to both sets of requests.

12. Contrary to Defendants’ allegation that they notified the Committee of supposed deficiencies to the discovery responses and that the Committee “consider[ed]” whether there was any merit to those concerns (Mot. 4 & n.4), the parties engaged in several meet-and-confers relating to the requests. Much of that dialogue focused on requests seeking information irrelevant

¹⁶ *Complaint* [Adv. Pro. No. 22-03028, ECF No. 1]. The defendants in the Fraudulent Transfer Proceeding are Ingersoll-Rand Global Holding Company Limited, Trane Technologies HoldCo Inc., Trane Technologies Company LLC, Trane Inc., TUI Holdings Inc., Trane U.S. Inc., and Murray Boiler Holdings LLC.

¹⁷ *Complaint* [Adv. Pro. No. 22-03029, ECF No. 1]. The defendants in the Fiduciary Duty Proceeding are Trane Technologies plc, Ingersoll-Rand Global Holding Company Limited, Trane Technologies HoldCo Inc., Trane Technologies Company LLC, Trane Inc., TUI Holdings Inc., Trane U.S. Inc., Murray Boiler Holdings LLC, Sara Brown, Richard Daudelin, Marc Dufour, Heather Howlett, Christopher Kuehn, Michael Lamach, Ray Pittard, David Regnery, Amy Roeder, Allan Tananbaum, Evan Turtz, Manlio Valdes, and Robert Zafari.

to the claims and defenses in the Adversary Proceedings, and that were duplicative of the Debtors' requests contained in the *Debtors' Motion for Bankruptcy Rule 2004 Examination of the Official Committee of Asbestos Personal Injury Claimants* (ECF No. 2824), dated October 2, 2025 ("2004 Motion"), which this Court denied. Nov. 20, 2025 Hr'g Tr. at 43:12-13.

13. Nonetheless, Defendants continued to press for information plainly outside the scope of relevant discovery, including requests targeting internal Committee conduct wholly unrelated to the prepetition corporate restructurings (e.g., Fraudulent Transfer Interrogatory No. 6 and RFP No. 6, which seek information about Committee meetings *after* the Petition Date). Unsurprisingly, Defendants have abandoned those requests in the present Motion, thereby conceding that such requests were improper.

14. Defendants now focus on discovery requests seeking information about the Debtors' assets, liabilities, and financial condition—information that is necessarily in Defendants' possession. Despite Defendants' arguments to the contrary, nothing in the Civil Rules requires the Committee to produce information that is already in the possession of Defendants.

15. As is the Committee's obligation in the ordinary course of discovery, the Committee supplemented its responses to certain requests in the SubCon Proceeding and in the Fraudulent Transfer Proceeding.¹⁸ However, before the parties could even meet and confer regarding those supplemental responses, Defendants filed the Motion.

¹⁸ As conveyed from the Committee to Defendants, attached is the letter containing the Committee's supplemental responses to Defendants' requests in the Fraudulent Transfer Proceeding, which was served on February 11, 2026. See **Exhibit 1**, attached hereto.

ARGUMENT

I. No Basis Exists to Expand the Committee’s Discovery Obligations or Otherwise Compel Searches for Information Outside Members’ Committee Role

16. Defendants’ contention that the Committee must search the personal records of its individual members (and, by extension, their tort counsel) fails for three independent reasons.¹⁹

17. *First*, the governing law is clear. Under Civil Rule 34, made applicable by Bankruptcy Rule 7034, a party must produce documents that are in the party’s “possession, custody, or control.” Fed. R. Civ. P. 34(a)(1). “Control” depends on “the degree of authority the responding party possesses over the non-party.” *Inventiv Health Consulting, Inc. v. French*, No. 5:18-CV-295-D, 2020 WL 728148, at *4 (E.D.N.C. Feb. 12, 2020). This standard imposes a meaningful limitation on what a responding party can be compelled to produce. Defendants’ assertion that the Committee must locate and produce documents belonging to individual claimants or their personal tort counsel—regardless of whether they were acting in a committee capacity—fundamentally, and intentionally, misconstrues the nature of a creditors’ committee.

18. Similarly, Civil Rule 33 only requires that a party respond with “available” information; it does not impose a duty on the Committee to search for and collect documents and information beyond what is within its possession, custody, or control.²⁰ Defendants’ own cases demonstrate that what is “available” to a party for the purposes of Rule 33(b)(1)(B) indeed hinges

¹⁹ While it is unclear which requests Defendants are actually seeking to compel based on their argument that the Committee must search beyond its possession-custody-control obligations, or whether they intend a blanket request covering all requests, in the interest of efficiency and the Court’s resources, the Committee addresses the following requests: SubCon Interrogatory Nos. 1-3 and 13-15, SubCon RFP Nos. 27-29, FT RFP Nos. 6-7 and 10-11, and SubCon RFA No. 11. Defendants do not explain how any of these responses are deficient, nor do they articulate why the Court should require the Committee to search beyond its possession-custody-control obligations or expand those obligations in any respect. In every instance, the Committee provided the best information available to it and responded in detail with all material within its possession, custody, or control.

²⁰ *Lynn v. Monarch Recovery Mgmt., Inc.*, 285 F.R.D. 350, 357 (D. Md. 2012) (“A party . . . should not be required to enter upon independent research in order to acquire information merely to answer interrogatories.” (quoting 8B Charles Alan Wright et al., Fed. Prac. & Proc. Civ. § 2174 (3d ed. 2012))).

on the party's possession, custody, or control of such information.²¹ None of the cases cited by Defendants held that a party was obligated to obtain and respond with information that they did not control.²² Indeed, courts have sustained objections to motions to compel interrogatory responses when the respondent lacks possession of the information.²³

19. A creditors' committee does not represent the individual claimants who serve on it, nor does it have possession, custody, or control over personal documents or information belonging to them or their personal counsel. *See In re Circle K Corp.*, 199 B.R. 92, 99-100 (Bankr. S.D.N.Y. 1996), *aff'd*, 1997 WL 31197 (S.D.N.Y. Jan. 28, 1997).²⁴ The committee's attorneys represent only the committee, and individual committee members are represented by their respective, personal attorneys. *In re Snyder*, 51 B.R. 432, 438-39 & n.11 (Bankr. D. Utah 1985).

20. None of the cases Defendants cite address possession, custody, and control in the

²¹ For example, in *Thomas v. Cate*, the court held that the subject party had to answer an interrogatory that would require it to search its own disorganized records. 715 F. Supp. 2d 1012, 1033-34 & n.2. (E.D. Cal. 2010). The party did not contend that the information was not "available" to it. *Id.* at 1032; *see also Nat'l Fire Ins. Co. of Hartford v. Jose Trucking Corp.*, 264 F.R.D. 233, 238 (W.D.N.C. 2010) (explaining that a party must respond to interrogatories with "information immediately available to him or under his control"); *Int'l Ass'n of Machinists, Dist. 169 v. Amana Refrigeration, Inc.*, 90 F.R.D. 1, 2 (E.D. Tenn. 1978) (holding that a party's obligation to respond to interrogatories extended to "sources under its control"); *United States v. 58.16 Acres of Land, more or less in Clinton Cnty.*, 66 F.R.D. 570, 572 (E.D. Ill. 1975) (holding that a government entity cannot "avoid answering an interrogatory by an allegation of ignorance if it can obtain the requested information from the sources under its control").

²² Two cases Defendants cite, *Sines v. Kessler and Bonumose Biochem, LLC v. Zhang*, likewise, address only the narrow principle that a party with knowledge of a particular document cannot refuse to respond to an interrogatory pertaining to that document on the grounds that it lacks "possession, custody, or control." *See Sines v. Kessler*, Civil Action No. 3:17-cv-00072, 2020 WL 3106318, at *7 (W.D. Va. June 11, 2020) (holding that party was required to provide information he had about others' social media posts where he "liked," "shared," or reposted other users' online content); *Bonumose Biochem, LLC v. Zhang*, No. 3:17-CV-00033, 2018 WL 10068638, at *1, 6 (W.D. Va. Oct. 31, 2018) (requiring defendants to provide "a description of all interactions" they had with an entity).

²³ *See, e.g., Mach. Sols., Inc. v. Doosan Infracore Am. Corp.*, 323 F.R.D. 522, 530 (D.S.C. 2018) ("The court cannot compel a party to furnish information that they do not possess.") (quoting *Hoffman v. Jones*, No. 2:15-cv-1748-EFB P, 2017 WL 5900086, at *8 (E.D. Cal. Nov. 30, 2017)).

²⁴ The *Circle K* court held that for purposes of bankruptcy proceedings, creditors' committee constituents are not clients of the committee's attorneys. As the bankruptcy court explained: "mere status as a constituent did not make the association member a client—in the traditional sense—of the association's lawyers, and this conclusion follows even more strongly in light of the committee's role in a bankruptcy proceeding." 199 B.R. at 99. By the same token, the files of individual claimants' tort counsel are outside the Committee's possession, custody, and control.

context of official committees and their members, let alone stand for the proposition that a committee has “control” over its members’ information or documents that is wholly unrelated to their work on the committee.²⁵

21. On the contrary, courts expressly recognize that “[a] Committee cannot reasonably be expected to be privy to all . . . information of all creditors.” *In re Trantex Corp.*, 10 B.R. 235, 238 (Bankr. D. Mass. 1981). Where the Committee represents a class of claimants—as here—and not individual asbestos claimants, it would be illogical and inequitable to impute to the Committee knowledge of each claimant’s personal information. *Id.* Bankruptcy courts addressing this exact issue in asbestos cases have held likewise. In the *G-I Holdings* and *Garlock* asbestos bankruptcies, the courts concluded that it was not appropriate for a party to demand that the committee provide documents or information belonging to individual committee members or their personal tort counsel.²⁶

22. Reported decisions in analogous situations affirm the reasoning and principles behind the *Garlock* and *G-I* decisions, including the nature of creditors’ committees and their

²⁵ See Mot. 13-15 (citing *Sines*, 2020 WL 3106318, at *7 (involving individual); *Bonumose Biochem*, 2018 WL 10068638, at *1, 6 (individual and corporation); *Thomas*, 715 F. Supp. 2d at 1018 n.2 (governmental entity); *Nat’l Fire Ins. Co.*, 264 F.R.D. at 238 (corporation); *Int’l Ass’n of Machinists*, 90 F.R.D. at 1-2 (labor union); *58.16 Acres*, 66 F.R.D. at 572 (governmental entity)).

²⁶ In *G-I Holdings*, the debtors served discovery requests on the committee that “require[d] responses by and on behalf of individual claimants or the tort counsel who represent them.” Hr’g Tr. at 15:15-18, *In re G-I Holdings, Inc.*, No. 01-30135 (Bankr. D.N.J. Sept. 10, 2003) (attached hereto as **Exhibit 2**). The court initially noted the principle that the committee “does not have any power or authority to bind individual creditors.” *Id.* (citing *Quality Beverages Co.*, 181 B.R. 887 (Bankr. S.D. Tex. 1995)). From there, the court rejected the argument that individual claimants’ files were within the committee’s possession, custody, or control, and accordingly ruled that “discovery served on the Committee, which is admittedly a party, cannot properly require responses by and on behalf of individual claimants or the tort counsel who represent them.” *Id.*

Likewise, in *Garlock*, the court held that requests “really asking for . . . communications by individual members and the claimants and their attorneys,” holding that such requests “couldn’t be sent to the ACC as an entity[.]” Hr’g Tr. at 12:22-13:2, *In re Garlock Sealing Techs., LLC* (Bankr. W.D.N.C. Dec. 28, 2015) (attached hereto as **Exhibit 3**). That the requests required the committee to provide documents belonging to creditors alone justified the court’s denial of the discovery requests. *See id.* (explaining that the requests could not be properly served to the committee “[e]ven if all the other problems didn’t exist”).

relationship to their members and constituent creditors. *See, e.g., Circle K*, 199 B.R at 97 (holding that the separateness of committees and their creditors meant a creditor could not bind the committee); *Spring v. Bd. of Trustees of Cape Fear Cmty. Coll.*, No. 7:15-CV-84-BO, 2016 WL 1389957, at *4 (E.D.N.C. Apr. 7, 2016) (holding that a school board of trustees did not “control” documents belonging to individual members of the board other than those located on the school’s internal email system).

23. The law draws this line between the Committee as an entity separate and apart from its underlying members for an important policy reason. If individual claimants’ personal files or their tort counsel’s records unrelated to committee work were deemed within a committee’s possession, custody, or control simply because those claimants served on a committee, no rational creditor would ever agree to serve. Committee service would expose claimants to sweeping discovery obligations wholly unrelated to their Committee role.²⁷ That is not (and has never been) the law. Defendants’ interpretation would produce exactly those untenable and destabilizing consequences, and for that reason alone should be rejected.

24. *Second*, Defendants’ speculation that “other responsive documents likely exist” (see Mot. ¶¶ 20, 23, 26 & Ex. E at 3) is insufficient to support an order compelling production of documents.²⁸ Defendants offer no factual basis to believe the individual members’ or tort counsel’s files contain relevant, responsive, and non-privileged information, and Defendants’ theoretical assertions cannot support an order compelling production of documents or

²⁷ A significant impediment also makes Defendants’ proposal unworkable. If committee counsel were required to search the personal files of individual claimants outside their roles as committee members, serious privilege problems would arise. Committee counsel does not have access to (and is not entitled to review) those individuals’ personal privileged materials. Requiring such a search would risk destroying those privileges.

²⁸ *See Kinetic Concepts, Inc. v. ConvaTec Inc.*, 268 F.R.D. 226, 252 (M.D.N.C. 2010) (“[E]ven an informed suspicion that additional non-privileged documents exist . . . cannot alone support an order compelling production of documents.”) (citation omitted).

supplementation of the interrogatory responses. The practical reality underscores why. The Committee can only possess information obtained in its capacity as a committee, beginning on the date it was formed, *i.e.*, July 7, 2020. *See* Case No. 20-30608, ECF No. 147. The Committee did not, and could not, have knowledge of Defendants' *prepetition* conduct at issue in these Adversary Proceedings until that information was revealed during the preliminary injunction discovery process and through Defendants' own disclosures. Every alleged act giving rise to these Adversary Proceedings occurred *before the Committee existed*.²⁹

25. *Third*, Defendants' attempt to manufacture a hole in the Committee's contentions that purportedly "must be explored" (Mot. ¶ 20) does not change the Committee's discovery obligations. Defendants' selective quotations from the Committee's discovery responses misrepresent the comprehensiveness with which the Committee responded to the requests.³⁰

²⁹ Each Committee member was advised by the Bankruptcy Administrator of their obligations regarding confidentiality and the proper handling of Committee-related information, and each Committee member executed the Protective Order. In light of those obligations, the Committee members are exceptionally cautious and refrain from any communications outside of privileged Committee channels, consistent with the obligations imposed on them.

³⁰ For example, in response to SubCon Interrogatory No. 1, which asked for all facts supporting the assertion that creditors and asbestos claimants "dealt with" TTC and Aldrich Pump as "one legal entity," the Committee responded in detail explaining that before the Corporate Restructuring, TTC and Aldrich Pump [REDACTED] Mot., Ex. B (SubCon Discovery Responses) at 12. In support, the Committee cited three documents produced by Debtors and the Court's Findings and Conclusions. *Id.* The Committee further explained that [REDACTED] and that [REDACTED]. *Id.* Again, the Committee cited Debtors' produced documents and other documents in support. *Id.*

Likewise, with respect to SubCon Interrogatory No. 2, which asked for facts supporting the Committee's assertions regarding unpaid settlements, the Committee provided detailed factual support in at least four ways: (1) The Committee explained that [REDACTED] *Id.* at 37. (2) The Committee identified specific evidence, including the Debtors' schedules showing [REDACTED] and [REDACTED] as part of the Corporate Restructuring, all of which remained unpaid as of the Petition Date. *Id.* at 38. (3) The Committee cited the Debtors' Claims Database identifying [REDACTED] *Id.* (4) The Committee explained that the Debtors' own metrics reveal that their assets are insufficient to cover their asbestos liabilities—directly responsive to the portion of Interrogatory No. 2 that requests "all facts you contend support any contention that Aldrich Pump or Murray Boiler have insufficient assets to pay any unpaid settlement agreement." *Id.* at 36, 40.

26. Merely because Defendants desire “every fact and application of law to fact that supports the party’s allegations” does not render the Committee’s detailed responses inadequate, nor does it justify expanding the Committee’s discovery obligations by requiring individual members to produce information in their personal capacities. *See E.R. v. Beaufort Cty. Sch. Dist.*, No. 22-cv-04482-DCN, 2023 WL 3605000, at *3 (D.S.C. May 23, 2023).³¹

II. The Committee’s Discovery Responses Comply with the Federal Rules

27. Defendants’ dislike of the Committee’s answers does not render those answers inadequate. And their broad assertion of noncompliance with the Civil Rules and Bankruptcy Rules is unsupported by the Committee’s actual responses and legal authority.

The Committee’s response to SubCon Interrogatory No. 3 is adequate for the same reasons as Interrogatory Nos. 1 and 2, as the Committee explained how asbestos claimants “extended credit” to Defendants and their predecessors, and directed Defendants to its responses to SubCon Interrogatory Nos. 1 and 2 for information identifying dates, amounts of credit extended, terms and conditions, and other information that the request sought.³⁰ Mot., Ex. B, SubCon Resp. at 44-45.

³¹ Information in the possession of Committee members in their personal capacities is also irrelevant to the Committee’s claims and defenses in the Adversary Proceedings, as well as overbroad and unduly burdensome. For example, SubCon RFP No. 28 seeks “all Documents and Communications . . . between the Committee (or any of its members’ or representatives’) and any third party . . . concerning this bankruptcy.” Similarly, SubCon RFP No. 29 seeks “presentations concerning this bankruptcy prepared or made by the Committee (or any of its members and representatives).” These sweeping requests have no bearing on the issues in the SubCon Proceeding, which is based on alleged conduct occurring **prepetition**—well before the Committee even existed. Courts consistently hold that discovery is limited to material relevant to a party’s claims or defenses. *See HDSherer LLC v. Nat. Molecular Testing Corp.*, 292 F.R.D. 305, 308 (D.S.C. 2013) (“Rule 26(b) limits the scope of discovery to those materials that are ‘relevant to any party’s claim or defense.’”) (quoting Civil Rule 26(b)(1)); *see also Cook v. Howard*, 484 F. App’x 805, 812 (4th Cir. 2012) (“Relevance is thus the foundation for any request for production.”).

Moreover, the request for *all* documents concerning *anything* relating these Bankruptcy Cases is vastly disproportional to the needs of the case, and the burden and expense of searching for, reviewing, and producing such documents substantially outweighs any relevance. *See* Civil Rule 26(b)(1). Similarly, Defendants’ request that the Committee identify all claimants and/or tort counsel with knowledge of the topics addressed in SubCon Interrogatory Nos. 1-3, and 13-15, when the Committee did not rely on them when drafting the complaint and motion for substantive consolidation in the SubCon Proceeding, is irrelevant, and such a response would be highly burdensome, requiring an extensive review of the Debtors’ claims database and subsequent interviews of individuals not within the Committee’s possession, custody, or control. *See Nat’l Fire Ins. Co.*, 264 F.R.D. 233, 238-39 (W.D.N.C. 2010) (“Interrogatories cannot require the responding party to make extensive investigations or conduct complex research.”) (citing *Fischer & Porter Co. v. Sheffield Corp.*, 31 F.R.D. 534, 536 (D. Del. 1962)); *Gorrell v. Sneath*, 292 F.R.D. 629, 632 (E.D. Cal. 2013) (“In general, a responding party is not required to conduct extensive research in order to answer an interrogatory, but a reasonable effort to respond must be made.”).

A. The Committee Is Not Required to Supplement Discovery Responses in the Adversary Proceedings Based on Preliminary Estimation Expert Reports³²

28. Defendants' demand that the Committee supplement discovery responses in the Adversary Proceedings based on an expert report served in the separate estimation matter is procedurally improper and ignores the discovery framework established by the Court. Importantly, the specific responses Defendants request be supplemented are already adequate.

29. As specifically requested by Defendants, the Second Amended Case Management Order governing the Adversary Proceedings³³ establishes only *fact* discovery deadlines—not expert discovery deadlines. The Committee cannot, thus, be compelled to provide information that would necessarily inform or constitute expert testimony before expert discovery deadlines have even been set in the Adversary Proceedings.

30. The Committee's initial expert report, the Sackett Report, was prepared "for reasons particular to the estimation proceeding in the main case." Mot., Ex. I (Dec. 19, 2025 Letter), at 5. Because an estimate of aggregate asbestos liabilities is complex and the sole subject of the estimation proceeding, the parties have all retained experts to develop such estimates,³⁴ and the estimation proceeding is subject to its own distinct scheduling order and discovery deadlines. Case No. 20-30608, ECF Nos. 2656, 2987, 3011. Defendants' attempt to bootstrap the

³² Again, Defendants do not address the sufficiency of the Committee's response to each request, as they are required to do for the relief sought, nor do they explain how any particular response is supposedly deficient. The Committee therefore addresses only the requests identified in paragraph 38 of the Motion, which are the ones actually placed at issue. Defendants' decision not to address each request in detail is no accident: a review of the specific requests makes clear just how baseless their requested relief truly is.

³³ Adv. Pro No. 21-03029, ECF No. 197; Adv. Pro. No. 22-03028, ECF No. 124; Adv. Pro. No. 22-03029, ECF No. 98.

³⁴ See *BB & T Corp. v. United States*, 233 F.R.D. 447, 450 (M.D.N.C. 2006) ("[W]hen there is an expert report which will touch on the very contentions at issue, the Court should normally delay contention discovery until after the expert reports have been served, which may then render moot any further contention discovery.") (citation omitted). SubCon Interrogatory Nos. 5 and 7 are therefore premature at this time. SubCon RFP Nos. 5, 7, and 21, which concern these same issues, are also premature for the same reasons.

Committee’s initial expert work from one proceeding into another—before expert discovery has even begun in the latter—violates the discovery framework established by the Court.

31. None of the cases cited by Defendants stand for the proposition that the Committee is required to prematurely disclose an expert opinion on asbestos liabilities in the Adversary Proceedings or rely on a preliminary expert report in the estimation proceeding as a fact in a separate proceeding particularly where the analysis differs.³⁵ The cases only concern damages calculations pursuant to Civil Rule 26 generally.³⁶

32. Regardless of the relative import of the Sackett Report in the Adversary Proceedings,³⁷ the Second Amended Estimation Case Management Order expressly provides that the Committee may supplement its Initial Expert Report and also serve rebuttal reports to address any valuation issues raised by Defendants, both by deadlines that have not passed.³⁸

33. As the Committee has consistently stated, it will comply with all deadlines set forth in the Second Amended Estimation Case Management Order. However, the existence of an expert

³⁵ When estimating claims for plan purposes, courts evaluate a debtor’s liabilities as of the petition date. *Owens Corning v. Credit Suisse First Boston*, 322 B.R. 719, 721 (D. Del. 2005) (holding that in a § 502(c) estimation proceeding “claims are to be valued as of the petition date.”). By contrast, when evaluating liabilities as part of a fraudulent transfer analysis, courts evaluate a debtor’s liabilities as of the date of the transfer. See, e.g., *In re Am.-CV Station Grp. Inc.*, 666 B.R. 395, 409 (S.D. Fla. 2024) (noting that, in fraudulent transfer cases, the “liability must be valued as of the time of the Transfer, based on information available at that time, and not by using improper hindsight.”); *Callaway v. Novelli (In re Bouchard)*, Nos. 09-06110-8-RDD, 09-00223-8-RDD, 2011 WL 110901, at *2 (Bankr. E.D.N.C. Jan. 12, 2011) (ability to avoid a fraudulent transfer “is contingent upon whether the debtor was insolvent on the date that such transfer was made.”).

³⁶ See *OHC Liquidation Tr. v. Credit Suisse First Bos. (In re Oakwood Homes Corp.)*, 340 B.R. 510, 538 (Bankr. D. Del. 2006); *Olaya v. Wal-Mart Stores, Inc.*, No. 2:11-cv-997-KJD-CWH, 2012 WL 3262875, at *2 (D. Nev. Aug. 7, 2012).

³⁷ While Plaintiff understands the Court’s intent for the parties to streamline as much discovery as possible, particularly on valuation issues, the Committee respectfully submits that the parties should be entitled to address any further nuance regarding valuation issues specific to fraudulent transfer and substantive consolidation at the appropriate time—during expert discovery—in the Adversary Proceedings.

³⁸ See, e.g., ECF Nos. 2656 (¶ 3) & 2987 (suspending expert deadlines for Phase II). The Phase I Estimation Proceeding contemplates rebuttal reports for initial expert reports to be served no later than March 27, 2026, and all other expert deadlines are suspended. ECF No. 3011, ¶¶ 5 & 12.

report in one proceeding does not transform that expert work into fact discovery in a separate proceeding. The Committee will supplement its responses to requests regarding the estimation of asbestos liabilities at the appropriate time.

B. The Committee Has Met Its Discovery Obligations

34. The Committee has complied fully with its obligations under Civil Rules 33 and 34: it served detailed responses, asserted appropriate objections, and expressly reserved its right to supplement as fact discovery progresses and expert deadlines approach. More fundamentally, the discovery responses Defendants challenge concern Defendants' *own* acts, conduct, assets, liabilities, and financial condition—the precise subjects that section 1103 of the Bankruptcy Code empowers the Committee to investigate, and the very information that resides entirely with Defendants. The Committee has provided all responsive information within its possession, custody, or control. Defendants' dissatisfaction with those responses does not create a deficiency where none exists, and it certainly does not justify compelling the Committee to produce information it does not have.

1. Fraudulent Transfer Interrogatory Nos. 1-4 and 9

35. Fraudulent Transfer Interrogatory Nos. 1 through 4 ask the Committee to identify the factual bases underpinning its fraudulent transfer claims, including the basis for its contentions regarding insolvency, reasonably equivalent value, unreasonably small capital, and the Debtors' intent to incur debts beyond their ability to pay. Interrogatory No. 9 asks the Committee to state the basis for any contention that the Debtors' assets are less than their liabilities. The Committee fully responded to each interrogatory, noting that Debtors' own metrics indicate that their assets are less than their liabilities and pointing to documents in support. *See* Mot., Ex. C (FT Discovery Responses) at 12. The Committee further described the funding agreements in detail. *Id.*

36. Civil Rule 33, which governs interrogatories to parties, requires that “[e]ach

interrogatory must, to the extent it is not objected to, be answered separately and fully in writing under oath.” Fed. R. Civ. P. 33(b)(3). Courts consistently recognize that contention interrogatories—those seeking the factual basis for a party’s allegations—are subject to important limitations. “Contention interrogatories that systematically track all of the allegations in an opposing party’s pleadings, and that ask for each and every fact and application of law to fact that supports the party’s allegations, are an abuse of the discovery process because they are overly broad and unduly burdensome.” *E.R.*, 2023 WL 3605000, at *3 (citations omitted). Rather than compelling a responding party to lay out “the equivalent of a narrative account of its case, including every evidentiary fact, details of testimony of supporting witnesses, and the contents of supporting documents,” contention interrogatories may “ask for the material or principal facts that support a particular allegation.” *Id.*

37. Courts have further held that the timing of contention interrogatories is significant. “Due to the nature of contention interrogatories, they are more appropriately used after a substantial amount of discovery has been conducted—typically, at the end of the discovery period.” *Capacchione v. Charlotte-Mecklenburg Schs.*, 182 F.R.D. 486, 489 (W.D.N.C. 1998). Where, as here, parties have not yet exchanged expert reports or engaged in significant discovery, courts have found motions to require parties to answer contention interrogatories premature.³⁹

38. Defendants fundamentally misconstrue their right to discovery under Civil Rule 33. As courts repeatedly hold, contention interrogatories properly seek only the “principal” or “material” facts supporting a party’s allegations. *E.R.*, 2023 WL 3605000, at *3. Defendants are not entitled to every possible fact that might support the Committee’s fraudulent transfer claim,

³⁹ See, e.g., *Glob. Locating Sys., LLC v. ShadowTrack 247, LLC*, No. 1:19-CV-00225-MR, 2020 WL 3432714, at *2 (W.D.N.C. June 23, 2020) (finding where the parties had not yet exchanged expert reports or engaged in significant discovery, a motion to require the parties to answer contention interrogatories was premature).

particularly where discovery remains ongoing.

2. SubCon Interrogatory No. 4

39. Interrogatory No. 4 is another premature contention interrogatory. As the Committee noted in its discovery response, among other things, “the Committee’s position on the value of the Debtors’ assets and liabilities will likely be the subject of expert testimony that would be disclosed at the time required by Civil Rule 26(a)(2)(D), Bankruptcy Rule 7026, and any applicable orders.” Mot., Ex. B at 48. The Court should not compel the Committee to prematurely respond beyond what it has already done in advance of expert reports being served in the Adversary Proceedings.⁴⁰

40. The interrogatory is also irrelevant to the Committee’s claims and the Defendants’ defenses in the SubCon Proceeding. It is undisputed that the Committee made the statement quoted in SubCon Interrogatory No. 4 in its motion to dismiss the Debtors’ bankruptcies in the main case, not in any Adversary Proceeding. See Mot. ¶ 39. Defendants assert without authority that they “are not limited to seeking discovery that supports whatever position the Committee wants to take in these Adversary Proceedings.” Mot. ¶ 41. But their proposed discovery exceeds the scope set forth in Civil Rule 26(b)(1). See Mot. ¶ 42.⁴¹

⁴⁰ See *Rogers v. W.V.U. Bd. of Governors*, No. 2:25-CV-00182, 2025 WL 3516476 (S.D.W. Va. Dec. 8, 2025) (“‘Premature contention interrogatories are discouraged for several reasons,’ including the unfairness of forcing a lawyer to commit to an underdeveloped position or articulate a position that might be better explained through a forthcoming expert report.” (quoting *Pauley v. CNE Poured Walls, Inc.*, No. 3:18-CV-01508, 2019 WL 3226996, at *1 (S.D.W. Va. July 17, 2019))); see also *A.Hak Indus. Servs. BV v. TechCorr USA, LLC*, No. 3:11-CV-74, 2013 WL 5244507, at *7 (N.D.W. Va. Sept. 18, 2013) (stating that contention interrogatories “should not be served until discovery has progressed far enough to allow the parties to develop their theories of the case”) (quoting *Nestle Foods Corp. v. Aetna Cas. & Sur. Co.*, 135 F.R.D. 101, 110-11 (D.N.J. 1990)).

⁴¹ See, e.g., *United Oil Co. v. Parts Assocs., Inc.*, 227 F.R.D. 404, 410 (D. Md. 2005) (“The commentary to the 2000 amendments to Fed.R.Civ.P. 26 admonishes courts to ‘focus on the actual claims and defenses involved in the action’ in determining relevance.”); *Per-Co Ltd. v. Great Lakes Factors, Inc. (In re Great Lakes Factors, Inc.)*, 331 B.R. 347, 350 (Bankr. N.D. Ohio 2005) (“By conditioning relevancy . . . on the claim and/or defense of a party, any controversy regarding its existence must necessarily focus on those claims and defenses raised by the parties in their pleadings.”); *U.S. ex rel. Tyson v. Amerigroup Illinois, Inc.*, 230 F.R.D. 538, 544 (N.D. Ill. 2005) (“Rule 33(c) permits interrogatories that ‘relate to any matters which can be inquired into under Rule 26(b)(1).’”); *Mainstreet Collection*,

41. Here, the statement Defendants quote in Interrogatory No. 4 that the “Debtors are not in financial distress” is not relevant to the Committee’s claims in the SubCon Proceeding, which are premised, *inter alia*, on the following: (1) each Debtor and its corresponding “new” affiliate were one and the same entity before the Corporate Restructuring; (2) the Corporate Restructuring has disadvantaged, hindered, and delayed the recourse and recoveries of asbestos claimants; and (3) the Texas Two-Step strategem has structurally subordinated asbestos claimants to the Debtors’ other (non-asbestos) unsecured creditors and their equity holders. *See, e.g.*, Adv. Pro. No. 21-03029, ECF No. 1 (SubCon Complaint) ¶¶ 2-5, 53. And it is likewise irrelevant to the Defendants’ affirmative defenses because the Debtors’ purported solvency is no defense to the remedy of substantive consolidation. *See id.*, ECF No. 30 (Pl.’s Opp. to Debtors’ Mot. to Dismiss), at 21-22 (“none of the applicable legal standards for substantive consolidation requires a showing of insolvency”); *see also id.* at 22-23 (“the Debtors’ alleged solvency, a characterization with which the Committee strongly disagrees, is of no moment here”). Specifically, despite Defendants’ assertions, the Debtors’ solvency is not relevant to whether substantive consolidation is necessary to “avoid some harm or realize some benefit”⁴² because (i) the harm to asbestos victims has already occurred and (ii) substantive consolidation would realize a benefit by unwinding or negating the effect of the Corporate Restructuring.

42. Finally, Defendants’ repeat assertion that the Committee cannot advance alternative

Inc. v. Kirkland’s, Inc., 270 F.R.D. 238, 244 (E.D.N.C. 2010) (holding that an interrogatory regarding a set of facts with “no discernible relationship to [the plaintiff’s] asserted claim . . . or [the defendant’s] defense of the claim” was not within the scope of Rule 26(b)(1)).

⁴² Mot. ¶ 42 (quoting *In re Auto-Train Corp.*, 810 F.2d 270, 276 (D.C. Cir. 1987)).

positions regarding the Debtors' financial position is wrong.⁴³ The Court has already recognized that, given the myriad unknowns regarding the Debtors' funding agreements,⁴⁴ the Committee is permitted to take alternative positions regarding the Debtors' financial position.⁴⁵ This Court (Judge Whitley) held that, because the Committee did not prevail in the contested matter in which it took a position regarding the Debtors' financial distress, "there is no judicial estoppel present."⁴⁶

The Court also explained:

Regardless of the language in the Committee's Motion to Dismiss, the Debtor [*sic*] is not currently solvent and does not have the wherewithal to pay all claims as against the Estate. Although the Debtor [*sic*] is party to a funding agreement, the agreement is contingent upon Court approval, which in turn requires creditor approval of the plan or a cramdown. Neither scenario is guaranteed at this stage, as the risk remains that creditors' claims will exceed the amount guaranteed within the funding agreement. Consequently, even if the Committee's motion qualifies as a party admission, the Debtor [*sic*] currently remains insolvent.

Id. at 3. The Committee should not be forced to adopt its alternative position from its motion to dismiss these bankruptcies in the SubCon Proceeding.⁴⁷

⁴³ Bankruptcy Rule 7008 (incorporating Civil Rule 8(d) ("A party may set out 2 or more statements of a claim or defense alternatively or hypothetically If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient.")).

⁴⁴ See DEBTORS_00003817 (Aldrich Funding Agreement) and DEBTORS_00004097 (Murray Funding Agreement).

⁴⁵ See *Menerick v. Salem Heritage, LLC*, 2023 WL 3818391, at *3 (W.D. Va. June 5, 2023) ("[T]he plaintiff may bring alternative theories of relief . . . based on alternative facts even if inconsistent and even if the party may not prevail on the alternative theories." (citing *Hayes v. Prudential Ins. Co. of Am.*, 60 F.4th 848, 855 (4th Cir. 2023))).

⁴⁶ *Order Denying Debtor's Motion to Withdraw Derivative Standing from the Official Committee of Asbestos Personal Injury Claimants* at 2-3, No. 3:20-bk-30608, ECF No. 2046 (denying motion to withdraw despite Defendants' arguments of alternative legal theories).

⁴⁷ The Defendants also inexplicably try to relitigate their argument that these Adversary Proceedings are unripe because they depend on future contingencies; they lost on this issue during the motion to dismiss phase of the SubCon Proceeding. The Court agreed with the Committee that an actual controversy exists because all the facts giving rise to the Committee's request for substantive consolidation have already occurred, including Ingersoll-Rand's and Trane's long history of defending against and paying asbestos claims in the tort system (SubCon Compl. ¶¶ 21-23), the decades in which Ingersoll-Rand and Trane were each a single economic unit (*id.*), management's objective of capping the asbestos liabilities and paying less to tort victims in bankruptcy (*id.* ¶ 26), the secret planning and implementation of the divisional mergers under the codename "Project Omega" (*id.* ¶¶ 24-32), the intercompany agreements formed in connection with the Corporate Restructuring (*id.* ¶¶ 33-44), whose terms were not the product of arm's length bargaining (*id.* ¶ 33), the shared officers and board members (*id.* ¶¶ 45-46), [REDACTED]

45. SubCon RFA Nos. 9 and 10 ask the Committee to admit that it has, or has not, developed an estimate of the aggregate dollar value of the Debtors' asbestos-related liabilities. The Committee's responses and objections are sufficient.

46. Civil Rule 36, incorporated by Bankruptcy Rule 7036, allows the following responses to a request for admission: (1) admit; (2) deny; or (3) "state in detail why the answering party cannot truthfully admit or deny it." Fed. R. Civ. P. 36(a)(4). Denial is a complete answer. *Michael v. Wes Banco Bank, Inc.*, No. 5:04CV46, 2006 WL 1705935, at *3 (N.D.W. Va. June 16, 2006). The Civil Rules "do not require parties to explain a denial." *Id.* (quoting *Scherer v. GE Cap. Corp.*, 2000 WL 303145, at *3 (D. Kan. Mar. 21, 2000)). Requests for admission are neither "a discovery device"⁴⁸ nor a "vehicle to establish disputed facts."⁴⁹

47. Moreover, Defendants' Motion essentially asks this Court to make a pretrial determination that the Committee's denials are unsupported by evidence, which is improper.⁵⁰

48. The Committee's responses and objections to SubCon RFA Nos. 9 and 10, which ask the Committee to admit that it has, or has not, developed an estimate of the aggregate dollar value of the Debtors' asbestos-related liabilities, are sufficient. The Committee's objection that the RFAs pertain to issues that are irrelevant to the claims and defenses in the SubCon Proceeding is proper. *See United Oil*, 227 F.R.D. at 410 ("The commentary to the 2000 amendments to Fed.R.Civ.P. 26 admonishes courts to 'focus on the actual claims and defenses involved in the

⁴⁸ *Erie Ins. Prop. & Cas. Co. v. Johnson*, 272 F.R.D. 177, 183 (S.D.W. Va. 2010).

⁴⁹ *Watkins v. Lincare, Inc.*, No. 3:22-CV-00109, 2023 WL 5490181, at *7 (S.D.W. Va. Aug. 24, 2023).

⁵⁰ *See Lakehead Pipe Line Co. v. Am. Home Assur. Co.*, 177 F.R.D. 454, 458 (D. Minn. 1997) ("Rule 36(a) does not authorize a Court to prospectively render determinations concerning the accuracy of a denial to a Request for Admission, or to order that the subject matter of the request be admitted because the opposing party's unequivocal denial is asserted to be unsupported by the evidence."); *see also United States v. Operation Rescue Nat'l*, 111 F. Supp. 2d 948, 968 (S.D. Ohio 1999) ("a party may not seek a pre-trial determination of the accuracy of an opponent's denial of a request for admission, merely because the evidence does not support that denial").

action’ in determining relevance.”). This is especially so because the remedy that the Committee seeks in the SubCon Proceeding is an equitable one. Moreover, solvency is not a proper defense to the claim of substantive consolidation.⁵¹ Defendants have the right to argue that the estimation that is taking place outside of these Proceedings is relevant to these Proceedings, but they cannot force the Committee to admit that. *See Roe v. Bishop of Charleston*, No. 2:21-CV-00020-RMG, 2021 WL 4272595, at *4 (D.S.C. Sept. 20, 2021) (stating that a party’s “mere dissatisfaction with the response [to its request for admission] does not render it improper”).

CONCLUSION

49. For the reasons stated above, the Committee respectfully requests the Court deny Defendants’ Motion.

[signature page to follow]

⁵¹ *See supra* ¶ 41. SubCon RFP Nos. 5, 7, and 21 concern these same topics and are irrelevant for the same reasons.

Dated: February 19, 2026

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Exhibit 1

OFFICIAL COMMITTEE OF
ASBESTOS PERSONAL INJURY CLAIMANTS OF
ALDRICH PUMP LLC AND MURRAY BOILER LLC,
by and through its undersigned counsel

February 11, 2026

VIA EMAIL

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Counsel to Non-Debtor Affiliate Defendants¹ (the “Non-Debtor Affiliate Defendants” and together with the Debtors, the “Defendants”)

Re: *In re Aldrich Pump, et al.*, Case No. 20-30608 (LMJ); Adv. Pro. No. 21-3029 (LMJ) (the “SubCon Proceeding”); Adv. Pro. No. 22-3028 (LMJ) (the “Fraudulent Transfer Proceeding”); and Adv. Pro. No. 22-3029 (LMJ) (the “Fiduciary Duty Proceeding,” and with the foregoing, the “Adversary Proceedings”)

Counsel:

We write, as we previously advised we would, on behalf of the Official Committee of Asbestos Personal Injury Claimants (the “Committee”) to provide the Committee’s response to Defendants’ November 5, 2025 letter and the December 12, 2025 meet-and-confer regarding Defendants’ First Set of Interrogatories, Requests for Production, and Requests for Admission served on the Committee in the Fraudulent Transfer Proceeding (the “FT Discovery Requests”). As detailed below, the Committee stands on its prior positions where appropriate, will provide

¹ The Non-Debtor Affiliate (“NDA”) Defendants include Ingersoll-Rand Global Holding Company Limited, Trane Technologies Holdco Inc., Trane Technologies Company LLC, Trane Inc., TUI Holdings Inc., Trane U.S. Inc., and Murray Boiler Holdings LLC.

discrete supplemental responses where warranted, and remains available to meet and confer to resolve any genuinely remaining disputes.

I. General Objections: Committee's Possession, Custody, and Control

The Committee stands on its long-asserted and legally supported position that the Committee's possession, custody, and control is limited to documents in its members' or professionals' possession, custody, or control only *while and to the extent* they are acting in their capacity as Committee members or professionals. Hr'g Tr. at 15:15-18, *In re G-I Holdings, Inc.*, No. 01-30135 (Bankr. D.N.J. Sept. 10, 2003); *see also In re Circle K Corp.*, 199 B.R. 92, 100 (Bankr. S.D.N.Y. 1996), *aff'd*, 1997 WL 31197 (S.D.N.Y. Jan. 28, 1997) (holding that for purposes of bankruptcy proceedings, constituents of creditors' committee are not clients of the committee's attorneys); *In re Snyder*, 51 B.R. 432, 438-39 (Bankr. D. Utah 1985) (acknowledging that a committee's attorneys represent only the committee, and that individual creditors are represented by their respective attorneys); Hr'g Tr. at 12:22-16:3, *In re Garlock Sealing Techs., LLC* (Bankr. W.D.N.C. Dec. 28, 2015) (denying a motion to compel and granting a committee's protective order and holding that discovery requests seeking "communications by individual members and the claimants and their attorneys . . . couldn't be sent to the ACC as an entity," would be unduly burdensome, and would provide limited and speculative benefit). The Committee will not search for and produce documents that exceed its legal discovery obligations.

Moreover, the Committee has responded consistent with the applicable rules and case law and has explained why Defendants have not identified a factual basis for their assertion that the Committee possesses responsive, non-privileged documents relevant to any issues in the Adversary Proceedings or that such documents are otherwise in the Committee's custody or control. Defendants' suggestion that "basic information relating to Committee meetings" is discoverable ignores both relevance and privilege/work-product constraints, and it is premised on speculation about "bad faith" that this Court has already rejected. *See Dmarcian, Inc. v. DMARC Advisor BV*, No. 1:21-cv-00067-MR, 2024 WL 1722468, at *2 (W.D.N.C. Apr. 22, 2024) (refusing to compel based on speculation); Nov. 20, 2025 Hr'g Tr. 43:13 (denying Rule 2004 motion after the Court agreed that a backward-looking investigation of the Committee was not appropriate). Accordingly, to the extent Defendants' requests (e.g., ROG No. 6 & RFP No. 6) seek Committee meeting dates, attendees, agendas, or similar internal matters, the Committee maintains its relevance and privilege objections. Such information is not probative of any claim or defense and remains outside appropriate discovery.

For the foregoing reasons, the Committee stands on its objections with respect to RFP Nos. 1-5, and 6, and ROG No. 6.

II. General Objections: Interrogatories

The Committee has provided complete responses consistent with the Rules. Defendants' generalized assertion that certain answers are "partial" does not articulate any concrete deficiency, nor does it establish that additional responses are required at this time. With respect to interrogatories that seek "the full factual basis" for various claims made by the Committee (ROG Nos. 1-4), the Committee is under no obligation to marshal all of its evidence in response to

interrogatories. *See Roberts v. Randy LL Corp.*, No. 3:24-cv-00523-HZ, 2025 WL 2717823, at *9 (D. Or. Sep. 24, 2025) (“A typical overly broad discovery request tasks parties with laying out every jot and tittle of their evidentiary case.”) (cleaned up) (citation omitted).

With respect to interrogatories implicating expert-driven topics (e.g., ROG Nos. 2–4, 9), Defendants’ demands are premature given the timing contemplated by the Adversary Proceeding CMO, and the recognized practice of staging fact and then expert discovery. *See Gore v. 3M Co.*, No. 5:16-CV-716-BR, 2017 WL 5076021, at *2 (E.D.N.C. Nov. 3, 2017) (noting expert discovery follows fact discovery to ensure complete factual record); *see also Booker v. P.A.M. Transp., Inc.*, No. 2:23-CV-18 WJ/KRS, 2024 WL 4664420, at *9 (D.N.M. Nov. 4, 2024).

The Committee remains willing to meet and confer regarding any interrogatory where Defendants can identify a specific, cognizable gap tied to a claim or defense.

III. General Objections: Requests for Admission

In excess of its discovery obligations, the Committee has provided a detailed response for Requests for Admission (“RFA”) it denied, in response to Defendants’ request that, “[t]o the extent You deny any of the Requests for Admission set forth below, state in detail the basis for each of Your denials.” ROG 12. Defendants’ dislike of RFA denials does not transmogrify the Committee’s responses into a refusal to “properly” respond.

In any event, a detailed basis for a denial is not required. As Defendants helpfully point out in their own letter, Rule 36 requires (1) admission; (2) denial; **or** (3) a detailed statement why the answering party cannot truthfully admit or deny the RFA. Fed. R. Civ. P. 36(a)(4). Nothing in Rule 36 requires the Committee to deny **and** provide a detailed statement as to why the RFA is denied. As Defendants know, the use of “or” in Rule 36(a)(4) is disjunctive. Nor does case law support Defendants’ interpretation of Rule 36. *See, e.g., Watkins v. Lincare, Inc.*, No. 3:22-CV-00109, 2023 WL 5490181, at *3 (S.D.W. Va. Aug. 24, 2023) (RFAs require clear responses, not litigation of disputes); *Roe v. Bishop of Charleston*, No. 2:21-cv-00020-RMG, 2021 WL 4272595, at *5 (D.S.C. Sept. 20, 2021) (RFAs are not a device to force ratification of legal conclusions).

To the extent Defendants seek explanations of denials or attempt to convert RFAs into mini-briefs, Rule 36 does not impose such obligations, and the authorities Defendants cite do not support that position. The Committee remains willing to address vagueness or compound-format issues for specific RFAs if Defendants identify them with precision.

IV. Targeted Supplements – ROG No. 9; RFA Nos. 3–4 & 9

Upon review of the complained-about discovery responses, the Committee will supplement or amend responses to the below requests, and only in line with the below.

- **ROG No. 9:** The deficiency in Debtors’ assets “as of the date of [the Committee’s] response” is irrelevant. The date of the transfer is the only relevant temporal inquiry for a fraudulent transfer. *See, e.g., Callaway v. Novelli (In re Bouchard)*, Nos. 09-06110-8-RDD, 09-00223-8-RDD, 2011 WL 110901, at *2 (Bankr. E.D.N.C. Jan. 12, 2011) (ability to avoid a fraudulent transfer “is contingent upon whether the debtor was insolvent on the date that such transfer was made.”). Further, the interrogatory is vague and ambiguous in that it asks for a “calculation of such amount,” without identifying which amount. The Debtors’ assets? The Debtors’ liabilities? The difference between the two? All of the above? It’s unclear. And any purported ongoing obligation to supplement the “calculation” on a periodic basis (as suggested by the “as of the date of Your response” language) is unduly burdensome and ignores the relevant temporal inquiry. Subject to and without waiving the foregoing, at the time the Corporate Restructuring was completed on May 1, 2020, according to Debtors’ own metrics, their assets (without the unsecured and contingent Funding Agreement as defined and described in the Complaint) are insufficient to cover their asbestos liabilities. Court’s Findings and Conclusions ¶ 63 (finding that, if the Funding Agreement is not taken into account, “Aldrich/Murray’s assets were not then, and are not now, sufficient to satisfy their liabilities” (footnote omitted)); *id.* ¶ 72 (“According to the Debtors’ own metrics, their assets (without the Funding Agreements) are already insufficient as they are less than their asbestos liabilities.”); Hr’g Tr. 397:18–398:1, May 6, 2021 (Diaz Direct) (“So yes, the, the liabilities of Aldrich, if you exclude the funding agreement, are greater than the assets of, of Aldrich, correct.”); *id.* at 398:18–23 (“On the Murray side, they picked up \$127 million of assets, they picked up all of the asbestos liabilities, \$193 million asbestos liabilities. Similar to Aldrich, the assets of Murray, \$127 million, if you exclude the funding agreement, are less than the total of liabilities of 193, plus 1. So \$194 million.”). For additional explanation, see Objection/Response to Interrogatory No. 1 above.
- **RFA No. 3:** Payment of the Committee’s professionals’ fees incurred in connection with the prosecution of the FT Complaint against Defendants is irrelevant to any claim or defense. The Committee understands from Debtors and Non-Debtor Affiliate Defendants that TTC and TUI have satisfied funding requests of the Debtors under the Funding Agreements. Beyond that, RFA No. 3 is denied.
- **RFA No. 4:** The Committee lacks knowledge or information after a reasonable inquiry and the information it knows or can readily obtain is insufficient to enable the Committee to admit or deny the request. In any event, the information sought by this RFA is squarely within the possession, custody, or control of Defendants.
- **RFA No. 9:** As a threshold matter, this request is improper in that it asks the Committee to answer a legal question. *Abbott v. United States*, 177 F.R.D. 92, 93 (N.D.N.Y. 1997). Further, hypothetical questions, such as whether equity holders would have an interest in

Debtors' assets if the Debtors' assets exceeded Debtors' liabilities are not within the purview of Rule 36. The Committee lacks knowledge or information after a reasonable inquiry and the information it knows or can readily obtain is insufficient to enable the Committee to admit or deny the request.

* * *

In line with the above, the Committee will supplement its objections and responses to ROG No. 9, and RFA Nos. 3, 4, and 9. As to the remaining issues raised by Defendants, the Committee stands on its objections contained in its written discovery responses and the explanations and legal support detailed above. Nothing contained herein shall constitute a waiver, either express or implied, of the requests or inquiries raised in our prior discussions or correspondence or of any of our clients' rights or remedies, whether at law or in equity, all of which are hereby reserved.

* * *

On a separate note, since Defendants served their FT Discovery Requests, they have produced only 16 documents. Please provide an update on the status of Defendants' document productions and confirm when we can expect a more substantial production.

Very truly yours,

HAMILTON STEPHENS STEELE
+ MARTIN, PLLC

/s/ Robert A. Cox, Jr.

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Exhibit 2

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

IN RE: . Case No. 01-30135
.
G-I HOLDINGS, INC., . M.L.K. Jr. Federal Building
. 50 Walnut Street
Debtor, . Newark, New Jersey 07102
.
. September 10, 2003
. 2:18 p.m.

TRANSCRIPT OF MOTION HEARING
BEFORE HONORABLE ROSEMARY GAMBARELLA
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

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1 (TELEPHONE CONFERENCE)

2 MR. KRESS: Alex Kress, Riker, Danzig, Scherer,
3 Hyland & Perretti, LLP, co-counsel for G-I. Also from my firm
4 Mark Hall is on the line.

5 THE COURT: Okay. Who else is on the line, please?

6 MR. SWETT: Trevor Swett and Max Heerman, Caplin &
7 Drysdale for the Committee. Jeffrey Prol, Lowenstein Sandler
8 is also on the line.

9 MR. IRWIN: Kevin Irwin and Doug Hensley of Keating,
10 Muething and Klecamp, PPL for the Legal Representatives and
11 Nancy Washington of the Saiber firm is also with us.

12 THE COURT: Okay.

13 MR. MILLER: This is Ralph Miller, Your Honor, here
14 with my client Peter Ganz, also co-counsel for G-I, Weil,
15 Gotschal and Manges.

16 THE COURT: Yes. Very good. This is being recorded
17 so there will be a transcript available. Good afternoon. I
18 take it you can all hear me?

19 MR. KRESS: I think so, Your Honor. At least we can.

20 THE COURT: Okay. I'll just read you my decision.
21 The matter before the Court is on a motion of G-I Holdings to
22 compel further responses by the Official Committee of Asbestos
23 Claimants to interrogatories and requests for production of
24 documents, pursuant to Rule 37 of the Federal Rules of Civil
25 Procedure as incorporated by Rule 9014 and 7037 of the Federal

1 Rules of Bankruptcy Procedure.

2 The Committee has opposed the present motion, the
3 Court conducted hearings on this matter and reserved decision
4 until today. An argument having been held on July 17th, 2003.

5 The Debtor and the Committee have put before the
6 Court competing motions or proposals on estimation of asbestos
7 claims pending before the Court in this case. The parties have
8 come before the Court on several occasions in regard to
9 discovery in relation to this matter.

10 For purposes just of background, on June 19, 2002,
11 G-I filed an application pursuant to Section 502(c)
12 establishing a method to liquidate asbestos claims. Subsequent
13 thereto, on or about May 23, 2002, the Committee filed a motion
14 to withdraw the reference of that matter to the United States
15 District Court for the District of New Jersey. The United
16 States District Court by an opinion of District Court Judge
17 Bassler has denied that motion to withdraw the reference.

18 On or about August 30, 2002 the Committee opposed the
19 Debtors estimation motion in a response of the Official
20 Committee to the Debtors application for such an order
21 establishing a method for liquidating claims and also at that
22 time a pending motion for an order fixing a final date for
23 filing proofs of claims.

24 In the Committee's opposition the Debtor asserts that
25 the Committee relied heavily on the affidavit or opinions of

1 Dr. Mark Peterson and his opinion or testimony on the Debtor's
2 proof of claim form and medical matrix and that he relied on
3 the findings in his pretest among other assertions, comparing
4 the Debtor's proof of claim form to those used in other
5 proceedings, including the Manville Trust, to undermine the
6 effectiveness and validity of the Debtor's proof of claim form
7 and further that Dr. Peterson deduced from his findings that
8 the Debtor's form or proof of claim form was inordinately time
9 consuming and expensive undertaking to be effectively used in
10 determining claims, or valid claims.

11 On November 18, 2002 and December 16, 2002, the
12 Debtor served two sets of interrogatories and requests for
13 production of documents on the Committee. It appears from the
14 record that Bankruptcy Rule 7026 or Rule 26, telephonic
15 conferences, were held on November 15th, 2002 and December 2,
16 2002. The Debtor asserts that the Committee at that time made
17 clear that it would object to discovery during the pendency of
18 its motion to withdraw the reference but, nevertheless, would
19 review the discovery request.

20 On January 21, 2003, the Committee filed a motion to
21 enforce or implement the existing stay order regarding claims
22 estimation or in the alternative, to stay estimation claims
23 related to discovery under Bankruptcy Rule 5011(c) and 11
24 U.S.C. Section 105(a), seeking to stay discovery related to the
25 competing estimation motions or applications.

1 On March 4, 2003, this Court heard oral argument on
2 the Committee's motion for stay and at that time issued a bench
3 ruling, holding that factual discovery was appropriate and
4 could continue in connection with the estimation motion and
5 related issues despite the then pendency of the Committee's
6 motion to withdraw the reference which was before the District
7 Court.

8 This Court did find that the original discovery
9 requests were broad and ordered the Debtor to tailor its
10 request to the factual issues raised by the competing
11 estimation models proffered by the Debtor and the Committee.

12 On March 27, 2003, G-I served it's revised
13 interrogatories and request for productions of documents on the
14 Committee. The Debtor asserts that the revised discovery was,
15 in fact, tailored to inquire into the factual issues raised by
16 the Peterson affidavit and the Committee's opposition to G-I's
17 estimation motion and proposed medical matrix. The Debtor
18 alleges that the revised discovery was reasonable and necessary
19 to the contested issued raised on these motions.

20 The Debtor has alleged or asserted that the Committee
21 used a questionable pretest in order to undermine the
22 appropriateness of the Debtor's approach to estimation. The
23 Debtor characterizes the Committee's opposition to its
24 estimation motion as relying almost exclusively on the
25 affidavit of Dr. Peterson which focuses on a pretest of

1 Debtor's proof of claim form that he completed.

2 The Debtor goes on to assert that the pretest
3 implicates the law firms that participated and specifically the
4 resources used to complete the Debtor's proof of claims forms
5 versus the resources available to test Dr. Peterson's alleged,
6 what the Debtor states is preordained conclusion, that the
7 proof of claim is inordinately burdensome or time consuming.

8 The Debtor contends that in order to test the
9 pretest, it is necessary to know what computerized data exists
10 because a major complaint of the persons, including paralegals
11 completing the form was that there was too much handwriting,
12 implying in the Debtor's view, the existence of off limits
13 computer data. The Debtor further alleges that discovery is
14 warranted to determine how the firms were selected, how the
15 sample claims were selected, how estimates were made and how
16 numbers were extrapolated to fit Dr. Peterson's opinion.

17 As such, the Debtor contends that it designed the
18 revised discovery to explore the Committee's assertions
19 regarding the pretest conducted with the participation of
20 certain law firms representing clients with personal injury
21 claims against G-I, G-I's proposed proof of claim, G-I's
22 estimation motion and medical matrix and the matter in which
23 the proof of claim proposed medical matrix compared with
24 related claims resolution procedures.

25 In exploring the pretest, the Debtor has proffered

1 what the Committee asserts is some 146 interrogatories when
2 discrete subparts are counted under Rule 33 of the Federal
3 Rules of Civil Procedure made applicable by the Federal Rules
4 of Bankruptcy Procedure 7033.

5 On May 10, 2003, the Committee served partial
6 responses and a series of objections to G-I's discovery. The
7 Committee also produced approximately 1,000 pages of
8 production. The Committee claims here that the pretest is not
9 the centerpiece of Dr. Peterson's expert opinions. The
10 Committee offers that the pretest was a limited and preliminary
11 exercise to estimate the expenses of the Debtor's proof of
12 claim form in terms of time and money to be spent on
13 compliance. Seven of thirteen invited law firms participated
14 in the pretest, here referred to as the participating law
15 firms. The Committee contends that the Debtor's discovery
16 requests are aimed not at the Committee and its members, but
17 rather at non-party tort counsel whose firms participated,
18 which firms participated in the pretest, thus, the Committee
19 submits that most of this information requested by the Debtor
20 is in the hands of the third party law firms, who participated
21 in the pretest and not within the Committee's control.

22 The Committee for its part answered certain
23 interrogatories and submitted another sworn statement from Dr.
24 Peterson to answer the Debtor's inquiries about the pretest.
25 The Committee also asserts that it produced all the documents

1 that Dr. Peterson and his colleague, Patricia Ebener at Legal
2 Analysis Systems either provided to or received from the law
3 firms that participated in the pretest.

4 The Committees' objections are that the information
5 requested by G-I is over broad and burdensome and their
6 objections include objections that the information requested by
7 G-I is over broad and burdensome and that the materials are not
8 within the Committee's control. The Committee also asserts
9 that some of the requested information could be privileged
10 information or work product.

11 Finally, the Committee submits that this Court can
12 adjudicate some of the legal issues regarding the competing
13 estimation models before further discovery need be made.

14 The Committee posits that its main objection to the
15 Debtor's proposals regarding claims estimations are matters of
16 law, the Committee states by liquidating personal injury tort
17 and wrongful death claims under a compulsory medical matrix,
18 are built on arbitrary values and liability criteria,
19 manufactured by the Debtor for its own advantage, as
20 administered by the Debtor's hand picked claims liquidation
21 committee, the Debtor's approach would not be estimation at
22 all.

23 On May 12, 2003 as indicated, G-I conferred with the
24 Committee in a good faith effort to resolve disputes without
25 this Court's intervention, but the parties were unable to

1 resolve certain disputes.

2 The Committee served upon the Debtor the declaration
3 of Mark Peterson, again, clarifying some of the methods upon
4 which Dr. Peterson derives certain of his conclusions.

5 On July 17, 2003, this Court, as indicated earlier,
6 held a hearing on the Debtor's present motion to compel and
7 reserved decision. At the July 17 hearing, the Debtor through
8 counsel agreed that certain discovery might either be deferred
9 or that the discovery might be dealt with in stages. The
10 Debtor nonetheless, emphasized the need for certain items of
11 discovery related to data sources, those being Interrogatory
12 Number 3(f), asking whether the participating law firms
13 maintain computerized data sources containing information
14 relevant to the proof of claim forms. Interrogatory Number 5,
15 inquiring as to how the computerized databases work, if they
16 exist, per Interrogatory Number 3, and what resources were used
17 or available to complete the proof of claim form.

18 Also, Interrogatory Number 9, inquiring, asking the
19 Committee to determine, or supply information as to whether
20 data sources exist, identifying among other things medical
21 personnel associated with claimants for whom a proof of claim
22 was either completed or partially completed. Interrogatory
23 Number 10, requesting whether the Committee or participating
24 law firms among other things, have evidence of exposure to some
25 asbestos or asbestos containing product, in connection with

1 other trust distribution procedures.

2 Interrogatory Number 13(b), seeking to identify
3 whether the Committee representative or participating law firm
4 maintained a cross-reference record of every exposure to an
5 asbestos product at job sites for such plaintiffs. Document
6 request Number 3, asking for production of original drafts or
7 documents from which the Committee and/or the participating law
8 firms attempted to complete or partially complete certain
9 discovery requests.

10 Document request Number 8, asking that each Committee
11 representative or participating law firm, produce responses
12 regarding information including ostensibly, medical history or
13 exposure, submitted by participating law firms in previous
14 litigation.

15 Document request Number 11, asking for production of
16 medical information of each claimant for whom a proof of claim
17 was completed or partially completed. Document request Number
18 12, asking for production of documents concerning the drafting
19 and execution of affidavits and documents referred to in
20 preparation for deposition regarding asbestos exposure, the
21 asbestos claimants included in the pretest sample regarding,
22 among other things, their recollections or the recollections of
23 co-workers.

24 Federal Rule of Civil Procedure 33 as incorporated in
25 Bankruptcy Procedure 7033, provides in pertinent part that

1 without leave of court or written stipulation any party may
2 serve upon any other party, written interrogatories not
3 exceeding 25 in number, including all discrete subparts to be
4 answered by the party served. On its face, the Debtor's
5 interrogatories, including discrete subparts even if the Court
6 were to consider certain subparts counting as one, clearly
7 exceed the numbers set forth under the federal rules.

8 The numerosity issue, however, while relevant to this
9 motion, may be capable of modification or amendment. Instead,
10 the Court believes that other objections to the production
11 control the Court's decision here.

12 As to first, and I will attempt to go through certain
13 of the discovery as it was outlined in the oral argument, as to
14 Interrogatories Number 3(f), 5, 9, 10 and 13(b), which the
15 Debtor, through counsel asserts is related to data sources, the
16 Debtor argues that because the Committee offered Dr. Peterson's
17 contentions or opinions, that it is entitled to discover
18 whether participating law firms have computerized databases
19 detailing the medical and exposure history of the approximately
20 50 claimants that were the subject of the pretest.

21 The Debtor further argues that whether the
22 participating law firms maintain computerized files containing
23 information requested in the proof of claim, goes to test the
24 validity of Dr. Peterson's conclusion that the Debtor's proof
25 of claim form is too time consuming. The Debtor in its

1 opposition restates Interrogatory Number 3 as "whether the
2 information required for the proof of claim exists and what
3 categories exist in computerized form". The Debtor is seeking
4 information which ostensibly would include medical condition
5 and exposure history.

6 As to the request as to Interrogatory 3, the
7 Committee answered Interrogatory 3 in part, but proffered a
8 number of objections, including the determination of whether
9 the participating law firms had computerized databases upon
10 which information regarding medical history and exposure could
11 be obtained, would or might invade the attorney/client and work
12 product privileges.

13 For purposes of the work product doctrine, which
14 protects discovery documents and other items produced by a
15 party and its representative in anticipation of litigation, the
16 party's representative can include his attorney, insurer,
17 employee or other agent, so long as they were working on behalf
18 of a party in preparing documents with the prospect of
19 litigation mind. See Federal Rule of Civil Procedure 26(b)(3).
20 See also the case of Shipes v BIC Corp., 154 F.R.D. 309,
21 (M.D.Ga. 1994) and Santiago v Miles, 121 F.R.D. 636 (W.D.N.Y.
22 1988), the latter case holding that computerized printouts
23 prepared at a request of counsel with the New York State
24 Department of Correctional Services in response to the filing
25 of the subject suit, were protected from discovery by the work

1 product doctrine.

2 Production of information which might or would
3 include medical and exposure history may raise at this time
4 issues of whether the information is protected under work
5 product privilege or other privileges. The Committee in the
6 present case, or rather Dr. Peterson in his declaration has
7 stated in pertinent part, this is at Page 15 of the most recent
8 declaration, May 20, 2003 "I did not discuss with anyone from
9 the law firms that participated in the pretest the structure of
10 their claims databases, if any, pertaining to data on work
11 sites and product identification. I discussed with someone
12 from each potentially participating law firm some of the
13 information required by the Debtor's claim form, but I have no
14 recollection of any discussion with any of those firms about
15 their ability to use any database or cross-reference record.
16 Based upon my 20 years of experience as a scholar and expert in
17 asbestos litigation, I know that no law firm would have been
18 able to compile such a comprehensive cross-reference record.
19 Furthermore as detailed below, no firm would have the need to
20 compile such a record."

21 While the Court notes that the Debtor certainly has
22 the right to test the opinions as proffered by Dr. Peterson in
23 that portion of his declaration among other opinions. The
24 Court is of the believe after a review of these requests for
25 discovery, that the Debtor must find alternative and less

1 intrusive means of testing Dr. Peterson's opinion.

2 First, or additionally, the Court notes the Committee
3 is not an agent of its constituents and, thus, cannot bind
4 them. See Colliers on Bankruptcy, Section 1303.05, 15th
5 Edition, 2002. See also, Quality Beverages Company, 181 Bankr.
6 Rep. 887, (Bankr. S.D. Texas, 1995), that court noting that a
7 committee does not have any power or authority to bind
8 individual creditors. See also In Re Snyder, 51 Bankr. Rep.
9 432 (Bankr. D. Utah) noting that the committee attorneys only
10 represent committee members but individual creditors are
11 represented by their respective attorneys.

12 This Court is not convinced that the files of
13 individual claimants' lawyers are necessarily within the
14 purview of the Committee's possession, custody and control.
15 And so it follows that discovery served on the Committee which
16 is admittedly a party, cannot properly require responses by and
17 on behalf of individual claimants or the tort counsel who
18 represent them. Here see, among other cases, University of
19 Texas at Austin v Vratil, 96 F.3d. 1337 (10th Cir. 1996).
20 There holding that in the University of Texas's suit against
21 the National Collegiate Athletic Association, under Rule 33(a)
22 interrogatories may only be directed at a party and that court
23 further noting that the federal rules, there citing Rule 37,
24 contains no procedure for requiring interrogatory responses
25 from unserved, non-party members of, in that case, an

1 association.

2 The individual claimants and the tort counsel are in
3 this case, or as pertains to this particular discovery, similar
4 to the unserved, non-party members of the referenced
5 association.

6 As to Interrogatories 5, 9, 10 and 13(b), the request
7 for this discovery suffers from the same deficiencies as
8 outlined as to Interrogatory 3. The Court does note that the
9 Committee answered Interrogatory 13(b) as follows, "The
10 Committee believes that Dr. Peterson is correct in asserting
11 that no firm maintains a cross-referenced record of every
12 exposure to an asbestos product at every site for every time,
13 for every plaintiff."

14 This Court is of the opinion that the Debtor's
15 efforts to obtain further information, not otherwise
16 voluntarily turned over to the Committee and then provided by
17 the Committee to the Debtor, would have to be directed at the
18 appropriate third party, be that the participating law firms or
19 the individual claimants as appropriate.

20 I want to also move onto Interrogatories Numbers 1
21 and 3(i) which were proffered as discovery requests relating to
22 the pretest itself. Interrogatories Number 1 and 3(i) seek in
23 turn, in Interrogatory Number 1, information on Dr. Peterson's
24 conclusions regarding the Debtor's proof of claim and/or
25 pretest, including pretests of proofs of claims in other

1 Chapter 11 bankruptcies and as to Interrogatory Number 3(i),
2 information including all documents provided to, or prepared by
3 individuals regarding the Debtor's proof of claim and/or
4 pretest.

5 The Committee answered those interrogatories in part
6 by stating as to Interrogatory Number 1, that "it is the
7 Committee's understanding that LAS has carried out pretests of
8 forms involving the following Debtors, Babcock and Wilcox,
9 Celotex Corporation and Carey, Canada, Dow-Corning, Eagle
10 Pitcher, Raytech and AH Robbins."

11 As to Interrogatory 3(i) the Committee objected on
12 several grounds, rather, including the broad nature of the
13 discovery request. The Court agrees with the Debtor that the
14 Debtor has the right to test the expert's qualifications and
15 can proceed with discovery going to the nature of the pretest
16 and to that matter, ostensibly, the experts experience with
17 other pretests of other proofs of claim. However, having
18 reviewed these particular interrogatories, the Court is of the
19 opinion that the discovery requested must be, again, more
20 narrowly tailored to that end, as the Court is of the belief
21 that the interrogatory requests are over broad.

22 I also want to deal with Interrogatory 6, 7, 11 and
23 13(b) which deals with proof of claims from other Chapter 11
24 proceedings. The Interrogatory 6, 7, 11 and 13(b) seek
25 information on proof claims in other Chapter 11 asbestos cases,

1 in which ostensibly Dr. Peterson or other related parties may
2 have knowledge or involvement. Again, these broad discovery
3 request may have some relevance to this issues presently before
4 the Court, although the extent of the relevance of those
5 matters, on balance with the breadth of the interrogatories
6 lead the Court, again, to the conclusion that the Debtor must
7 tailor these broad discovery requests when going forward to
8 obtain these interrogatory answers from the Committee or the
9 Committee's expert.

10 As to the Document Request Numbers, 3, 10, 11 and 12,
11 documents and tangible things are discoverable, again, if they
12 are in the possession, custody or control of the party upon
13 whom the request is served. See Federal Rule of Civil
14 Procedure 34, incorporated by Federal Rule Bankruptcy Procedure
15 7034.

16 The term control generally refers to the legal right,
17 authority or ability of the party to whom or which the Rule 34
18 request is directed, to exercise the lawful possession over the
19 premises or documents at issue. See McKeeson Corporation v
20 Islamic Republic of Iran, 185 F.R.D. 70, 78 (D.D.Columbia
21 1999). The party seeking production of the documents bears
22 the burden of establishing the opposing party's control over
23 them. See United States v International Union of Petroleum and
24 Industrial Workers, 870 F.2d. 1450 9th Cir. 1989. See also
25 Camden Iron and Metal Company v Marubeni America Corporation,

1 138 F.R.D. 438 (D.N.J. 1941). The term control, however, is
2 broadly interpreted and a party is deemed to have control over
3 documents, that it has the right authority or ability to obtain
4 upon demand. See Soto v City of Concord, 162 F.R.D. 603 (N.D.
5 Cal. 1995). See also, In re Andover Togs Incorporated, 231
6 Bankr. Rep. 521 (Bankr. S.D.N.Y. 1999) holding that for an item
7 to be subject to discovery under the bankruptcy rule, it must
8 be in the possession, custody or control of the party from whom
9 the discovery is sought. A party is deemed to have control
10 over a document that it has the right, authority or ability to
11 obtain upon demand. So long as the party has control over the
12 entity who is in possession of the document, the party will be
13 compelled to produce it. See the Soto decision at Page 619.

14 The Debtor seeks to compel production of documents
15 arguably, or ostensibly, used to complete the pretest of the
16 proof of claims and argues that this request is no different
17 from rights under Rule 1006, the Federal Rules of Evidence for
18 the underlying documents, of a summary, arguably regardless of
19 the breadth or extent of those documents. The Court is not
20 persuaded that Federal Rule of Evidence 1006 is implicated
21 here.

22 That rule states, the contents of voluminous
23 writings, recordings or photographs which cannot conveniently
24 be examined in court, may be presented in the form of a chart,
25 summary or calculation. The originals or duplicates shall be

1 made available for examination or copying, or both, by other
2 parties at reasonable times and place. The Court may order
3 that they be produced in court.

4 The Committee proffers here that the pretest was
5 merely a preliminary determination of how long it might take to
6 complete the Debtor's proof of claim form. The Court finds
7 here that the pretest by its very nature, is not the same as a
8 summary, therefore, the Debtor cannot rely on Federal Rule of
9 Evidence 1006 to obtain the underlying documentation.

10 Again, here, the Court must deal with the issue of
11 control and, again, the Court finds similar to the reasoning
12 set forth above that the participating law firms and individual
13 claimants are similar to unserved, non-parties at this time and
14 it is not at all clear that the Committee has the control,
15 right or authority over those parties to obtain this
16 documentation upon demand.

17 It is, however, clear that all documents provided to
18 a party's expert witness must be produced on request. See
19 Furniture World v DAV Thrift Stores, 168 F.R.D. 61
20 (D.N.Mex. 1996), citing Corrigan versus Methodist Hospital, 158
21 F.R.D. 54 (E.D.Pa. 1994). See also Rule 34(c) and Rule
22 26(a)(2).

23 The Committee has represented both in its pleadings
24 that it, in fact, has already produced all such documents.
25 Certainly to the extent that it comes into possession of other

1 documents, it would have a continuing obligation to turn over
2 those documents which it or its expert does have possession,
3 custody or control.

4 Accordingly, for the reasons stated, the Debtor's
5 motion to compel is denied, except to the extent that the Court
6 has set forth certain other instructions and parameters as to
7 future discovery. The Debtor, again, shall be directed to
8 comply with the Court's directive, moving forward to test Dr.
9 Peterson's opinions and conclusions in a way and a means that
10 is an alternative means to the discovery, or the remaining
11 discovery, which is outstanding today.

12 It is clear that while the Debtor has a right to
13 discovery, it must, again, find an alternative, a less
14 intrusive means of testing Dr. Peterson's opinion than the
15 broad discovery by way of interrogatories and production of
16 documents which implicate non-parties which are not properly
17 before the Court at this juncture of these proceedings. That's
18 my decision, counsel. And I'll need an order submitted. The
19 Committee will submit the order, counsel?

20 MR. KRESS: Your Honor, it's Alex Kress. I think I
21 heard Mr. Prol suggesting that they would submit the order, I
22 guess on notice to the other interested parties.

23 UNIDENTIFIED MALE SPEAKER: -- have a chance to look
24 at it before it is submitted?

25 THE COURT: Yes. Who is going to be submitting the

1 order?

2 MR. SWETT: The Committee will submit the order, Your
3 Honor, and we will circulate it in advance.

4 THE COURT: Okay. Just try to identify yourselves on
5 the line, just for the purpose of my court recorder.

6 MR. SWETT: This is Trev Swett, Your Honor.

7 THE COURT: Thank you, very good. I was going to
8 suggest now that you have this opinion and, obviously, the
9 discovery is still going to proceed, there may still be other
10 issues of discovery going forward, and as well scheduling on
11 the motion, the estimation motion and certain determinations of
12 threshold legal issues have to be resolved, it would appear
13 that it may be useful to either have the Court conduct a
14 general status conference or if the parties believe they can
15 endeavor to come up with some form of a scheduling order moving
16 this forward, we can do that.

17 MR. SWETT: Your Honor, why don't we -- this is Trev
18 Swett again. Why don't we pick a date for a status conference
19 and the parties agree to confer promptly in advance of that
20 conference to see if we can agree --

21 MR. MILLER: -- Your Honor, this Ralph Miller.

22 THE COURT: Yes, okay. I would like to have that
23 conference in Court, unless the parties believe that it would
24 otherwise be, otherwise would want to have it over the phone.
25 I always find that in court conferences are sometimes --

1 MR. SWETT: The Committee agrees, Your Honor.

2 THE COURT: They are, I think, the better way to go.
3 Of course, if there's anyone that can't be at the conference
4 and needs to be on the phone, I would certainly give
5 consideration to that as I have in the past. Okay. Well, what
6 time frame do the parties believe makes sense here? I don't
7 know what other matters there are coming up. I can attempt to
8 put this on a date where there are other matters so parties
9 don't have to make multiple appearances. In fact, I would like
10 to do that.

11 MR. SWETT: Your Honor, we have the estimation -- I'm
12 sorry, we have the exclusivity hearing on the 30th of
13 September.

14 THE COURT: Okay. I don't know how crowded or not
15 that calendar is, I don't have it in front of me, but it would
16 make some sense to, perhaps, schedule this for that date, at an
17 appropriate time.

18 MR. IRWIN: Two o'clock, Your Honor. This is Kevin
19 Irwin.

20 MR. KRESS: Your Honor, this is Alex Kress, that's
21 correct. Because of various scheduling conflicts, why don't
22 you just put it on for an afternoon, Your Honor, on a regular
23 motion day, so I'm not sure that there will be much time to do
24 anything other than exclusivity motion, but we could certainly
25 discuss it further at that time.

1 MR. SWETT: If that's not a convenient date for the
2 parties or the Court, and, perhaps we could look to early
3 October. This is Trevor Swett.

4 THE COURT: Yes.

5 MR. MILLER: This is Ralph Miller. Is there any
6 chance we can do it before that, earlier, say at one?

7 THE COURT: Well, that's what I was trying to see. I
8 would like, perhaps, to have the status conference on this
9 matter before the motion on exclusivity because I assume the
10 exclusivity motion is going to take up some oral argument.

11 MR. MILLER: That's my understanding, Your Honor.

12 THE COURT: So, I mean I can perhaps start the
13 session at 1:30 and begin with the status conference on the
14 estimation motion and then follow that up immediately with the
15 argument on the exclusivity issue.

16 MR. MILLER: Your Honor, that would work for is and,
17 of course, we are going to work as Mr. Swett said to try to
18 eliminate the need for this if we can, Your Honor.

19 THE COURT: Very good. Is that acceptable to
20 everyone?

21 MR. SWETT: That's fine with the Committee, Judge.
22 This is Trev Swett again.

23 THE COURT: Okay, very good.

24 MR. IRWIN: On behalf of the Legal Reps., Your Honor.

25 THE COURT: Thank you all. Okay. So, the status

1 conference in regard to the estimation motion and any related
2 discovery issues would be conducted on Tuesday, September 30th,
3 at 1:30. If there are any other parties that are not on this
4 call that need to be advised, I assume that counsel can work
5 together to be sure everyone is on notice of it.

6 MR. KRESS: Certainly, Your Honor. This is Mr.
7 Kress. We'll take the lead in making sure everybody knows of
8 this scheduling issue.

9 THE COURT: Thank you very much. Thank you, counsel
10 and the other parties on the call. Have a good afternoon.

11 MR. KRESS: Thank you for your time, Your Honor.

12 THE COURT: Okay, thank you for listening.

13 *****

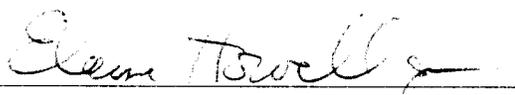
14
15 **CERTIFICATION**

16
17 I, ELAINE HOWELL, court approved transcriber, certify that
18 the foregoing is a correct transcript from the official
19 electronic sound recording of the proceedings in the
20 above-entitled matter.

21

22

23



Date: October 3, 2003

24

ELAINE HOWELL

25

J&J COURT TRANSCRIBERS, INC.

Exhibit 3

1 APPEARANCES (via telephone):

2 For Interested Party,
3 Coltec Industries, Inc.:

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5 of Asbestos Personal
6 Injury Claimants:

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24

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Fee Examiner
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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: Have a seat, everyone. Good afternoon.

4 MR. WORF: Good afternoon.

5 MS. WRIGHT: Good afternoon.

6 THE COURT: All right. We are here in the Garlock
7 Sealing Technologies case to get some rulings from prior
8 motions and fee applications.

9 Let me get appearances first and then we'll see where
10 we are.

11 MR. WORF: Good afternoon, Your Honor. Richard Worf
12 from Robinson Bradshaw & Hinson for the debtors.

13 THE COURT: All right.

14 Ms. Wright.

15 MS. WRIGHT: Good afternoon, Your Honor. Cotten --

16 MR. MILLER: Afternoon, Your Honor.

17 Sorry. I'm sorry. I'm not in the courtroom, so I'm
18 going to shut my mouth until everybody who's there is done.
19 Sorry.

20 THE COURT: Hold tight for one.

21 Ms. Wright.

22 MS. WRIGHT: Cotten Wright here on behalf of the
23 Future Claimants Representative, Mr. Grier.

24 THE COURT: Okay.

25 Now telephonic appearances.

1 MR. MILLER: Thank you, Your Honor. This is Jack
2 Miller on the phone. And I understand Ms. Abel is also on the
3 line.

4 THE COURT: Okay.

5 MR. MOON: Tom Moon, Your Honor.

6 MR. CASSADA: Your Honor, Garland --

7 MR. CLODFELTER: Judge, Dan Clodfelter for Coltec.

8 THE COURT: All right.

9 MR. CASSADA: Your Honor, Garland Cassada here for the
10 debtors.

11 MR. McDOW: Your Honor, Clarkson McDow, the fee
12 examiner.

13 THE COURT: All right.

14 MR. SWETT: Ted Swett, Your Honor, for the Official
15 Committee of Asbestos Personal Injury Claimants.

16 THE COURT: Any others?

17 MR. WEHNER: Jim Wehner for the Asbestos Committee.

18 MR. MACLAY: Kevin Maclay for the Asbestos Committee.

19 MS. GILBERT: Jeanette Gilbert for Motley Rice.

20 MS. LETSCH: Bryn Letsch, Brayton Purcell.

21 THE COURT: Any others?

22 MR. GLASSER: Richard Glasser, Glasser & Glasser.

23 THE COURT: Any others?

24 (No response)

25 THE COURT: Okay. Some of you may be on

1 speakerphones. I would ask that you at least hit your mute
2 button so that we don't -- we're picking up some extraneous
3 noise, unless you're speaking, of course.

4 We're back in the Garlock case to get some rulings.

5 Were there any preliminaries? Any -- I wouldn't
6 assume there were any resolutions during the break before now,
7 or we're just ready to get the decisions?

8 (No response)

9 THE COURT: Okay.

10 All right. Well, let me see. We'll start with the,
11 the debtors' Rule 60 motion and I'll just try to give you my
12 best take on these and, hopefully, not have you here till 5:00
13 listening to me read, but --

14 The bottom line is with regard to the Rule 60 motion
15 to reconsider the solicitation procedures and voting, etc., the
16 requirements there, I really begin where we ended up the first
17 time around in the decision that approved the solicitation and
18 confirmation procedures that we had. Effectively, the question
19 was how do you treat unliquidated claims and do you temporarily
20 allow them for voting purposes and, if so, when and under what
21 criteria.

22 At the outset, the debtors wanted some fairly
23 stringent criteria for the temporary allowance, basically
24 certification and evidence of diagnoses and exposure and a
25 variety of documents to demonstrate all of that. At the time I

1 found that would be unduly burdensome to the claimants and,
2 potentially, would cause them in order just to vote to meet a
3 higher criteria than they might even have to show in state
4 court in a trial. And for what we were doing and knowing that
5 we could not hear and determine all these claims before
6 bankruptcy, I thought that was too burdensome. On the other
7 hand, integrity of the process was needing to be respected as
8 well. And we did what a variety of courts before us have done,
9 which was to require that claimants make certifications about
10 the general conditions regarding their claims, including that
11 they had been diagnosed with an asbestos disease, exposed to
12 the debtors' products, and had documentation to that effect.
13 There was nothing really novel about that. It was done on,
14 under penalty of perjury, but on best knowledge and belief.

15 During that hearing the debtors made the assumption
16 that there was, effectively, pervasive fraud in regard to these
17 claims and that we would be facing that if we didn't require
18 all the stringent requirements that they had proposed. And
19 similarly, they weren't too keen on the idea of master ballots.
20 And for the reasons I stated then, I believe that was excessive
21 under the circumstances and believe that we should allow less
22 stringent requirements.

23 Well, now, we've had the vote and, frankly, as anyone
24 could have predicted coming out of the disclosure statement
25 hearings, the debtors received an overwhelming no vote from the

1 current claimants class, Class 4. And in this motion -- this
2 is kind of the more things change the more they stay the
3 same -- the debtors are interpreting the vote to be a,
4 basically, a act of collusion or fraud by the plaintiffs'
5 attorneys and believe that the integrity of the vote is at
6 stake if we don't reinstitute the same procedures that were
7 rejected earlier and believe that the only way to ensure that
8 integrity is to require all of the heavy document demands that
9 they previously demanded. I didn't agree then and I don't
10 agree now.

11 While we take our orders seriously and take voting
12 seriously, if there is, in fact, a conspiracy, we can deal with
13 that when it is demonstrated. There are ways of doing that,
14 Rule 11 sanctions, criminal prosecution, all those sorts of
15 things. But I don't believe this is the time and I don't,
16 hadn't been convinced that it's been demonstrated there's a
17 widespread noncompliance with the certification requirement or
18 that it had a material effect on the voting.

19 The parties have, of their own volition, put
20 themselves on a very ambitious schedule trying to get to a
21 confirmation hearing in June with very tight discovery and
22 hearing schedules. Summary judgment hearing's only eight days
23 away. To do as is being proposed in the Rule 60 motion is
24 going to blow all of that up and if it's to be done then, I
25 think the need must be demonstrated to do it beyond a level,

1 beyond mere conjecture. I don't think it's clear still that,
2 that we've had an occasion of mass voting based on improper
3 certifications and collusion, or anything of the sort. It's
4 still impossible, as it was before, to hold mass pre-petition
5 claims hearings or mass estimation hearings. The criteria are
6 still burdensome and, effectively, when you couple it with the
7 ability to block claims and votes by class objections it would
8 allow the debtor to control who votes in the class. I'm not
9 convinced that we've had anything. There's probably in 173,000
10 votes some bad apples, but I'm not convinced that there's a
11 pervasive fraud underway, or anything of the sort.

12 It's even more uncertain that if there were voting
13 improprieties, that they had any material effect on the vote.
14 I asked at the most recent hearing whether all of this alleged
15 behavior changed the vote. I did that after looking at the
16 briefs and, and writing off all the claims the debtors had
17 indicated were infirm. It's still appeared that Class 4
18 rejected this, this plan by a wide margin. I asked at the last
19 hearing about the effect as a nudge to the debtors to show me
20 that, that this was a material issue. At the hearing the
21 debtors were very careful to stay away from that question,
22 saying they didn't know. In short, we're going to have to redo
23 the whole vote and put a lot of people to a great deal of
24 expense and bother just to determine whether or not there's a
25 problem.

1 I think that was a bit disingenuous. I don't really
2 think the debtors believe the voting was affected adversely.
3 Rather, I think it's just another go-around to try to impose
4 some very stringent voting criteria on a hostile class that
5 allows them to control the class vote and, frankly, to wear
6 down their opponents. I don't think -- and my law clerk and I
7 recognized this coming out of the courtroom at the end of the
8 disclosure statement hearings -- I don't think there was any
9 prospect that Class 4 would ever go the debtors' way. The ACC
10 has been loud and clear about this up to this point and in this
11 case, the Class 4 claimants are litigation opponents allied
12 with the ACC and against the debtors. They're numerous.
13 They're not professionals. Pipefitters are not like bankers.
14 They're not going to exercise independent judgment as opposed
15 to that of their attorneys. They have to rely on their
16 attorneys' opinions in the plan and if given a choice, I
17 imagine a bunch of asbestos tort lawyers are going to rely on
18 the ACC and not on the debtor. I can't imagine it would go any
19 other way.

20 As -- from the perspective of Class 4, the debtors'
21 plan is hostile to the bulk of the claimants. Now I'm not
22 saying that's unfair. We hadn't gotten to that point, but the
23 point is that from the perspective of these current claimants
24 it's not a good deal. The debtors say they want to pay all the
25 holders of allowed claims, but their belief is there aren't

1 that many of them. The current claimants have just the
2 opposite opinion.

3 So effectively, that fact, the ACC saying that they
4 were opposed to the plan, was probably all that ever needed to
5 be said in supplemental statements to ensure the outcome of
6 this vote. You add to the fact that the plan also has fairly
7 stringent claims allowance procedures and heavy evidentiary
8 requirements and from the claimants' perspective, low payments.
9 This is not me talking now. I'm, I'm mimicking their
10 viewpoints on this. I'm not ruling on any of this, nor do I
11 have opinions at the present time. But despite that and while
12 retaining the equity, it looks the fund is capped and that's
13 not palatable to the ACC, as they've been loud and clear.

14 So I never really thought that there was much chance
15 that the debtors would get anything but a resounding no vote on
16 this, this plan and that could be no surprise to anyone.

17 Moreover, and the Rule 60 criteria, I don't think, are
18 met to justify this. We're not really talking about real,
19 really new evidence. We just have the actual numbers now, but
20 the vote was never in doubt. We've heard the same arguments
21 made as at the original hearing. Effectively, this is just a
22 reargument buttressed by the vote.

23 Courts routinely sidestep these very practical
24 problems by temporarily allowing claims for voting and if
25 allowing voting without the evidence proof that the debtors

1 asked for might somehow taint that voting, the alternative, in
2 my opinion, is worse. If the debtors object to these claims en
3 masse, effectively, you end up with the debtors deciding who in
4 the class could vote. That's a no-no. Given the Hobson's
5 choice of if the ACC and the plaintiffs' firms have a
6 disproportionate voice in the vote or the debtors have a
7 disproportionate voice, I'm electing the former. Their
8 interests are at least aligned and not openly adverse to one
9 another.

10 So that motion is denied.

11 Okay. Ready to move on?

12 (No response)

13 THE COURT: Debtors' motion to compel the ACC to
14 produce the non-public solicitation documents. Again, this one
15 is driven by the outcome of the vote and the debtors' fears
16 about an orchestrated effort by the plaintiffs' firms to taint
17 the Class 4 vote. This is the same as before. I think the
18 class vote was so overwhelming and so unsurprising that even if
19 someone was doing improper tampering, whatever that is, I don't
20 think it would have affected the outcome as, again, once the
21 ACC said, "We opposed to this plan," I think the die was cast.

22 What I said before about the perception of the
23 claimants to the merits of this plan goes. The debtors seem to
24 assume that direct marketing by the ACC to members of the class
25 to have urged them to vote no is somehow inappropriate. If

1 that's the position, it's contradicted by the Century Glove
2 case, the Third Circuit's ruling that I alluded to earlier. I
3 think they've got the right take on what was being attempted
4 here. Congress was trying to mandate a floor, a certain amount
5 of minimal information that would be available to creditors
6 before they got a plan and the request to vote on one. It
7 wasn't dictating that there could be no other communications.
8 It was a floor, not a ceiling and it was not an anti-fraud
9 device, as best I could tell.

10 So bottom line is I don't think that's the, the
11 reason. Meanwhile, the ACC says it's given up what it has on
12 this topic with two small exceptions and tells us there's no
13 orchestrated effort by it beyond what has been identified. I
14 don't have any evidence to the contrary.

15 So I'll have to take them at their word. If it were
16 to prove out otherwise, then, again, there are ways of dealing
17 with that. The only thing that seems to have been held back as
18 work product were the talking points and that which was
19 immaterial, a list of 188 callers on a vote of, whatever it
20 was, 173,000, 140,000.

21 So those would mitigate against allowing the motion.
22 It seems to me what the debtors are really asking for are
23 communications by individual members and the claimants and
24 their attorneys. Even if all the other problems didn't exist
25 there, I think such a request couldn't be sent to the ACC as an

1 entity, but would have to be made to the individual members.
2 I'm not encouraging that.

3 Again, the other part of this was the requests are
4 also overbroad and burdensome on a suspicion, a disbelief,
5 apparently, that anyone could disapprove of the plan by these
6 numbers. The debtors are wanting to put on a very big
7 burdensome discovery request on all of the ACC Committee
8 members. In asking for every communication with any claimant
9 or attorney that any way touches on the plan, you're opening
10 yourself up for a huge amount of inquiry.

11 Since we started this exercise, the rules of discovery
12 have changed and the Supreme Court or Congress, whoever you
13 want to attribute those to, have emphasized that discovery is
14 supposed to be proportionate to need as well as importance and
15 burden and expense. Here, I think the need is speculative.
16 The benefits are likely immaterial. The burdens are real.

17 So I'm denying that motion as well.

18 Then we had the ACC's motion for a protective order,
19 111 law firms, if you will. Again, debtors are wanting to,
20 have stated they want to demonstrate the 170,000 ballots, the
21 ones that are negatives, are bogus, I guess to the end to show
22 that the plan is feasible and the litigation procedures won't
23 swamp this court and the district court. And again, the same
24 perspective that this is an effort by plaintiffs' attorneys to
25 derail confirmation. And again, it is premised on the number

1 of rejecting Class 4 votes. Effectively, it rides on the Rule
2 60 motion to reconsider and fails for the same reasons. I
3 don't agree with the assumptions. I hadn't seen evidence of
4 this overarching, unlawful conspiracy as opposed to just a
5 flat-out wholesale rejection of the plan on its merits seen
6 from the perspectives of the Class 4 claimants.

7 The debtors also seem to think they can prove that in
8 terms of the burdens on the Court, that they, by getting into
9 this type of information and establishing that a number of the
10 votes are invalid, that they can show that the burden of the
11 litigation option won't be a deal breaker, if you will, as to
12 the burdens placed on the two courts. Frankly, I don't know
13 how that can be proven, at least not in this way.

14 As to the number of claims and the amounts and all
15 that, well, you can't extrapolate from a sample and find fraud
16 overarching as to all members. I think you got to do it one at
17 a time. And equally, because out of the 176,000 claims each of
18 them can opt for the litigation approach. I don't think you
19 can prove in advance that there won't be many pretrials in
20 bankruptcy court or trials for the district court. Bottom line
21 is every one of them can opt for that if they choose to. It
22 may not be feasible. It may be, however, that if, as resistant
23 as the plaintiffs' attorneys are to the debtors' plan, if this
24 goes through, the firms themselves might decide they're going
25 to test the system by putting up a lot of those. But I don't

1 know how you prove it through discovery, one way or the other.

2 In any event, as to how feasible the plan is, if
3 you're talking economically feasible, we already have the
4 stipulation in the estimation hearing. So we know what the
5 total size of the claim body is, at least what we think it is.

6 And then, again, we have the same problems about
7 burdens. As to the firms, the debtors are limiting in number
8 the firms that -- excuse me -- the claimants of each firm that
9 they are trying to get information from and while the
10 interrogatories present basic requests, the production requests
11 require a great deal. Again, it's the same stuff that got
12 rejected in the voting procedures and it's another effort to go
13 around and try it all over again by getting it, asking in a
14 different way and from a different group of people. But as to
15 some firms, the requests aren't very limited in terms of
16 number.

17 So you get tremendous burdens on some and we have to
18 compare that all as to what's being proposed for all those non-
19 mesothelioma claimants in terms of the plan. The cost of
20 replying is probably more than what you could get out of the
21 case.

22 So again, it looks like it's something that's
23 burdensome. It also looks unnecessary. The debtor already has
24 extensive information about these claimants. As pointed out,
25 some of these firms and the claimants have been subjected to

1 repeated discovery demands, PIQs, motions, etc.

2 So a lot of the information is already in hand and for
3 that reason I'm granting the ACC's motion.

4 Ready to talk about fees?

5 (No response)

6 THE COURT: All right.

7 Fee objections. Let me speak, generally, just for a
8 minute or two.

9 As to presentation and procedures, the parties worked
10 through these procedures and agreed to them. The Court adopted
11 them and they're now mandatory. Even so, some of these
12 applications seem to honor several of the procedure
13 requirements for fees as only in the breach, if at all. Time
14 and again, as I was reading through these materials and,
15 particularly, the examiner's reports, I noted the lack of
16 narratives, the lack of evidence billing judgment, nothing
17 really describing division of duties, explanations for
18 increased hourly rates, and, in particular, the need for
19 sufficient detail to avoid entries being vague.

20 A word to the wise on this one, with one or two
21 exceptions that I'm going to mention in a moment, I'm not
22 cutting time in this round of applications for these omissions,
23 but I plan to do so in the future if we don't get some of these
24 things closed up, or cleared up. These were negotiated rules
25 and adopted by the Court, so let's follow them. We're trying

1 to make this easier and reduce the time you're in here fighting
2 about extraneous matters as opposed to the important things you
3 have to address in the, in the case. Okay.

4 Now turning to the individual applications. Charter
5 Oaks. Charter Oaks is looking for interim compensation of
6 about \$281,000, expenses, about \$1600, of which about 173,000
7 is in this new category we've got of litigation support. The
8 debtor wants about a hundred thousand of those fees to be
9 disallowed for a variety of reasons. The examiner has also
10 looked at them and suggested that the fees be reduced by
11 \$62,000, the bulk of which, 58,600, because the time entries
12 were vague and a couple of other technical and smaller
13 objections. He subsumed about \$50,000 of reasonableness
14 objections in the earlier vagueness category. You've got some
15 agreement there like the business about converting documents to
16 PDF where the parties have worked out their differences on
17 that.

18 I'm sustaining the examiner's objections and basically
19 adopting his recommendations as to that.

20 About vagueness, I want to be clear 'cause this
21 carries over to all the fee applications. Section 330 is
22 clear. In a bankruptcy case a professional is only paid for
23 work that is reasonable and necessary. The burden of proof is
24 placed on the applicant to show those things and the process is
25 meant to be transparent so that people can look at the case and

1 see what you applied for and see what you were paid and have
2 some confidence that it bore some, that it was aboveboard and
3 fair.

4 If the Court and the other parties can't tell from
5 your time entries what you were doing with sufficient
6 specificity to gauge the reasonableness and necessity of the
7 work, then the fees are simply noncompensable. There's nothing
8 in 330 that provides a litigation strategy exception. Now that
9 doesn't mean you got to give away all your secrets, but it's
10 also not a take-your-word-for-it matter. The professional's
11 got to give us some, some information here, enough detail for
12 the Court to make an informed assessment.

13 So in the Charter Oaks application, I'm disallowing
14 those entries that the examiner objected to as vague. I looked
15 at them myself and came to the same conclusion, but I am doing
16 so without prejudice to allow them to amend and, and reclaim
17 those monies after the June 20th confirmation hearing. We got
18 too much to do to be backtracking around. If the parties don't
19 do their fee applications properly the first time, they're
20 going behind all the other things we need to do.

21 So we don't have time for this kind of extraneous
22 exercise right now. And if Charter Oaks applies for the parts
23 that I'm disallowing now and the clarifications are provided,
24 that resurrects the ability of the other parties, the examiner
25 and the debtor, or whoever, to raise their alternative argument

1 about reasonableness of the work. Right now, it's getting cut
2 out because of the vagueness.

3 There is a lurking question in this application that's
4 pointed out by the examiner about how often and to what extent
5 is it necessary for the ACC to review the finances of EnPro,
6 the debtor, and Coltec. It appears to me to be a tremendous
7 cost for what may prove to be little or no need. We've got a
8 lot of work that's already been done on this topic. The level
9 of analysis looks, on the face of it, to be excessive and I
10 wonder whether we really need to do this quarterly, if that's
11 what this is. I've been told in argument that there's a need
12 to know for settlement purposes. Well, frankly, I don't buy
13 that. Y'all are not showing a lot of signs of being close to a
14 settlement. You're racing to a contested confirmation hearing
15 fighting every issue on the way.

16 So I don't think continuous evaluations are necessary
17 for that purpose. Also, from what's been said previously in
18 the case and what's in the plan it looks like the debtors'
19 ability to fund the estimated liabilities that it would bear
20 under this burden isn't really in doubt. In fact, from what
21 I've been told, it may have enough cash in its current asset
22 section of the balance sheet to retire all the estimated claims
23 right now, assuming that number holds, of course. Meanwhile,
24 the ACC's been telling me loud and clear that the parent's
25 contributions are basically peanuts, small amounts compared to

1 the liabilities and most of it's spread out over long periods
2 of time and is highly contingent as to whether it's ever going
3 to be paid.

4 So question whether you really need a whole lot of
5 analysis of the parents, at least for purposes of this plan.
6 In fact, the feel of this -- and I don't want to go too far on
7 this 'cause I'm reading tea leaves -- but the feel of it is
8 similar when, to those situations where in a piece of
9 litigation before you ever get to a judgment the parties are
10 trying to do discovery about the defendant's assets and you
11 think what's going on is really trying to see what you're
12 playing for and what you can keep tabs on to negotiate for.

13 So bottom line is I've -- I've -- I'm sympathetic. I
14 understand you need to pay attention to where they are
15 financially, but it looks to me like it may be overdone at this
16 point in time. Again, I'm not dealing with the reasonableness
17 now because of the prior ruling, but I think some -- we're
18 trying to give you some guidance -- some periodic review in
19 this area is warranted, but it needs to be proportionate to the
20 size of this case and the liabilities involved. It would
21 strike me that doing this a couple of times a year would be
22 about as much as anything would ever need. More than that,
23 I've got my doubts, but I'll listen if you think there's
24 something to be said to the contrary in future applications.

25 So for the purpose of the present application of

1 Charter Oaks, on an interim basis I'm sustaining the examiner's
2 objections to the point of denying the 58,600 number. The
3 debtors' objections over and beyond what the examiner has
4 sought, those are overruled for now. Again, if Charter Oaks
5 comes back to the table and reseeks those fees, we'll talk
6 about, more about the overall level of reasonableness.

7 And I'll have a few more things to say about the
8 debtors' objections to the ACC's professionals, generally, when
9 we get to that application.

10 Okay. So that's the first one.

11 The next application of the FCR, Future Claims
12 Representative's professionals, we've got the 15th Orrick
13 application looking for fees of about 279,800, expenses of
14 about 19,000; the 14th Grier Furr application goes for 19,600,
15 expenses of about 1400; the 14th application by the FCR himself
16 is looking for 45,925 and expenses of 1404.87.

17 And then there's an application by the Hamilton
18 Rabinovitz firm, which is very small dollars, and the Lincoln
19 Partners application for \$65,000. The last two, Lincoln and
20 HRA applications, there were no objections filed to those and
21 those are approved.

22 The only objection to Mr. Grier's application was the
23 March 11th time entry and the parties have dealt with that by
24 agreement. And so the objection's overruled now and reserved
25 for final fee purposes.

1 So that application's approved as well.

2 So that leaves us with the Orrick and the Grier Furr
3 applications.

4 There have been some small dollar agreed reductions
5 and reservations of rights between the examiner and the firms
6 and those are adopted without elaboration.

7 The remaining disputes get more into the interesting
8 question, interesting only to those of us who are lawyers and
9 professionals, about when can you get paid for defense of fees
10 and what is a defense-of-fee issue. The examiner is the only
11 objecting party in regard to these two applications and he has
12 focused on two points that he believes are an issue. The
13 drafting and negotiation of the fee procedures in the case, he
14 was looking for a partial reduction, only \$3578 for Orrick and
15 720 for Grier Furr, and he's also looking for another reduction
16 of 2702.50 by Orrick and \$1,008 by Grier Furr in what he
17 considers to be defense of fees, basically the time spent
18 responding to his questions and providing information,
19 negotiation, and all that sort of thing. Let me see if I can
20 back into this topic, generally.

21 First, Baker Botts. You're right as to what Baker
22 Botts' factual circumstances were. They were actually in
23 litigation about those fees and, perhaps, that is a point that
24 makes some of what the Supreme Court said dicta, but, as we
25 know, Supreme Court dicta is very good dicta and the lower

1 courts are supposed to respect it. I think the thrust of Baker
2 Botts is pretty clear as is 330. Section 330 takes
3 compensability for your fees up through the point of the
4 application. However, once you get beyond that point and start
5 negotiating and then litigating over those fees, my view of it
6 is that that's on the professional, not the bankruptcy estate.
7 And so you're not generally paid to defend your applications.

8 I -- hmm. I agree with Mr. McDow that litigation
9 often starts before we get into the courtroom and I believe
10 that to rule other than what I was suggesting would reward
11 deficient or improper fee applications with the estate paying
12 for the exercises of a professional fighting for its own
13 awards. That would be contrary to the Code philosophy that
14 administrative expenses are narrowly construed and the
15 applicant has the burden in order that we preserve estate
16 assets. Now that's, that's the overarching.

17 Here, we've got a little bit of a different situation
18 because we put the fee procedures in and we asked that these
19 procedures be put in and we've got a big, messy, complicated
20 case with a great many professionals, a very quick path to, to
21 confirmation, and very limited court time. In other words, I'm
22 saying we need to be practical, folks. In this case, this
23 size, this many people involved, and all the issues that have
24 between us I believe the fee procedures were a necessity and
25 they also serve as a benefit to the estate and standardization

1 is a benefit to the Court in the sense that these procedures
2 enable us to compare apples to apples, not oranges. And here's
3 no doubt Ms. Wright being involved and fully knowledgeable of
4 local practice was a benefit to the exercise and that the FCR's
5 professionals played a beneficial role in reaching these
6 agreements.

7 So the bottom line is I'm, I'm inclined in the
8 circumstance of this case to say that the time spent
9 negotiating fee procedures is compensable.

10 As to defense-of-fee applications and what that
11 consists of, again, under the procedures we adopted we're
12 encouraged to try to take and resolve Mr. McDow's objections
13 and those of each other, if possible. And I think that, that
14 in and of itself is a beneficial exercise. We need to
15 encourage settlement in this case as much as possible. Simply
16 put, none of us have time to fight these fee fights every
17 quarter, much less every, every month. And y'all have had to
18 spend an inordinate amount of time and expense getting to this
19 point on these applications, particularly the one between the
20 debtor and the ACC's professionals. For its part, I spent a
21 lot of the last week poring over fee applications and fee
22 objections, time that would have been better for all of us if I
23 had been spent reading summary judgment briefs and, and looking
24 at your cases. Those are much more important matters for all
25 of us and then there's that matter of the rest of my caseload

1 which needs its child's portion of time as well. We've somehow
2 or another have hit a point where this case is coinciding with
3 some fairly serious litigation in two other cases and court
4 time and brief-reading time is fairly limited.

5 So anyway, what I think we need to do with regard to
6 defense of fees we need to try to settle, if we can, but we've
7 got to pay attention to 330 and the thrust of the Baker Botts
8 case.

9 Whoever has got us on speakerphone, please hit your
10 mute button, if at all possible. I'm getting a whole lot of
11 noise.

12 But there needs to be some balance in this and I made
13 a suggestion at the last hearing -- and I saw some people
14 shaking their heads yes like it might work. I don't know --
15 but let's try it this way and see how it goes for now. I
16 believe that under the circumstances what we ought to do is
17 this and it's only a practical solution. And if you're a local
18 lawyer, don't read this back to me a year from now in another
19 case and say this is court precedent because it's not. This is
20 trying to arrive at a practical solution.

21 While I believe that the general rule is once you get
22 past the fee application, defense of fees isn't compensable.
23 What I'd like to do here is to recognize the practicalities and
24 try to do this. One of you were saying, a number of you were
25 saying that Mr. McDow's objections kind of string along

1 sometimes and he asks some questions now and comes back with
2 more questions and, gosh, I don't blame him at all for any of
3 that, given the magnitude of his task. But what I was thinking
4 we would do from this point out is, starting with the next
5 interim applications, let's extend Mr. McDow's time to file his
6 report for an additional two weeks -- we're going to need to
7 change a few procedures to accommodate this -- and ask
8 Mr. McDow as best possible, recognizing that this isn't
9 entirely possible, do the best you can to promulgate complete
10 lists of requests and questions to the applicant. I know there
11 will be some follow-up, but the goal is to get the bulk of the
12 questions raised on the front end in one inquiry. And what I'd
13 like to do is say that you can be compensated on an interim
14 basis, subject to reasonableness and necessity, for the first
15 round of inquiries trying to resolve these matters, to figure
16 out what his questions are and to answer them, and to,
17 hopefully, work through those issues.

18 So one, one round of doing that. And after that, I
19 think you're on your own nickel if we continue to fight about
20 them for purposes of interim fee allowance. Everything I'm
21 talking about today is interim, so.

22 But on the interim basis we won't pay for that
23 exercise and if any of y'all want to come back at the end of
24 the case in final fee applications argue about Baker Botts some
25 more and what it should and shouldn't mean, fine. But let's

1 see if we can't get some things off the, off the contested list
2 and get it worked out.

3 Now I've been talking about the questions of
4 Mr. McDow, not other parties. The debtor has its own series of
5 questions. For the most part, those appear, largely,
6 duplicative of what the examiner's been concerned. I'd like to
7 see the, the objections by parties to each other's fees be
8 reduced, but at the same time the -- well, the bottom line is
9 I'm not going to rule one way or the other. I'm just going to
10 leave that in a fuzzy area of we can talk about it.

11 But the point, generally speaking, is at least getting
12 these applications in a posture where the fee examiner
13 understands them and can give the Court a take of what he
14 believes is allowable. I think one pass at that is, should be
15 compensable and we can talk about the rest.

16 And as to the FCR professionals, the amounts in
17 controversy that the examiner has called defense-of-fee
18 disputes are so small, they don't warrant trying to separate
19 them out. I'm just going to allow half of the entries, which
20 means 50 percent of the 2702 to Orrick and half of the 1728 by
21 Grier Furr. And again, you can reserve your rights and come
22 back and try to argue for the rest of them at the end of the
23 case.

24 So that gets us through that. Well, there was one
25 other matter on the fee applications and my law clerk and I,

1 seizing on all things to argue about with one another, have
2 been debating at the end of the day whether these airline agent
3 fees save money to the estate or cost it. Obviously, a lot of
4 y'all travel by air to court and we want to reduce your travel
5 expenses. Currently, the fee procedures say that these are
6 part of overhead and they're not allowed and that's where we
7 are, but if y'all want to revisit that topic and think that
8 they should be allowable, we just need one rule one way or the
9 other. I could see where if you got an agent in that allowed
10 you to save some money on your airfare by being able to make
11 changes that save money, that that, that would be worthwhile.
12 It's not a big-ticket item and it's not worth a lot of time
13 discussing. But right now, under the procedures those fees are
14 not allowable.

15 So I would, would make that ruling in this case.

16 MS. WRIGHT: Your Honor, may I ask for a clarification
17 on your ruling on my fees, please?

18 THE COURT: Yes, ma'am.

19 MS. WRIGHT: We had -- you had called out half of
20 1728.

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

23 MS. WRIGHT: I believe that should be half of 1,008
24 because that's the defense-of-fees portion.

25 THE COURT: Okay.

1 MS. WRIGHT: The 720 was the Garlock procedures and
2 you had previously allowed that.

3 THE COURT: Right. I may have an error there,
4 Ms. Wright.

5 MS. WRIGHT: It -- you know, it's pennies, but --

6 THE COURT: Every --

7 MS. WRIGHT: -- it matters.

8 THE COURT: Surely.

9 MS. WRIGHT: Thank you.

10 THE COURT: We'll take another look at that and unless
11 I call you back, that's fine. We'll use the 1,008 number,
12 okay?

13 MS. WRIGHT: Thank you, Your Honor.

14 THE COURT: All right. It's not worth tying up a lot
15 of time about. Okay.

16 Now to the main event, the ACC's attorney's fees.
17 Technically, two firms, but the debtors' objections were
18 primarily directed to the Caplin & Drysdale fees. The FCR, of
19 course, has reached a separate agreement with the ACC's
20 professionals for reductions and reservations of rights. I'm
21 accepting that level and the rest of what I'm going to say has
22 to do with the additional and heavier objections made by the
23 debtors. And I'm going to talk my way into this rather than
24 talking about individual items for a while. And I'm going to
25 start with a little hyperbole of my own. I've heard some of

1 yours and I guess I ought to get a shot in every now and then.

2 But the bottom line is looking at these fee
3 applications -- and I have spent a lot of time reading them and
4 the briefs -- it raises, in my mind, the metaphysical question
5 of whether or not when engaged in a fight to the death whether
6 one side's efforts can be said to be unreasonable as compared
7 to his opponent's. These fees are high. The case fees are
8 extremely high. The current application fees are high and
9 that's not just reserved for Caplin & Drysdale or the ACC's
10 professionals. That's everyone's. I remember back before I
11 got into this case someone told me around the time of the
12 estimation hearing what the total amount of fees were in this
13 case and I was a bit stunned. To anyone other than the
14 professionals involved in this, the fees racked up to this
15 point in this case appear outrageous.

16 Now I've been in the case about a year now active and
17 I understand why they're so high. In part, it's because this
18 is a large Chapter 11 case and in part, it's because it's an
19 asbestos case which, in many ways, is very complicated and more
20 so than most Chapter 11s and part of it's because you have such
21 a difficulty. You're dealing with things that are subject to
22 opinions more than provable facts, at least on the front side.
23 You know, how much is really owed by this debtor to claimants?
24 How many of these people were made sick by Garlock, you know?
25 What is, effectively, a fair compensation level here? But when

1 I really get down to it, I think it's not those things that
2 have driven the fees so high to this point in the case. It's,
3 rather, the posture of the parties and their goals and the way
4 they have chosen to litigate this matter and I don't know if it
5 works this way in every asbestos case, but I sort of doubt it.
6 Because the fees aren't that high in many of them.

7 But what it looks like from my chair and what you've
8 taught me over the last year is that Garlock, after about 30
9 years of getting sued and paying out some serious money in the
10 state courts for diseases that it believes it didn't cause, has
11 just basically decided the state court system is unfair and
12 unreliable. And it also doesn't care much for the several
13 dozen asbestos cases and the models that they used to treat
14 claims under trusts to say nothing of Section 524 and its
15 voting requirements. I don't want anyone to get excited about
16 any of those issues. We're teeing those up on the 6th. I'm
17 not foreshadowing anything.

18 The point is, the debtor doesn't like the system and,
19 effectively, it thinks it's created a better mousetrap and a
20 method of resolving claims that's cheaper than litigation in
21 the state system and fairer than what the other trusts have
22 done and that it ferrets out meritorious claims better and is
23 fairer to itself and to its shareholders and Garlock wants to
24 use that method, even though it's been categorically rejected
25 by, first, the ACC and now the Class 4 vote.

1 And in another anomaly even among asbestos cases,
2 Garlock is aided in this by the FCR, which it's made its peace
3 with the debtor presumably because the old, it believed the old
4 bankruptcy mousetrap didn't work, either, for future claimants,
5 saying that the trusts have run low on assets and cut their
6 distributions, but probably, also, because the low, if you're a
7 claimant, the low mesothelioma estimation number. I suspect
8 Mr. Grier is making the best of what he considers a bad
9 situation and has been successful in increasing the size of the
10 pot and he's also got claims procedures that make it less
11 likely, in his mind, that the pot will be dissipated before the
12 future claimants get to it. So that's -- but that's strange to
13 have the Future Claims Rep siding with the debtor and not with
14 the current claimants.

15 And then on the other hand we've got the ACC that not
16 only wants to maximize recoveries for current claimants and
17 believes that the estimation number is too low and these
18 procedures are too demanding, it wants to, to stop this plan
19 and force a better deal. And I can't argue with that. That's
20 a meritorious position, if that's what you believe, but it also
21 has a vested interest in the status quo because the ACC, like
22 such committees, of course, is effectively run by plaintiffs'
23 firms. And so to a certain extent, from my chair, it looks
24 like the ACC is interested in protecting the state tort system
25 and the prior bankruptcy case models from assault.

1 So it's not eager to look at new mousetraps. And the
2 524(g) arguments, which we will be dealing with in just a few
3 days, it doesn't want to deviate from 524(g) for obvious
4 reasons. It gives a superpriority -- excuse me --
5 supermajority vote to current claimants, as currently
6 interpreted, and that, not surprisingly, is why the ACC
7 believes that's the only way you can confirm a plan here.

8 Those are novel, but important issues and I'm looking
9 forward to addressing these issues of substance as compared to
10 unpleasant fee fights and discovery disputes and I'm hopeful
11 after January we can start moving this case towards a
12 resolution.

13 But somewhere along the way in the last five years
14 y'all lost some sense of proportion about what this case is
15 about. The fight-to-the-death illusion seems to be manifested
16 by showering your opponents with very burdensome and expensive
17 discovery that may be unlikely to provide evidence to make your
18 case, but it certainly does a good job of tying up your
19 opponent. We've got pleadings that have been drafted that
20 don't even exist under the Rules of Civil Procedure, such as
21 replies to surreplies. And along the way, this has become kind
22 of a spare-no-expense effort. I think that is sad because
23 these monies could be used to be paying claimants or
24 shareholders, or whoever would be entitled to them.

25 So the behavior has gotten more extreme and

1 unreasonable and the firms' profit along the way.

2 I've also noticed and not much appreciated how at
3 these hearings you almost shower your opponents with antipathy
4 and accuse them of unreasonable tactics, even though the
5 tactics look a whole lot like your own. And I have seen the
6 same arguments get made time and time again in the courtroom.
7 I, I guess some of these you're trying to drill into me, but
8 maybe it also seems like some of the arguments you make have
9 been made so many times that you're expecting your opponent by
10 hearing them so often will be brainwashed and capitulate.

11 So I don't think that's going to happen. Along the
12 way, the parties seem to have forgotten the size of the fight.
13 Now unless disturbed on appeal -- and y'all know how, what
14 that's going to involve -- if you're going to try to overturn a
15 17-day evidence-backed ruling, you're going to have hard times
16 doing that.

17 Someone needs to hit the mute button. Might say
18 something nasty about the Judge and that'll hurt, so.

19 Okay. Listen, along the way it seems to me the
20 parties lost appreciation for the size --

21 Are you still getting this? We may have to jump on
22 someone.

23 One more time. Whoever is listening and making noise
24 with the speakerphone, please hit the mute button or, or drop
25 off. We're getting a lot of extraneous noise, okay? All

1 right.

2 Anyway, the bottom line is Judge Hodges says that the
3 mesothelioma claims are only 125 million. You've stipulated to
4 the non-mesothelioma claims at about 22 million. Thus, with no
5 real creditor body, the case is about \$150 million.
6 Professional fees are over 118 million and I daresay with what
7 we've done over the last few weeks they're beyond the amount in
8 controversy. Now it doesn't take an asbestos expert to know
9 that when you have spent more in attorneys' fees than the
10 subject matter of the litigation you've spent too much. And I
11 don't think it's just because the estimation figure was a low
12 number, if that's what it was. Even if the ACC's number had
13 been adopted, it would still be disproportionately high.

14 It appears to me that because of the novelty of the
15 debtors' plan and the antipathy of the parties, you're working
16 this case now as if it were the size of the General Motors case
17 or Manville or Grace. In fact, maybe bigger than Grace based
18 on some of these fees, which I think you said had about \$7
19 billion of liabilities as opposed to the 150 that we're talking
20 about.

21 But the bottom line is that as we move towards
22 confirmation, an unprecedented confirmation that's contested
23 with the cast of characters and the allies that have been made,
24 the costs seem to be going up and the issues seem to get
25 broader, even though we all know that a contested confirmation

1 hearing isn't the preferable way of resolving this case. In
2 fact, no one's done it, apparently, so, at least among the core
3 constituencies.

4 Now I, I realize these are complicated cases and
5 they're atypical questions and you're all very bright and very
6 motivated lawyers and if, as Robert Frost once suggested, "The
7 jury is determined with deciding who has the better lawyer," I
8 will tell you the jury is hung. You're all very bright, sharp
9 people and extremely motivated. But there's really nothing
10 about this case that justifies the level of fees. What is
11 different in this case and the ones before it there and even
12 the J. A. Jones case, which we had and which, frankly, was
13 bigger in liabilities by far, but yet the fees were, were
14 greatly less than this seems to be the parties' attitude and it
15 looks to me like you need to change what you're doing.

16 You're not going to get the other side to capitulate
17 just by the strength of your arguments. Maybe y'all are doing
18 things in negotiation that I don't know about, but in the
19 courtroom it looks like that there's this concede-nothing
20 attitude that, that has prevailed. And when you lose a motion
21 -- and I'm talking to all sides now -- it looks like the
22 natural response seems to be, "Well, let's file a motion for
23 reconsideration or to reopen or," if it's discovery, "let's
24 just try it again by doing it a different way and asking for
25 the same information from someone slightly different." And

1 we're seeing motions that have been extensively briefed and
2 argued open for reconsideration time and time again. The
3 parties seem to think that there should be no limits on their
4 own actions, even though anything the other side does in
5 opposition is inherently unreasonable. There is an old proverb
6 that says that, "The houses of lawyers are roofed with the
7 skins of their clients." Indeed.

8 So with that, let's talk about the current
9 application. The debtors' belief is that the Caplin firm, for
10 the most part, and the ACC's professionals, generally, are
11 overworking the case. And this for the third time has been
12 raised and suggested. The truth of the matter is I can't find
13 on this record that the ACC's professional fees are
14 disproportionate to its opponents' professional fees. It's how
15 you slice and dice the applications and, frankly, we've looked
16 at them and looked at the underlying applications. We've
17 looked at your briefs and it's just not clear there. There's a
18 lot to indicate that the fees are balanced between the two
19 sides, if you will, if you put the FCR currently on the, on the
20 debtors' side of things.

21 What is also clear is the fees are excessive and
22 unreasonably so. Well, normally, the answer to that is start
23 hacking on fees, but I can't do as the debtor suggested and lay
24 this all off on the ACC because I can't find that, that they
25 are doing anything different than the way the debtors and the

1 FCR, to a point, are doing as well. I can look at things and
2 tell you that billing \$140,000 for a six-page reply is
3 unreasonable. If written in gold leaf, it shouldn't have cost
4 that and particularly since there's no procedural animal and
5 that that was a reconsideration motion that had been the
6 subject of great debate and expense when it was first put up
7 and it failed. But then the debtors' suggested reasonable
8 amount, \$80,000, which was the cost of its surreply, strikes me
9 as also being unreasonable.

10 So both are being unreasonable and that gets me back
11 to my metaphysical question. In a case where the debtor is by
12 its own admission solvent and is in bankruptcy because it
13 wishes to replace the tort system with its own way of
14 addressing asbestos claims and where future claimants are
15 siding with the debtor and fighting the present claimants
16 trying to preserve the pot where the ACC's fighting for not
17 just its own constituents' interest in this case, but in large
18 measure to preserve precedent, meaning the existing case
19 procedures in the tort system, in hopes that the new mousetrap
20 won't hit the market for, God forbid, 'cause other courts might
21 actually buy it. Forgive me for mixing the metaphors, but you
22 get what I'm talking about.

23 The question is how far should the bankruptcy court go
24 to rein in these parties and their efforts to prevail in this
25 litigation. It is litigation and not bankruptcy and it's a

1 solvent estate. So the usual reasons to justify fee reductions
2 and holdbacks, meaning the need to conserve precious resources
3 for the benefit of creditors, aren't there.

4 On the other hand, the debtor is having to bear those
5 fees and there is the integrity of the bankruptcy process that
6 leaks into this.

7 And third, and frankly, most on my mind at the present
8 moment are that these scorched earth tactics are eating up a
9 tremendous amount of court time and judicial resources. And
10 that comes, sorting out all of your many disputes, comes at the
11 expense of other bankruptcy cases and other bankruptcy parties
12 who are insolvent and in need of this Court's time. To them,
13 it's not a litigation option. They're here because they have
14 to be.

15 To this point in this case the Court has not
16 constrained the parties on their attorney's fees. The bulk of
17 those fees, of course, were incurred before I got in the case
18 and I haven't sat down with Judge Hodges and tried to go
19 through all the reasons why he did what he did when this issue
20 came up previously and why he, whether he thought about
21 holdbacks or cost reductions. All I've done is look at his
22 rulings and looked at what's happened in the case.

23 The way I read his prior rulings that declined to
24 reduce the ACC's fees when the debtor previously objected, I
25 don't think they reflect as much that he was saying they were

1 entirely necessary and reasonable. I think more that they
2 appeared to be that the debtors were given as good as they got
3 in this case. And so that if you were going to pay one, you
4 had to pay both. I think more probative to all this, though,
5 was the fact that, as one of his last acts in this case, Judge
6 Hodges decided to appoint a fee examiner to get rid of some of
7 this stuff. I think he realized it had gotten to the point
8 where it was problematic. For my part, I've tried to settle in
9 this case and stick to what he had till I knew which end was up
10 and now I feel like I've got a feel for the case. Y'all might
11 feel differently, but I, I think I understand it at this point.
12 We've got a confirmation hearing six months away, summary
13 judgment motions eight days away, and we are straining the
14 ability of one Judge and his law clerk just to read your
15 materials and hear your disputes and I don't want to have a
16 couple more rounds of fee applications and fights in the
17 courtroom over these between now and June. So what to do?

18 All weekend and this morning, as late as this morning,
19 I was thinking of just beginning to hold back allowing some
20 percentage of professional fees. I was thinking about 75
21 percent of the fees that otherwise comply with the procedures
22 and let y'all come after the others, after we get past the
23 point of confirmation or towards the end of the case.

24 Now, frankly, I talked myself out of that idea this
25 morning and I've decided to delay taking action like that for a

1 bit longer in hopes that your better natures will prevail and
2 you'll make that unnecessary. I'm not being a Pollyanna about
3 this, but I do remember being a lawyer and I remember how
4 holdbacks hurt a law firm and create other tensions in a case
5 and I don't want to add to your burdens at a time when I want
6 you fully devoted to trying to get some important case issues
7 resolved with us. But I am forecasting where I'm at. If the
8 parties don't get more focused and more reasonable in their
9 approach to this case, I'm going to start reducing the fees
10 across the board.

11 So take a word for the wise there and let's see if we
12 can make this unnecessary. For present purposes, I'm
13 overruling the debtors' objections to the ACC's professionals'
14 fees. I'm adopting the examiner's objections and his
15 accommodations that he arrived at with the professionals. I
16 think he's got a reasonable resolution on the ACC's fees, given
17 the restrictions with what I've said earlier.

18 Now the last thing I want to say before we finish
19 today is this:

20 Mr. McDow, you've taken a few hits over the last
21 couple of hearings and I'm, I know that you're performing a
22 task that is thankless and, and gets the ire of the
23 professionals in this case. I can still remember Judge Wooten
24 holding back on me one time and I never got over it. I still
25 think he was wrong and it's the sort of thing, when you object

1 to fees, things get very personal very quickly.

2 And, Mr. McDow, you've, you've come into this case
3 without an agenda or a side. I want to tell you, if no one
4 else, I greatly appreciate and respect the job you've done thus
5 far. Determining fees in a case of this size and this level of
6 complexity is difficult, but you've certainly simplified the
7 Court's task.

8 And just as an aside, I would remind the parties that
9 Mr. McDow, when it comes to the adherence to these fees
10 procedures, is charged with being stubborn. Even if you don't
11 agree with him, he's got to do what his conscience dictates and
12 we'll sort it out here.

13 So that's it. We'll do orders consistent -- if the
14 parties will submit them consistent with those remarks.

15 And we'll try to get going and get focused on what I
16 really am looking forward to. I will tell you I've read over
17 at least on a single run of all the materials that have been
18 filed relating to the summary judgment motions and they look
19 really great. I'm looking forward to having that, that debate
20 that comes in with it.

21 So we, unless there are other issues y'all know of
22 that we need to talk about, we'll be back on the 6th.

23 Ms. Wright.

24 MS. WRIGHT: Just to be clear, did you want us to
25 submit orders that -- that just -- just say refer to the

1 comments today?

2 THE COURT: Right. You can -- you can --

3 MS. WRIGHT: Simple.

4 THE COURT: Unless someone feels the need to preserve
5 them for appeal or wants to try to go up now on something
6 and -- let's keep it the way we've been doing the prior orders
7 in the case.

8 MS. WRIGHT: Thank you, Your Honor.

9 THE COURT: Okay.

10 MS. WRIGHT: We'll do that.

11 THE COURT: All right.

12 Anything else today?

13 (No response)

14 THE COURT: Okay. Well, go and good luck. Keep
15 talking to one another. I think there's room for a settlement
16 in this case still, so.

17 All right. We'll recess now.

18 MS. WRIGHT: Thank you, Your Honor.

19 MR. MILLER: Thank you, Your Honor.

20 (Proceedings concluded at 3:09 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

December 30, 2015

Janice Russell, Transcriber

Date