UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

IN RE:	:	Case No. 20-30608 (LMJ) (Jointly Administered)
ALDRICH PUMP LLC, *et al.*,	:	
Debtors,	:	Chapter 11
	:	Charlotte, North Carolina
	:	Thursday, February 26, 2026 9:34 a.m.
	:	
OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS,	:	AP 21-03029 (LMJ)
Plaintiff,	:	
v.	:	
ALDRICH PUMP LLC, MURRAY BOILER LLC, TRANE TECHNOLOGIES COMPANY LLC, and TRANE U.S. INC.,	:	
Defendants,	:	
OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS, on behalf of the estates of Aldrich Pump LLC and Murray Boiler LLC,	:	AP 22-03028 (LMJ)
Plaintiff,	:	
v.	:	
INGERSOLL-RAND GLOBAL HOLDING COMPANY LIMITED, TRANE TECHNOLOGIES HOLDCO INC., TRANE TECHNOLOGIES COMPANY LLC, TRANE INC., TUI HOLDINGS INC., TRANE U.S. INC., and MURRAY BOILER HOLDINGS LLC,	:	
Defendants.	:	

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

APPEARANCES:

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

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P R O C E E D I N G S

(Call to Order of the Court)

THE COURT: Morning, everyone.

MR. EVERT: Good morning, your Honor.

THE COURT: I've never been in this courtroom before. Give me a second, all right?

All right.

MR. ERENS: Okay. We'll start with appearances on the debtors' side. Brad Erens, E-R-E-N-S, of Jones Day on behalf of the debtors.

MR. EVERT: Your Honor, Michael Evert from Evert Weathersby Houff for the debtors.

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

MR. TORBERG: Good morning, your Honor. David Torberg from Jones Day on behalf of the debtors.

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

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

MR. WALDREP: Your Honor, Tom Waldrep, Waldrep Wall Babcock & Bailey, for the Maune Claimants.

MR. WEHNER: Good morning, your Honor. James Wehner

from Caplin & Drysdale for the Official Committee of Asbestos Personal Injury Claimants.

THE COURT: Good afternoon.

MS. HARDMAN: Good morning, your Honor. Carrie Hardman from Winston & Strawn, as special counsel for the Asbestos Claimants Committee. I will try to also just be efficient about this, if your Honor will allow me. With me from Winston is Cristina Calvar and Elizabeth Ireland from Winston; from Caplin & Drysdale, as well, we have Nate Miller and Serafina Concannon. And from Robinson & Cole, we have John Cordani and Annecca Smith. And last but not least, saving the best for last, of course, Mr. Cox from Hamilton Stephens Steele & Martin.

Thank you.

MR. GUY: Good morning, your Honor. Jonathan Guy for the FCR, who's here. I'm also with Cotten Wright and Amy Lenz.

Thank you, your Honor.

MS. ABEL: Good morning, your Honor. Shelley Abel, Bankruptcy Administrator.

THE COURT: Good morning.

All right.

MR. EVERT: Your Honor, good morning. Michael Evert for the doubters.

Before we get into the meat of the agenda this morning, as, as you know, the next deadline in the Phase 1

estimation trial Case Management Order is the preparation of rebuttal reports, which will be served at the end of March. And we, we've been working, certainly. I'm sure both, all sides have been working on their rebuttal reports. We've been -- we -- we owe the ACC some reliance materials. We recently requested some more from them. All, that process is all going fine.

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

MR. EVERT: But I stand this morning to just raise a couple of questions. So the first is one of the rebuttal witnesses that we're considering is unavailable the week of August 10th. Don't worry. I'm not going to request to move the trial. What I was going to make sure was okay with the Court is that, of course, under the Rules, we, we would go one of two ways with this witness. We would do them a, a *de bene esse* deposition by video and present to the Court by video. This witness is also available the week after. So if the Court wanted to hold the record open for her to come, you know, the week after, then that could be done.

But we wanted to make sure before we retained this witness that one of those possibilities would be fine with the Court, the Court wouldn't have an issue with the witness being presented in that fashion, either one the Court preferred. Just, just to make sure it was okay with the Court's practices.

THE COURT: All right. Have you --

Does anyone have any opinion on this or objections to this?

MR. WEHNER: Your Honor, we just heard about this. So I don't know that we have an opinion yet, but I'm sure we can work something out. It sounds like a thing we can work out.

THE COURT: Okay.

Mr. Guy?

MR. GUY: The same, your Honor. I don't have an issue with the *de bene esse* deposition. That's fine. Whatever works for the parties.

THE COURT: All right. Yeah. I, I think the next week could be, could be easier said than done, but just because how schedules are. That's my only concern.

MR. EVERT: Right.

THE COURT: But, you know. So to the extent -- but I'm willing to accom, I'm willing to accommodate. Whatever works. Of course, you know, everyone just has to have a chance to examine --

MR. EVERT: Oh, sure.

THE COURT: -- you know.

MR. EVERT: Sure. Yeah. And, and we'll, we're fine either way. And of course, you know, the, the, the Rules, clearly the Federal Rules allow schedule a, an evidence deposition, to have it. We just wanted to make sure. Some,

some courts, particularly for bench trials --

THE COURT: Right.

MR. EVERT: -- like all the witnesses to be live. And we wanted to make sure that you'd be happy -- and we don't have to decide live or, or --

THE COURT: Well --

MR. EVERT: -- *de bene esse* right now.

THE COURT: -- I mean, I'll be honest that certainly a live witness is better. I mean, I'm not going to, you know, but if that's all that's -- but that -- so that's your choice as a litigator.

MR. EVERT: Okay.

THE COURT: But certainly, for me, certainly a live witness is, you know, I, I generally get a better, you know, just --

MR. EVERT: Sure.

THE COURT: I don't know. It's that, you're in the same room with them.

MR. EVERT: Sure.

THE COURT: So.

MR. EVERT: In person is better than Zoom. I get it.

THE COURT: You've done, we've, we've done a lot of that.

MR. EVERT: Right.

THE COURT: And so, you know, that, that's, you know,

something you just need to consider.

MR. EVERT: All right. Well, we'll, we'll talk to, we'll talk to, to everybody and as we get closer --

THE COURT: Right.

MR. EVERT: -- we might inquire of the Court if there's a way that we could bring her, you know, the next week and if that would work with the Court's schedule, if it would work with everybody's schedule. We'll, we'll figure something out. But we just wanted to make sure that we weren't foreclosed from this witness because of the Court's --

THE COURT: Right. I mean, the complication, also, with the next week is then are you going to do -- we're going to do arguments after that?

MR. EVERT: Well, actually, that was my next question, your Honor, about that. Were, were you envisioning opening and closings or were you envisioning that to be done on paper? I mean, very often what courts do, they, they do both. But very often what courts do in bench trials is say, "Yeah. File me, file a trial brief pretrial."

THE COURT: Right.

MR. EVERT: "Let me read it." Then we'll come in, we'll go straight into the testimony, and then after the testimony ends, we'll file post-trial papers that essentially serve as our closing argument.

But I don't know the Court -- and other courts prefer

live oral openings and closings. So we were trying to plan for all those things as well and I, I didn't know where the Court was.

THE COURT: I do prefer pre-trial briefs. I don't necessarily need openings that -- so we could just go right into, right into it. I, I do, generally, appreciate oral arguments, closing --

MR. EVERT: Okay.

THE COURT: -- arguments, as well as papers. But -- so that, that is, that's the issue with not being finished at the end of the time we've blocked out.

MR. EVERT: Right, I understand.

THE COURT: Right.

MR. EVERT: And, and that, and, and we get that. So we'll, we'll, we'll factor that in, obviously, into our, into our thinking. And that's, that's why I wanted to have this discussion.

THE COURT: Right.

MR. EVERT: So along the same lines was, there was a little disagreement among our group and comments of the Court about the August 10th week. Is, is your plan or view that the, that we have five days to try the case and we've got to work out how to split up the time? Or is your view that we start on August the 10th and it ends whenever it ends, obviously, but subject to the Court's discretion?

THE COURT: Right. I mean, you don't need to take five days if you don't need five days

MR. EVERT: No, I understand. It --

THE COURT: But --

MR. EVERT: I understand. It starts on August 10th and it ends in three days --

THE COURT: Right.

MR. EVERT: -- it ends in three days. If it ends in six days, we got to figure out where the sixth day comes from. Or, or did the Court have a, have a view on that?

THE COURT: My understanding is people were thinking about 3-1/2 days. Was that, is that still the thought?

MR. EVERT: Well, your Honor, honestly, until all the experts are deposed --

THE COURT: Right.

MR. EVERT: -- it's really hard to estimate what --

THE COURT: Right.

MR. EVERT: -- we think the time will be. I mean, in -- in -- I've only tried one other of these --

THE COURT: Right.

MR. EVERT: -- estimation trials, and the primary, what I will call estimating wit -- the, the witnesses who issued the, or the experts who issued the initial expert reports, in each of those, in that case, their testimony, direct and cross, took a day, and in one case, even a little

more than a day. So, and that's before you get to any rebuttal witnesses.

So I, I don't, at this point in time, I had no way to forecast for the Court. And I don't think anybody here has any way to forecast for the Court what sort of timing we'd be looking at. But I'm just --

THE COURT: I envisioned what, I don't know, would it be June, July, somewhere in there, that we would have a gathering and sort of try to map out, out times? That's what I was thinking.

MR. ERENS: Have a pre-trial conference.

THE COURT: You would know better then.

MR. EVERT: Oh, absolutely.

THE COURT: We do have the five days. And in part, I wanted to have that, also, just in case whatever happens, you know, just to have a little bit of buffer since it's so hard to get everyone's schedule aligned, you know. I just wanted to have that buffer.

So I wasn't meaning that it would take the full five days, but we do have that. Now if we're thinking we need an extra day the next week, we need, I think, sooner than better, we need to see if we can agree on a date.

MR. EVERT: All right. Well, we have a, we have a pre-trial conference scheduled for, I think it's July 23rd, if memory serves me.

THE COURT: Right.

MR. EVERT: But it's somewhere in that ballpark --

THE COURT: Right.

MR. EVERT: -- which is about, about 2 weeks or 2-1/2 weeks before the August 10th start. And we, we certainly are going to have a much better idea by then of where things will shake out. But just to make sure I'm following the Court, as I understand what you're saying is, is that I want it done as quickly as it can be done. We, you know, there, there's, there's no, there's no need to use up a lot of time here. But if it turns out that, that it looks like it's going to take a little longer, then we can figure that out at the pretrial and, and see if there's a date aft, you know, one day the next week or whatever that would work or, is that where --

THE COURT: Well, that's not exactly what -- what -- you're correct until the last thing. I think if we want to go ahead and put a pin and a date for the next week, we should do it sooner rather than later.

MR. EVERT: Okay.

THE COURT: Because everyone's calendar is going to really, is going to fill up, including my own.

MR. EVERT: Okay.

THE COURT So do we feel -- does -- is this -- do we need to look at calendars and look at the next week?

MR. WEHNER: Your Honor, I think we ought to have a

chance to talk with debtors.

THE COURT: Right.

MR. WEHNER: We, frankly, don't know exactly what they're talking about quite yet.

THE COURT: Right.

MR. WEHNER: So before we start --

THE COURT: Yeah.

MR. WEHNER: -- putting things -- we, we took your admonition last month that this was going to be August 10th -- It's not going to move. It's going be three-to-five days.

THE COURT: Right.

MR. WEHNER: -- very seriously. I think we don't want to get into mission creep here and have, all of a sudden, two weeks and then three weeks and -- let's -- give us a chance to talk to the debtors, you know. We have time to make adjustments as necessary.

MR. EVERT: Yeah, sure. We're, we're, we're glad to talk about it. I don't think any of us knows for a little while, but we're glad to talk about it.

THE COURT: I mean, it's, you know. Yeah. I mean, it's just -- it -- I think it's unlikely that even the next week we're going to find a day when everyone is going to be happy with it, even now. I mean, practically. Think how hard it was to get the August 10th week when you're talking about your clients, you know, the committee member, everyone who

wants to be involved.

MR. EVERT: It -- and --

THE COURT: So I think you need --

MR. EVERT: -- let me be clear.

THE COURT: -- to make --

MR. EVERT: I'm sorry.

THE COURT: -- that decision as that, that's what you're, you're paid the big bucks for.

MR. EVERT: Right.

THE COURT: You need to make that decision as to, you know.

MR. EVERT: And let me be clear, your Honor. We're not asking for extra time.

THE COURT: Right.

MR. EVERT: I don't, I don't --

THE COURT: Right.

MR. EVERT: -- want this to be misinterpreted. I'm -- I'm -- we're, we're just trying to understand what the Rules are.

THE COURT: Right.

MR. EVERT: So --

THE COURT: What you have for me, guaranteed, is the week of August 10th.

MR. EVERT: Okay.

THE COURT: All right? And what you have of everyone

involved, guaranteed, is the week of August 10th.

MR. EVERT: Okay.

THE COURT: 'Cause I've told everyone the week of August 10th is mine here in this courtroom doing this. So that's what's guaranteed.

MR. EVERT: Okay.

THE COURT: So if you're making any sort of plans for anything outside of that, you do that at your own risk.

MR. EVERT: Okay. All right. We will -- well, then, we will talk to the parties and we will, we will --

THE COURT: Right.

MR. EVERT: -- come up with some, some plan.

THE COURT: 'Cause if we can't find a date the week after that works for everyone, it's not going to work. So you --

MR. EVERT: No.

THE COURT: Right? And I'm not going to do it in, like, September or, you know, we're not going to do that, so.

MR. EVERT: Again, your Honor, just --

THE COURT: Yeah.

MR. EVERT: -- just to be clear.

THE COURT: Yeah.

MR. EVERT: I'm not, I'm not trying to move dates around. I'm not, I'm not, I'm not wading into an area that I don't --

THE COURT: Right.

MR. EVERT: I'm just -- we're just trying to understand exactly the way the Court was viewing it, and now we know.

THE COURT: Okay.

MR. EVERT: Okay.

THE COURT: Yeah.

MR. EVERT: So that's very helpful.

THE COURT: All right.

MR. EVERT: Thank you.

And I think we'll move to the agenda now, which I think the first is the Maune motion.

THE COURT: All right. We -- we had one -- I had one other thing not on the agenda, which is I had a letter filed on the docket -- I assume that person's not here -- about an employment order asking for more time.

MR. EVERT: Your Honor, I, I think you're referring to a letter filed by the insurers --

THE COURT: Right.

MR. EVERT: -- the Resolute, the London Market Insurers in regard to the Committee's retention of FTI, or supplemental --

THE COURT: Right.

MR. EVERT: -- retention of FTI. And I think that the letter was filed because it was an *ex parte* motion and they

wanted --

THE COURT: Right.

MR. EVERT: -- the Court to hold -- and I --

THE COURT: So I mean --

MR. WEHNER: I think I can --

THE COURT: -- I've waited over a week.

MR. WEHNER: -- clarify.

Thanks --

THE COURT: Yeah.

MR. WEHNER: -- Michael.

The -- yeah. That, that a letter filed by the LMI Insurers. I don't think they were --

THE COURT: Russell Roten.

MR. WEHNER: Yeah. I don't -- they're not familiar with the procedures in this court --

THE COURT: Right.

MR. WEHNER: -- apparently, about, you know, 9013, where you do this *ex parte* and then there's a 14-day period. So I believe they filed that letter kind of, like, sort of spur of the moment.

But in any case, we are in contact with them. We're going to work something out and we'll let you all know what to do about it.

THE COURT: So I plan to sign the order.

MR. WEHNER: That's fine. If, if that's what you're

planning to do, that's fine.

THE COURT: Well, I mean --

MR. WEHNER: They, they have 14 days to --

THE COURT: Yeah.

MR. WEHNER: -- to --

THE COURT: I mean, I, I thought perhaps in the week they would do something, but I don't know if --

MR. WEHNER: We're talking with them.

THE COURT: Yeah.

MR. WEHNER: We're working something out.

THE COURT: Okay.

MR. WEHNER: If, if that involves some additional piece of paper, we'll let you know.

THE COURT: Okay.

MR. WEHNER: Okay?

THE COURT: All right. So that's all I had.

All right. Who's presenting the motion? Is it Mr. Waldrep?

MR. WALDREP: Your Honor, Tom Waldrep.

The movants seek to cross-examine the debtors and the FCR's witnesses in the estimation trials and to participate in the discovery depositions for those trials. The movants do not want to offer expert testimony or evidence. So nothing in the scheduling order would change. I know the Court has read the pleadings. So I have four points to make.

First point. Section 1109(b) says that a party in interest "may raise and may appear and be heard on any issue in a case under this chapter." Collier states:

"The general theory behind Section 1109(b) is that anyone holding a direct financial stake in the outcome of the case should have an opportunity, either directly or through an appropriate representative, to participate in the adjudication of any issue that may ultimately shape the disposition of his or her interest."

In the matter of Marin Oil, Inc., it's a case by the Third Circuit, 689 F.2d 445. And there, the Third Circuit affirmed a district court's reversal of a bankruptcy court. The bankruptcy court had allowed a creditors' committee to participate in an AP, but only as an *amicus*, only to submit briefs. Third Circuit analyzed the scope of Section 1109 and found it to be broad based on the legislative history and the purpose of the statute and determined that because it allows a party to raise an issue, that party must be allowed to more fully participate in proceedings, rather than simply voicing opposition or approval of arguments made by others.

The Second Circuit in In re Caldor Corp. -- the citation is 303 F.3d 161 (2002) -- quoted U. S. v. Ron Pair Industries, Enterprises, which is a Supreme Court case in 1989. There, the court said, "The plain meaning of legislation should

be conclusive, except in the rare cases in which the literal application of a statute would produce a result demonstrably at odds with the intentions of the drafters."

And this continues the quote from the Second Circuit.

So begin with the plain language of Section 1109(b) and its legal relevance. Black's Law Dictionary defines -- you know, I didn't think, your Honor, after 43 years I'd still be quoting Black's Law Dictionary. Here I am -- Black's Law Dictionary defines "the opportunity to be heard" as "encompassing the chance to appear in a court or other tribunal and present evidence and argument ordinarily, including the right to cross-examine adverse witnesses."

In the Financial Oversight case, which is cited in our response, the First Circuit talked about the broad rights granted to parties in interest by Section 1109(b). The First Circuit held that "1109 in fact grants parties-in-interest an unconditional right to intervene in adversary proceedings." That logic applies with even stronger force when we're talking about contested matters, which are, as the Court knows, less formal and include wide participation by debtors, creditors, trustees, bankruptcy administrators.

Recently, the Supreme Court discussed 1109(b) in Truck Insurance v. Kaiser Gypsum, 602 U. S. 268. That was two years ago. That case involved whether and to what extent an insurance company is a party in interest that could object to

confirmation of a plan. Counsel for the debtors in this case also represented Kaiser Gypsum in that case. They sought to exclude the insurance company. I want to quote from the court's unanimous opinion that Truck Insurance could participate and be heard as a party in interest. The court said:

> "Now consider the purpose of §1109(b). Broad participation promotes a fair and equitable reorganization process. The Bankruptcy Code seeks to prevent 'the danger inherent in any reorganization plan proposed by a debtor' that 'the plan will simply turn out to be too good a deal for the debtor's owners.' Section 1109(b) addresses this concern. 'Drafters and early commentators hoped that an expansive definition of 'party in interest' would allow a broad range of individual and minority interests to intervene in Chapter 11 cases, and expressly warned that undue restrictions on who may be a party in interest would enable dominant interests to control the restructuring process.' In short, 1109(b) was 'designed to serve the policies of inclusion underlying the chapter 11 process.'"

And the Supreme Court had one other comment. Here, I quote:

> "Finally, in resisting the text of 1109(b), the

Debtors emphasize the risk of allowing 'peripheral parties' to derail a reorganization. To start, a 'parade of horribles' argument generally cannot 'surmount the plain language of the statute.'"

Section 1109(b) is the authority upon which the movants' request should be granted.

My second point. The movants' request does not require formal intervention under Rule 2018. An analysis of the standards governing formal intervention under 2018 and 7024 and Federal Rule of Civil Procedure 24 is unnecessary. Rule 7024 only applies to adversary proceedings, not estimation, which is, as we all know, a contested matter. The debtors contend that the movants are not, capital-P Parties, as that term is used in the Court's orders, but this is a distinction without a difference. The movants agree to follow the estimation orders and comply with all applicable deadlines. They will not offer expert testimony. They seek only to cross-examine the experts called by the debtors and the FCR. This eliminates concerns about timing and disclosure raised in their objections.

Most of the cases cited by the debtor and the FCR address the standards for intervention in adversary proceedings, not contested matters. In the matter of Richman, which is the Fourth Circuit case cited, 1997 Fourth Circuit case, addresses intervention in an adversary proceeding. Other

cited cases address a situation which the party sought far more extensive inclusion and intervention than the very limited participation that we seek. That distinction is significant. Cross-examination of witnesses is a far cry from wholesale intervention that raises the kind of case management concerns that the Richman court was concerned about.

The debtor cites In re Bicoastal Corporation, a bankruptcy case in 1990. That case involved a pre-petition district court lawsuit in Maryland and the estimation of a claim filed by the Government against the bankrupt debtor in Florida. A party in the district court action argued that it would be prejudice in that lawsuit if it wasn't allowed to participate in the estimation of one claim in the Florida bankruptcy court. The argument was rejected by Judge Paskay, which distinguished, who distinguished between an estimation, which would not be binding, and an adjudication which would be. However, or moreover, the court found that the interests of the party were identical to the debtor who was involved, obviously, in estimation and were adequately represented. Those are the reasons that the party's participation was denied. Those are not our facts.

The contention that 1109 only permits party of interest to object to contested matters or submit briefing, but not engage more substantively is just wrong.

Third point. Even if this Court were to analyze this

motion as a request for intervention, the movants satisfy the factors that courts normally and generally consider. The movants have distinct interests that are not adequately represented by the existing parties. The debtors and the FCR contend the ACC already adequately represents the movants' interests. And while we have great respect for the ACC, that has not been true in several instances in this case. Example, when the movants, my clients, and the ACC both moved to dismiss this case, the movants made different arguments. Example, when the motions were denied, the movants filed a separate petition to the Fourth Circuit. Example, two of the movants have sought relief from the automatic stay.

The movants' interests are certainly different from those of the FCR, who has entered into a plan support agreement with the debtors. The FCR has written that dismissing this case would not reflect the best interest of the class of current claimants, even though the FCR only represents future claimants. The movants are people who currently have asbestos-related cancer and they disagree with the FCR. Some of the movants were themselves future claimants at the time the FCR agreed to support the debtors' plan in 2021 and they disagree with the actions taken by the FCR. The movants' participation in a more, will ensure a more comprehensive representation of interest in the estimation proceedings. The ACC's support of our motion underscores this point.

Limited participation proposed by the movants, your Honor, will not cause undue delay and not open the floodgates. The debtors and the FCR both warned that allowing us to participate would be cumbersome and open the floodgates to thousands of additional claimants and undermine the goal of concluding the Phase 1 trial in a few days.

Your Honor, I heard the discussion that was just had. We understand. These concerns, your Honor, are overstated and they're unsubstantiated. We seek only to cross-examine the debtors' and the FCR's witnesses and to make final arguments, whenever that is, before the Court renders an opinion. The estimation discovery process has already spanned several years and consumed tens of millions of dollars in professional fees. Allowing the movants to participate in the expert depositions and at the estimation proceeding prejudices no one. This Court, not the debtors, retains full authority to manage the scope and duration of any such cross-examination. You can control that.

The debtors' floodgate argument lacks any factual support. The movants are the only discrete group of claimants aside from the ACC who have significantly engaged in these cases. It is pure speculation that any other individual group or claimant will seek similar relief and the Court's inherent ability to manage its own docket provides ample protection against an imagined flood of parties. I'll again repeat what

the Supreme Court said, "A 'parade of horribles' argument cannot 'surmount the plain language of the statute.'"

The movants will be adversely affected if their participation is denied. The movants opposed estimation, and they continue to do so. But the Court has ordered it. And their opposition does not deprive the movants of the right to participate. They are claimants with direct economic interest in, in the estimation process. Denying the movants the right to cross-examine expert witnesses whose opinion may form the foundation for this Court's opinion would deprive them of due process.

Fourth point. The motion is timely. The debtors and the FCR argue that the motion is untimely, but this argument conflates two completely different things. On the one hand, full-party intervention from the inception of the estimation proceeding, and, on the other hand, limited participation in Phase 1 and Phase 2 of the estimation process. The movants don't seek to reopen discovery, do, undo any completed work, propose any experts, or relitigate any matters that have already been litigated. Simply seek to participate in proceedings that are still months away, in August. No party will suffer any prejudice as a result. It has already been established, your Honor, through the pleadings and I won't go over it, that the movants filed their motion promptly after the debtors refused to include them in the estimation order.

Your Honor, this motion should have been unnecessary, but the debtor and the FCR want to bar the movants from participating, even in a limited way. This violates due process, it violates Section 1109(b), and it violates principles of fundamental fairness in this court of equity. We ask that the motion be granted.

Thank you.

THE COURT: All right.

MR. WEHNER: Your Honor, James Wehner again for the Official Committee of Asbestos Personal Injury Claimants. I can keep it short, very short.

The Committee supports the motion and the Maune Claimants' participation in the estimation on the terms they set forth in their papers.

Thank you.

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

I think maybe it's important to start with what we're here on. We're here on a motion to participate, which was filed at Docket 3012. It was two pages long. It cited no authority for their motion, cited no case law. It was backfilled by a reply brief, which we heard a number of cases today that were not cited in that reply brief, numerous authorities. And so ordinarily, I thought, in this court, if we're going to file motions, we provided the authority we're

going to rely on in oral argument. That didn't happen.

The reason we got to even that point, your Honor, was because when we were finalizing your Honor's January order on how the Phase 1 estimation was going to go, we had basically finalized it amongst all of us and then we got an email from counsel for Maune Raichle that said, "You need to include us as parties to the estimation hearing." We said, "Well, you're not." And as a matter of fact, sitting there that day, they were not. They had -- the parties to estimation had been over and over and over, both your Honor and Judge Whitley before you, had been identified and the Maune Claimants were not among those. And so we could not overrule prior court orders and declare them a party.

The biggest issue that I see being confused is the difference between 1109(b), being a party in interest, and being what we described as a capital-P Party and the case law describes very clearly as a capital-P Party to this contested matter, this estimation. We don't debate, your Honor, that they're a party in interest under 1109(b), that the Maune Claimants are a, a party in interest. This has nothing to do with Truck. Truck was a question of whether or not the insurers in that case were parties in interest. We concede they're parties in interest. They have a right to be notified. They have a right to be heard. And suffice to say, they've been heard frequently about estimation, and their continued

position is over and over and over again. There should not be an estimation, that the estimation is a waste of time. That has been Maune's position from Day 1. Your Honor has certainly heard it and aware of it.

But there's a big difference, and the case law makes clear there's a big difference between being a party in interest and being a capital-P Party to the estimation hearing, to litigation. We cited a number of cases to your Honor in our brief. The Bicoastal case, which counsel referenced, is a Middle District of Florida bankruptcy case, and I think it summarizes it the best, but there are a number of cases that follow it. "There's an important" -- and this is the court here:

> "There's an important distinction" -- "This is an important distinction because a right to be heard pursuant to Section 1109 of the Code and Bankruptcy Rule 2018 is one thing, and to intervene and thus become an actual party litigant in a contested matter is another. In the latter instance, if intervention is permitted, parties who intervened are treated on par with the litigants already in the lawsuit or in the contested matter with the full right to conduct independent discovery, present evidence, and cross-examine witnesses. On the other hand, if the party is merely authorized to be heard, pursuant to Section

1109, his involvement in a particular contested matter is limited to the right to present arguments and to submit briefs, and that party has no right to conduct litigation of its own in the orthodox sense as a party litigant."

So this is what we're talking about here.

Counsel always, also cited a number of out of the Fourth Circuit cases that suggested that being a party in interest pursuant to Section 1109 gives you the automatic right to be a capital-P Party to the litigation. And in particular, I think in their brief and in argument today, counsel relied on the Financial Oversight case in Puerto Rico that the First Circuit issued. Problem for them on that is that is not the law of this Circuit. The Fourth Circuit has said that 1109 parties in interest do not have an automatic right to intervention, that, instead, you have to meet the standards for intervention, whether it be under 2018 or 7024. And so that's the law of this Circuit. Financial Oversight is not the law of the Circuit.

Furthermore, in Financial Oversight, your Honor, to be clear, what was being requested in that case was the right to present argument, not the right to cross-examine witnesses, not the right to be involved in depositions cross-examining witnesses. Far greater involvement is being sought by the Maune Claimants in this case.

So to the standards themselves for intervention, we laid those out in our brief. There's four elements to it. It's their burden to meet all four of them. Obviously, their motion didn't talk about any of this. They clearly cannot meet two of them. No. 1, this is untimely, your Honor. Estimation was ordered over four years ago. The Maune Claimants have been at each and every hearing I think your Honor has been at where estimation's been discussed and never raised their hands, never filed a motion. And they were at numerous hearings before Judge Whitley on estimation. They, if they wanted this role, they should have done it a long time ago.

The second one, and I think the more fundamental one, is the adequate protection issue, whether or not their interests are being adequately protected by the ACC. And they certainly are in this case, your Honor. I mean, this is -- the ACC, as the Committee, has responsibility to all the class of claimants, including the Maune Claimants. The Maune Claimants are in a unique position because one of them is actually on the Committee itself. In their reply brief, and I heard it again today, there was an attempt, at least, to, to indicate why the ACC didn't protect their interests here, but none of those have to do with estimation. All of them had to do with the fact that the Maune Claimants have filed *seriatim* attempts to dismiss this bankruptcy, attempts to avoid the automatic stay over and over again. That's where the difference has been, has

nothing to do with estimation. And if you think about it, your Honor, what is going to be the difference here? The ACC is, I presume, going to try and undermine our experts' and, I guess, the FCR's experts' estimation numbers in this case, which is exactly the exact same thing the Maune Claimants are going to do. They have no expert of their own. They have no evidence they're going to put on. All they want to do is the exact same thing the ACC is already doing.

I think one of the, one of the cases we cited was the Fifth Circuit's decision in Fuel Oil Supply. It's the decision that the Fourth Circuit relied on in the Richman case to adopt the fact that intervention standards are required to become a capital-P Party in interest. And the Fifth Circuit kind of hit on it really well. They said:

> "Thus, for example, individual creditors whose interests in a particular adversary proceeding are adequately represented by a creditors' committee would not be permitted to intervene under 1109(b) in the adversary proceeding; on the other reading, both the committee and each individual creditor, perhaps hundreds of them," or, in this case, perhaps 80,000 of them," would be automatic parties to every adversary proceeding connected to the case."

And that's what we have here.

Now is he correct that we haven't seen a stream of

creditors walk in asking for the same rights the Maune Claimants have? Absolutely. We concede that. But if your Honor grants them the right to cross-examine at trial and cross-examine in depositions, what is to stop every other member of the Committee or any of those claimants from asking for the same rights? I, I assume you would have to present those rights to them as well.

We have -- I guess I'll conclude with this, your Honor. I think based on what I heard today, we have five days. We have three affirmative experts and in talking to the ACC, I know they're going to have at least one separate rebuttal expert. You've heard us. We're going to at least have one, maybe two. We have a lot to get through. The ACC is going to be examining on the exact same topics that the Maune Claimants propose to. We don't need multiple cross-examiners representing the same interest. We don't need multiple cross-examiners in deposition. They have a right to be heard and they have a right to notice. That does not give them the right under the case law to do the things they are asking your Honor to grant them the right to do today. We think the motion is unsupported. It's, it's too late. And the relief sought is unwarranted. It should be denied.

Thank you.

THE COURT: Mr. Guy.

MR. GUY: Thank you, your Honor.

One status update. The ACC counsel has filed a *cert.* petition with the Supreme Court on the dismissal.

THE COURT: I did see that.

MR. GUY: And Maune Raichle sits on that Committee, too. We continue to take the position that the ACC should not be supporting dismissal because it's not in the interest of the class of claimants. It's certainly not in the interest of the class of future claimants. And the best evidence of that, your Honor, is the FCR in Bestwall is not supporting dismissal, either. So I'll just leave it at that.

Your Honor, we're here in bankruptcy court in the Fourth Circuit. We know what the Rules are. We know what it says. 1109 says "right to appear and be heard." It's not a right to cross-examine in the litigation. It's not a right to depose witnesses. They don't have that right under the Rule.

And your Honor, if I may approach, I have these two, the two cases. I'm not going to cite any new cases.

THE COURT: All right.

(Documents provided to the Court)

THE COURT: All right. Thank you.

MR. GUY: The Bicoastal case, your Honor.

Your Honor, I only hand those up because of, I think, this whole, this whole issue.

The Financial Reporting case, which is in the First Circuit -- so not controlling -- makes it very clear that, yes,

you can appear and be heard, but the scope of the intervention is up to the court's discretion. But that's not this Circuit. That's the First Circuit. The case in Bicoastal -- and I won't repeat the language, but, because we already heard from debtors' counsel -- but it makes it very clear and the logic is rather compelling. There's a big difference between a party in interest, a creditor who can appear and be heard, and one who's a party to a litigation.

And they have competent counsel, your Honor. They sat through all these hearings. They knew the difference. They knew the difference and they never said "boo." They never put their hand up and said, "We want to be a party litigant." So it's not timely to say, well, just as the Court orders something, then "we're going to put our hand up." They've had four years to do it, your Honor.

But I would say this. We don't mind if Mr. Thompson argues or Mr. Waldrep argues. In fact, we like to have them argue because it highlights the true motivations in these cases. And I'm not going to say what they are because I know the Court's already formed an opinion on that. But it highlights exactly what's going on in these cases and whose interests are being represented. But what we didn't hear is how are the arguments that, how the cross-examination is going to be any different from what the ACC is going to ask. We didn't hear that at all.

So in my mind, your Honor, this is really, we don't mind. They already have four law firms. If they want to have a fifth one, they can have one. But it's the Court's docket and the Court who has to manage it. So we can handle it.

But what I haven't heard is any commitment that this isn't going to delay, it isn't going to distract, and what the true motivation is. Because the motivation is they want the case dismissed. They don't want estimation. So what is it that they don't think the ACC counsel, very competent counsel -- I know them -- what is their prejudice? They can sit in the deposition, if they want. They can sit in the hearing, if they want. God bless them if they want to spend a week in trial. They can ask the very competent ACC counsel, "Well, could you ask this question, please?" But if the Court decides, well, they can do it independently, that's fine, too. We'll handle it.

But I do think it will take up more time and it will delay the process and it will make it harder to be efficient and get it done in a week.

Thank you, your Honor.

THE COURT: All right.

Mr. Wehner, so what, what is the difference between you -- so you don't feel that the Committee can adequately represent all the claimants? Is that, is that what's going on? Is this another committee governance issue happening?

MR. WEHNER: I'm sorry, your Honor.

THE COURT: Like what --

MR. WEHNER: A committee what issue?

THE COURT: What -- what -- why do you feel like you need the -- how would it help you to have, or would it not? You're just indifferent to have the --

MR. WEHNER: Your Honor, we didn't make the motion.

THE COURT: -- the Maune -- right.

MR. WEHNER: It's the Maune Claimants --

THE COURT: Right.

MR. WEHNER: -- who made the motion.

THE COURT: Okay. So you're just willing to accommodate.

MR. WEHNER: We are supportive of that motion.

THE COURT: Okay.

MR. WEHNER: As you know, we heard, a couple of months ago, we heard all about the importance of debtor partici, I mean, creditor participation in this process --

THE COURT: Right.

MR. WEHNER: -- you know. We're, you know, we represent the Committee, the creditors.

THE COURT: Okay.

MR. WEHNER: But they, they made the motion. We're supportive of it.

THE COURT: Okay. All right.

MR. WEHNER: Okay?

THE COURT: So Mr. Waldrep, if you could articulate for me what, what you're looking for, your clients are looking for that the, you do not feel that they're adequately represented by the Committee, bearing in mind that the question for estimation is, I'm going to be tasked with estimating the liability as a whole, not, not the Maune Claimants specifically, right? And the Committee has a fiduciary duty to represent that class. You obviously, necessarily, as you're representing those claimants, do, do not and in fact, have a distinct and at times, perhaps, even adversarial relationship, right, with, with, perhaps, other members of the class, you know.

So can you, can you explain to me what the -- what -- what your concern is about not being able to participate?

MR. WALDREP: Yes, your Honor. My clients have disagreed with the approach taken by the Committee --

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

MR. WALDREP: -- in this case on several occasions. I cited --

THE COURT: Right.

MR. WALDREP: -- some of them. There were others.

My, my clients also are different lawyers who are very experienced in dealing with mesothelioma cases and believe that

they will bring a different viewpoint to that because of that background. That is different because they have seen it already too many times, that their approach and their questioning and their theories, their arguments, have been different from the Committee. And I think the Committee -- I think -- we've all seen this. This is not, this is not a radical or new concept. And they believe they will take the same thing in the estimation process. They will take a, maybe a different tact, ask different questions. They can't really effectively -- I don't know how many -- you know, I've been in lots of depositions and asking someone to ask your question for you in the way you would ask it, and also knowing that they don't have to do that if they don't want to, or they might, you know, decide differently, that's not the same thing as participating yourself in the cross-examination of these witnesses, both in a deposition and, and at trial.

So they feel like they have a different, different views, different approaches. They have different experience with regard to meso cases, which is all they do. It's all they've ever done. Do it nationwide.

So those differences are what they hope to be able to, why they hope to be able to participate in this, just asking --

THE COURT: Right.

MR. WALDREP: -- questions.

THE COURT: So my concern is it could undermine the

integrity of the process of having a committee which, as we know so recently, Ms. Abel worked so hard to have, be balanced and represent different, different types of claimants, have different firms involved, different viewpoints, right? And so, and, and which one of, of the claimants that you represent is on the Committee, right?

MR. WALDREP: Wrong.

THE COURT: No.

MR. WALDREP: That was incorrect. The one claimant we have that is on the Committee is not one of the movants today.

THE COURT: Okay. All right. But -- so that's good. That's good. Because it's a little bit of a conflict there.

MR. WALDREP: We saw that --

THE COURT: Right.

MR. WALDREP: -- your Honor.

THE COURT: Right. So the specific question of this particular proceeding, estimation, though --

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

THE COURT: -- is, is different than, say, a motion for relief from stay or even a motion as this, or plan confirmation, right? This specific question about estimation I need to be hearing from, I mean, the, the, obviously, the, the party, which is why Judge Whitley and any court makes the party be the Committee, is the one that has the fiduciary duty to the

classes as a whole. You would only be speaking as to 46 claimants.

So I'm not sure how that's going to be, in fact, almost relevant. The question is not what would suit 46 claimants, you know. It's, it's the class as a whole that I need to be looking at. And so, you know, so -- but, but at least what is clear to me is that you disagree. So you disagree with the approach the Committee is taking, your clients do.

MR. WALDREP: We do. We do. And I heard the word "undermined." I don't know who used it, but that is the farthest thing from our minds. Rather, augment the questioning and the arguments that the Committee would make. Simply another voice, your Honor. And --

THE COURT: Well, it sounds like you're planning to undermine because you disagree with the approach they'll be taking.

MR. WALDREP: Well, to offer an additional argument is not undermining. So offering additional argument with regard to this estimation process, I don't, I don't see as undermining, your Honor. I'm not saying we're here, here to oppose the ACC, far from it. We're, we're here to assist and offer further viewpoints that we think will assist the Court. And we think we have and should be granted, recognize the right to participate. We've participated pretty --

THE COURT: Well, so to be clear, I have no problem with, with arguments. And you can file papers. Okay, you know. So yes, you can certainly augment with your, with, with filing a, whatever you want, you know. And I'll read it. And anyone, you know, who's a claimant in this, in this case certainly can, you know, so. But what will happen if a dozen other claimants come next month and want to participate in the same way?

MR. WALDREP: Your Honor, that's always the trouble with dealing with the "parade of horribles" argument. No one can ever prove it. No one can ever know if it would happen. It was made to Judge Whitley when we moved for relief from stay, didn't happen, hasn't happened, and I would say you would deal with that if it ever occurred. But really, our experience is it won't.

THE COURT: Other comments?

MR. HIRST: Yeah, your Honor, I do have a comment.

I'm not sure it's -- well, first of all, the fact that the, the counsel is now taking the position that the claimant that they represent that's on the Committee is not among those moving is not what the motion says.

But more importantly, I'm, I'm a little worried we have a conflict here. So the Maune Claimants that are now, apparently, subject to the motion want to take a very different position than a claimant who is represented by the same law

firm who was on the Committee, apparently, based on what we just heard, which was not something we certainly anticipated. That's, that's a, a separate and real conflict issue that I think they're going to need to answer to, putting aside the issue of whether or not they should be able to participate. I, I, I'll stand on my comments about their participation, what our, what our response to that is.

But I'm very concerned about the conflict I just heard about between the varying Maune Climate, Claimants.

THE COURT: Mr. Guy.

MR. GUY: Thank you, your Honor.

Your Honor, I, I hear what Mr. Waldrep is saying about the "parade of horribles" --

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

MR. GUY: -- but we also know what the Fourth Circuit Rules are on this and what the law is in this Circuit and this court.

And I -- I am -- I do have a concern. If the Court is going to set the precedent that someone just says, "Oh, I want to be a party litigant 'cause I believe I'm entitled to be," which is what they said in their brief. They said, "We believe we're entitled to be a party litigant," that's is a problem. Because how is the Court going to distinguish the next person, the next case, who comes in and says, "Oh, well, I believe I'm

entitled to be a party litigant"? The Rules don't allow them to say, "I believe." They have to justify.

Your Honor, what I really hear Mr. Waldrep saying is he thinks that Maune Raichle can do a better job than committee counsel. That's what he's saying. Now that's a problem because he sits on the Committee. He has a client on the Committee. Maybe they should just withdraw from the Committee. But what happened in the Garlock case, your Honor, we did have an estimation trial in the Garlock case and the ACC brought in counsel, who were very experienced with mesothelioma cases, prosecuting those cases. And they weren't from the law firms that we see here today. They were special mesothelioma litigation counsel. If they want to do that, they're welcome to do that. But they haven't. They have to choose now.

There's no basis for them to be a party litigant, your Honor, and I do have great concerns about the precedent it would set.

Thank you.

THE COURT: All right. Anything further?

(No response)

THE COURT: All right. I'm going to deny the motion. That's the request to cross-examine witnesses and participate in depositions. To the extent necessary, I don't know that it is, I'll grant the motion as to filing any papers. Can certainly, also, allot time for oral arguments when we get to

that at the end.

I find, consider that the existing estimation orders have established the parties, set the deadlines, and the rules. Judge Whitley, you know, from the outset, established who the parties would be. And I don't, I don't read Fourth Circuit case law as, as requiring that I allow the movants to participate in cross-examination and depositions, etc.

So further, I find the request is not timely. So to the extent, you know, even, even a few months ago, I think, perhaps, piping up, I don't know. But I, honestly, I think it's not timely from, for years.

Further, you know, if I allowed these individual claimants to participate, to be fair and equitable, I would allow any other individual claimants to participate in this way, rendering this Phase 1 estimation trial unmanageable. As we are all acutely aware, given the recent filings in this case, the members of the Committee have been carefully selected to provide a balanced perspective and represent varying types of claimants. And the Committee has a fiduciary duty to all creditors in the class as a whole, not just to their own individual interests.

So I'm going to find, also, that the movants' interests are adequately represented, to the extent I need to make that finding. So to be, to be clear and fair and equitable. And, and so there's no need for anyone else to file

a motion. Any -- any -- as I said earlier, any claimant is, is allowed to file a paper individually, if they, they care to do so. And when we get to the final pretrial, if any, when we're talking about scheduling things out, if people want to make statements or arguments, they can certainly do so, if we have time. You know, maybe that, due to time reasons, since we have just the five days, if it turns out that we just do post-trial briefs and no closing arguments, then that's what we'll, that's what we'll have to go, so, which will be fine. So I'm not -- we'll just know more when we get to July, right?

So will you prepare the order?

MR. HIRST: Yeah. Will be glad to, your Honor.

MR. EVERT: Oh. We're going to --

MR. HIRST: Switching seats.

MR. EVERT: Yeah, we're switching seats --

THE COURT: All right.

MR. EVERT: -- for the next, for the next argument, your Honor.

MR. WALDREP: Thank you, your Honor.

THE COURT: Thank you.

MS. HARDMAN: We might need a little --

THE COURT: Sure.

MS. HARDMAN: -- musical chairs here, too, your Honor.

THE COURT: Why don't we take ten minutes?

MS. HARDMAN: That'd be great. Thanks, your Honor.

We may Tim's assistance, anyway. So thank you.

THE COURT: Okay. All right.

(Recess from 10:30 a.m., until 10:41 a.m.)

AFTER RECESS

(Call to Order of the Court)

THE COURT: All right. Good morning, again.

MR. TORBERG: Good morning, your Honor. David Torborg from Jones Day on behalf of the debtors. It's a pleasure to be here before you for the first time.

I have some slides and a handout that I hope will assist the Court to keep us moving along. If I can approach?

THE COURT: Yep,

(Slide deck provided to the Court and counsel)

MR. TORBERG: I'll explain the handout shortly, your Honor, about that.

Before addressing the motion to compel, I wanted to very briefly level set about the adversary proceedings. As the Court may remember, the parties filed competing motions last October relating to the APs. The Committee asked for an amended CMO to be entered. It set a trial date around the time of the estimation trial, as well as various pre-trial deadlines. The debtors moved to stay the adversary proceedings in their entirety. The Court denied the Committee's motion for amended CMO and indicated that any trial in the adversary proceedings would follow the estimation trial. The Court

continued the defendants' motion to stay for six months.

As indicated in the reply brief we filed on Monday, the defendants intend to revisit the motion to stay at the April, April omnibus hearing. And we'd like an opportunity to put in some briefing in advance of that, just to set forth some developments in the cases that we think are relevant.

THE COURT: Right.

MR. TORBERG: That might be something that we talk about before we adjourn today.

THE COURT: Okay.

MR. TORBERG: So that brings me to the motion to compel. There are three main areas of disagreement on the, with, with the parties that prompted this motion. The first is the Committee's obligation, or do they have an obligation, to search for responsive information from committee members and their tort counsel. The second is whether the Committee should supplement their responses to various discovery requests that go to the debtor, their position as to the debtors' aggregate asbestos liability. And finally, it's the Committee's refusal to squarely answer an interrogatory on the Committee's statement in the main case that the debtors are not in financial distress.

So I appreciate the Court might have an interest in how these three overarching issues actually play into specific requests at issue 'cause my experience has been the courts

typically deal with requests, discovery motions to compel on a request-by-request basis. But to make things easier, we're trying to put them into big buckets 'cause that's what the issues are. So the handout is something we've done to try to tie these three issues to specific requests.

So for brevity, we've quoted those interrogatories that we think are probably most important to us, frankly. And then we've had a "see also" for additional requests that we think may, where there may be some documents that need to be produced if our motion is granted.

So the first three interrogatories that we served in the sub con litigation, which are the first three quoted on the handout, all stem from the Committee's contentions in the sub con motion that they filed. And as we show on the slide here, "The sole purpose of sub con is to ensure the equitable treatment of all creditors." That's the, that's coming from the Augie/Restivo case in the Second Circuit. That's been widely adopted with Fourth Circuit, although there is, there's some, I won't get into it, but there's argument that one or two standards could, could apply.

But the Augie/Restivo test, there are two factors. First, whether creditors dealt with the entities as a single economic unit. It "did not rely on their separate identity in extending credit." And the second is whether the affairs of the entities are so entangled that consolidation will benefit

all creditors.

The debtors filed a motion and the defendants, the NDAs, I mean, filed separate motions to dismiss the sub con complaint. In response to that, the Committee made various contentions and I have quoted some important ones on this slide. We also quote them in our brief. The first is when the asbestos plaintiffs originally entered into these settlements with Ingersoll-Rand, or Old Trane, they were extending credit to those entities insofar as they were accepting an unsecured promise by those entities to pay the agreed settlement amount. Relatedly, they alleged asbestos plaintiffs treated Ingersoll-Rand and Trane, respectively, as one enterprise when agreeing to settle with those enterprises. As such, they were relying on the economic resources of Ingersoll-Rand and Trane to pay the settlement amounts. We wanted to understand, naturally, who actually relied upon the economic resources of those combined entities and what evidence, if any, the Committee was going to present at the trial to prove this reliance.

So we issued discovery. And on this slide is one of those interrogatory requests that we served, asking for the Committee to identify asbestos claimants they relied and the facts and reasons for that reliance, as alleged in the sub con complaint and motion. In response, the Committee lodged a litany of, of objections, most of which are boilerplate, frankly. One, however, caught our eye, and that was that they

objected to the interrog, to the interrogatory on the grounds that it sought information and/or documents in the possession, custody, or control of individual members of the Committee's constituency or their respective tort counsel. After lodging that objection, they did provide a response. And I've pasted on the slide what they were saying, essentially, in response. This is, again, something we quoted in our brief. I don't need to read it again, but it essentially regurgitates what the Committee had said in its objection to the motion to dismiss, but it didn't provide us any information on which asbestos claimants actually relied on the combined resources of Old IRNJ or, and Trane when they entered into settlement agreements, nor any facts or reasons supporting that assertion. It didn't identify any persons with knowledge. In other words, they didn't tell us who's going to be at trial to testify to this alleged reliance.

We don't know where the Committee came up with this idea that asbestos claimants or their counsel actually relied upon the combined resources of the old entities when they made these settlement agreements. We don't know if it was mere supposition by counsel. We don't know if it was based on discussions with the members when they, about when they settled claims or discussions with the tort counsel who represent the members about their reliance.

So if it was the latter, it was not mere supposition.

There's actually something behind this, then we have a problem with the Committee's position here. Because they stated, "Well, we're not going to, we're not going to look for any information from the committee members or the tort counsel. So we have a hole in their response that we need to fill so we can be assured that we know what evidence they might be bringing at trial. So that's why we're pressing this issue before the Court.

So we believe any responsive information that the committee members or their tort counsel have is fairly available to the Committee. And I'll start just at the beginning. We believe that the Committee is using the wrong standard when it comes to what are their obligations in responding to interrogatories. In the objection that they filed that I showed on the slide, they, they were using the possession, custody, or control standard and they're still arguing that standard in their opposition. That's not what the plain text of Rule 33 says. It is "available to the party." And we cited some cases in our pleading which make clear courts have stated, yes, they are different. It may not make a difference for a specific request, but other requests, it might.

The standard for Rule 33 is they have to provide information that is within, reasonably available to them. And the cases they cite say the same thing. And some of them say

without undue burden. You don't have to conduct an independent investigation to, to go get information. So the question is, is it reasonably available to them? Is the information we're seeking reasonably available? We believe it is. In fact, you can scour the Committee's opposition. You won't see any explanation of why it wouldn't be reasonably available for the Committee to ask its members and the tort counsel if they actually relied upon the combined economic resources of the old entities. They haven't made any argument at all that it would be any sort of undue burden to do that. The general rule is that when a interrogatory is directed toward an organization, the members of that organization have a responsibility or they have, the entity has a responsibility to get responsive information from its members. That's the International Machinists case that we cite.

They, the Committee seems to be arguing for some sort of exception for creditors' committees in bankruptcy and they're arguing about, "Oh, well, we're trying to get leverage over these, over these claimants. We're trying to discourage participation by claimants." That's, that has nothing to do with what we're doing. We're trying to understand the factual basis of contentions that they made. That is all we're doing. And we, we cited this in the reply brief, but Judge Whitley previously rejected a protective order that made essentially the same argument, that we weren't allowed to seek discovery

from individual members 'cause it would show participation in the cases. The truth is, every law firm wanted to be on this committee. That, that is undisputed.

So here, I think it's important to remember that the Committee consists of and is its members, and we would argue, also, their tort counsel, who has been acting as *de facto* members for much of this case. We think it's important to realize that we're asking for information that supports or is relevant to their allegations, their contentions. Particularly, if you look at, for example, Interrogatory No. 2, it concerns how asbestos claimants relied on something. Well, the committee members and the tort counsel are asbestos claimants. So in fact, we believed that this allegation was, presumably, informed by the committee members or the tort counsel. We find out for the first time when we saw the Committee's opposition brief when they said the Committee did not rely on, on asbestos claimants or tort counsel when drafting the complaint and motion for substantive consolidation. That does not mean the Committee is somehow excused from providing information that's available to it.

And then finally, I wanted to, to, to note that the Committee's position has been, essentially, "We will only search for documents or information to the extent it relates to the Committee's work on the Committee, the committee members' work on the Committee. And Interrogatory 2 and 1 and 3 explain

how that doesn't work. Because that dealt with their actions or reliance prepetition before the, before they were even put on the Committee.

So we don't think that limitation is fair or really works here.

Before I move on to document requests, I just wanted to highlight a, a different issue with respect to Sub Con Interrogatory No. 1, where we had asked them to state all facts and reasons they contend support their assertion that subsequent to the restructuring creditors and asbestos claimants dealt with these entities as one entity, essentially. Their response is they -- is they -- they really didn't answer it. They said, they had a bunch of objections, of course. And then they say, "The Committee responds that before the corporate restructuring, they were, essentially, one entity. But they didn't even, they didn't even try to answer the question of, well, how about after the restructuring? What evidence do you have that they dealt with them as one entity?

So that's a particular issue with respect to Interrogatory 1 that I wanted to highlight.

All right. Now I'd like to go to document requests. Our position is the Committee is required to request its member and its tort counsel to search their files for documents responsive to our requests. Again, the Committee consists of and is the members. And in the Fourth Circuit, regardless of

who has the legal right to possess documents, the Fourth Circuit standard is does the party have the practical ability to obtain them? Here, they've never argued that they don't have the practical ability to ask the members whether they have any documents responsive to our requests.

So we think that's an important thing.

The other thing I would note is, you know, the Committee should not be permitted to make contentions, particularly about things about asbestos claimants' reliance, but withhold responsive information that might bear on those contentions. We think the Committee's authorities are inapposite. We discuss those at length in our brief. The two cases they cite have nothing to do with the issue, frankly, at all. And the, the, the two transcripts they cite from G-I Holdings and Garlock, we think are distinguishable because they're not really targeting a, a committee, discovery on a committee's allegations specifically.

The other thing I wanted to note, I wanted to respond to one of the footnotes they had in their, their brief. I think it was Footnote 31. Where, for these requests -- and to back up. These requests are, basically, seeking any communications or presentations by the Committee with any third party. So unprotected communications about this bankruptcy. For these, clearly, those would fall within the Committee's, the, the members work on the Committee. So it falls within

even the, the Committee's position about capacity and, and whatnot. But they're not, but they refuse to, to search for these, arguing that it's overbroad and irrelevant.

And I'd say, first of all, it's not overbroad, you know. They're, they're arguing, well, this relates to activity that occurred postpetition. And I would note that they have not limited their discovery in the sub con proceeding to pre-petition conduct. They have all sorts of requests that go after the petition date.

The second, the requests are not overbroad and not, and not irrelevant. In fact, if you look at Footnote 29 of their opposition, they basically say the committee members didn't have many conversations outside the Committee. They were extremely cautious and refrained from any communications outside the privileged committee channels.

So we don't think this would be a big lift for them to provide this information.

As to relevance, the Committee has made a number of allegations about this bankruptcy and, and these proceedings regarding the impact of the divisional merger and its impact on asbestos claimants and the ability to reach a resolution. Those are post-petition events. What if, for example, one of the members or their tort counsel sent an unprotected email to a third party that said, "I'm not worried about how long this bankruptcy is going to take because we've already received

substantial compensation from 20 other defendants, 20 other bankruptcy trusts," right? That's squarely relevant to what they're arguing in the adversary proceedings in the sub con case. If those materials exist, they should be produced.

I'd also note that, as the Court knows, they've taken waffling positions in this case as to financial distress, insolvency. Maybe some communications with third parties would lend some credence or lend some insight into what they really believe.

Okay. So I'll move -- that's all I have to say on the first issue. If the Court doesn't have any questions, I'll move on to the, to the second one.

All right. As you can see from the handout, there are a fair number of discovery requests that, in one way or another, seek the Committee's position on their estimate of the debtors' aggregate asbestos liability. I've quoted one on the slide, Sub Con Interrogatory 5, asking for them to state their estimate of the dollar value of the Aldrich asbestos-related liabilities and any Murray asbestos liabilities as, at various times.

There is no dispute that this information is relevant to the adversary proceedings. The Committee did not raise a relevance objection in its responses. Initially, this was, this was the Committee's position. They said, "We've not refused to respond to this discovery." This, this is an

excerpt from the October 23, 2024 letter It's Exhibit G to our motion. This is a section of the letter that's dealing with the asbestos liability discovery. What they told us is, "We will not -- we'll -- "we have not refused to respond. We will respond at the appropriate time." They said:

> "An estimate of aggregate asbestos liabilities is set to occur in a related but separate proceeding," i.e., the estimation proceeding. "It is complex and the sole subject of that proceeding. The parties have retained, have all retained experts to develop such estimates. The Court has set a specific schedule for that proceeding, including deadlines for expert discovery. The Committee is following that schedule."

In other words, they told us, "You'll get your response to this discovery in the estimation proceeding." That's what they told us.

So as the Court knows, the parties were required to provide preliminary expert reports in the estimation proceeding on September 15, 2025. The Committee provided the expert report of Andrew Sackett, which contained an estimate of the debtors' asbestos liability. Since the Committee now had an estimate, we asked the Committee to supplement its answer to these, to this discovery. We did not think it was a controversial request. We didn't say, "You have to adopt the Sackett, the, the Sacket estimate." We thought they would,

since that's what we had just seen. "But we want your estimate for purposes of these proceedings." Why? Because the Committee has a habit of waffling positions between different proceedings. So we wanted to get their position in this pro, in these adversary proceedings. To our surprise, they refused.

And this is, these are some excerpts from a letter they sent to us last December, responding to a letter we had, where we had requested that they supplement their estimate. And they said, "The second estimated" -- "The Second Amended Estimation CMO set forth the Committee would provide an initial report, expert report, for reasons particular to the estimation proceedings in the main case, not the adversary proceedings." And them notes the adversary proceeding CMO does not have discovery deadlines and they're standing on their objections, which basically they think this discovery is premature and subject to expert report. In short, the Committee changed what it was going to do. I don't think there's any dispute that they changed the position. We made that point in our brief. They don't deny it in their, in their opposition.

As to what remains of their objections, we don't think any of them have merit. There's, there's nothing procedurally improper about us seeking compliance with our discovery requests. The Committee cites no rule or precedent that says a party cannot seek compliance with deficient discovery requests. We're not ignoring the discovery framework established by the

Court. The Court has never indicated a party can refuse to answer discovery requests because its answers might later be supplemented by expert testimony.

We think the case law on damages disclosures under, initial damages disclosures under Rule 26 is, is really applicable here. It's, it's really relevant. It basically says to a plaintiff in a civil case, "Yeah, we know you're going to have an expert that's going to calculate damages. That doesn't mean that you have a total pass," right? "You still have to provide your best estimate at the time. And you can *caveat* it all you want and say, 'I'm going to have an expert come in a year from now and supplement it,'" fine. We still have a right to have an answer.

I, I have to say I think this, this argument in their opposition brief that, that we're attempting to bootstrap the Committee's initial expert report from one proceeding into another is kind of ironic. Because it was their position at first that we would get answers to the adversary proceeding discovery in the estimation.

Finally, the, the Committee's claim that Mr. Sackett's estimate was particular to the estimation proceedings. Frankly, we really don't know what that means. I mean, they, they cite one thing, and that's, "Well, for the fraudulent transfer proceeding, we would do the analysis of the asbestos liabilities as of May 1, 2020, the date of the restructuring,

versus for an estimation, we would, for an estimation proceeding, we would use the petition date." This is six, six weeks' difference. This is, this is immaterial and it does not provide an excuse not to answer the discovery.

That's what I have to say on the second issue.

And then on the last issue, this relates to what I'll call the financial distress issue. As shown on this slide, the, the defendants asked the Committee to "state all facts and reasons you contend support the assertion that 'the debtors are not in financial distress: they can fully pay all creditors in the ordinary course of business, and their economic viability is not threatened by their liabilities.'" That's what they said in the dismissal motion. There's no denying it. They're not even arguing we've taken it out of context. That's what they said in the dismissal proceedings. There's -- there's -- you can see the answer. Instead of providing the facts and reasons why the debtors are not in financial distress for purposes of this proceeding, they provided answers or reasons why the debtors are in financial distress and a long discussion about the funding agreements, etc.

So it's, it's clear they have not addressed the interrogatory as posed. Again, we think the Committee's objections to, to responding to this discovery are meritless. There's no dispute that they have alleged in these proceedings that the debtors are not in financial distress. They really

haven't stated any valid objection to responding to this interrogatory, other than, without saying it, "You know what? We really don't want to say this in the adversary proceedings." That's why they're objecting to the interrogatory 'cause they don't want to say it. That's not a valid objection. And you know, we're not, you know, we're not saying for purposes of this motion that they can't take alternative positions, okay? We have other arguments about that. But for, for purposes of this motion, you can take alternative positions all you want. We're entitled to know the parameters of your, of your inconsistent positions, each of them. They don't get to choose. "We're only going to answer, we're only going to give you information about the litigating position we like in this case." We want the factual record in the adversary proceedings to include the details of why they think the debtors are not in financial distress, the alternative position. We don't think that's much to ask. And frankly, we think the, the suggestion that, that the debtors' solvency would be irrelevant to a sub con proceeding, really sort of borders on the specious. To suggest a debtor's solvency is not relevant to a sub con request, which concerns whether there are sufficient resources to pay claimants across different entities. They haven't cited any case law for that, or we're not aware of any. In fact, if you go look at their own briefing, it's full of allegations like the debtors are undercapitalized, cash starved. Their own

pleadings put this at issue.

I would say that their, their opposition was useful at least in one respect, however. They clarified the basis and purpose of what's going on in the sub con case. They say the debtors' financial -- whether the -- whether debtors are in financial distress "is not relevant to the Committee's claims," which are premised on, basically, two things. One, the debtors and the corresponding Non-Debtor Affiliate were one and the same entity. Well, that does not establish a need for sub con. If there's a need for sub con, then we can talk about it. But don't even get there until you actually have a need for sub con, which is an extraordinary remedy, particularly when it comes to non-debtor affiliates.

And the second two premises that they state are really, basically, the same thing, is they're attacking, again, the Texas twostep, the fact that there was a divisional merger, a funding agreement put in place, and the debtors were put into bankruptcy and not the Non-Debtor Affiliates. Those are the same attacks that they made in the motion to dismiss, was the main point of the motion to dismiss. Judge Whitley rejected those arguments and they should do no better here.

Unless the Court has any questions for me, that concludes my remarks.

Thank you.

THE COURT: No. Thank you.

MS. SIEG: Good morning, your Honor. Again for the record, Beth Sieg of McGuireWoods for the Non-Debtor Affiliates.

The reason I'm at the table and that I rise, just to make this clarification. Our clients are the defendants in the sub con proceeding, but we're also the only defendants in the fraudulent transfer proceeding. As you can see from the handout, all of these issues that Mr. Torborg has raised with your Honor this morning pervade also the fraudulent transfer discovery requests.

So you'll see those as well in the handout where those arguments impact, also, individual requests in the fraudulent transfer case. But I don't need to repeat any of those arguments. I just wanted to make that clarification for the record.

THE COURT: All right. Thank you.

MS. SIEG: Thank you, Judge.

MS. HARDMAN: Your Honor, if you'll bear with us a second, we also have some slides. So we need to connect to the system and --

THE COURT: Okay. All right.

MS. HARDMAN: -- perhaps disconnect the defendants' slides.

So I will pause a moment for, for everybody to get on the same page. And hopefully, someone with more tech expertise

than me will work through that.

(Pause)

MS. HARDMAN: All right. I think we were successful, your Honor.

Carrie Hardman from Winston & Strawn on behalf of the Committee.

And we do have slides. So if your Honor wouldn't mind, we, if we approach.

THE COURT: Yes.

MS. HARDMAN: Thank you.

(Slides deck provided to the Court and counsel)

MS. HARDMAN: So I think, your Honor, I just, similar to what the debtors have been doing this morning, given these are our adversary proceedings, just wanted to kind of give you a broad overview of where we believe we are. And parties can disagree if they like. But since these are our affirmative matters, just kind of want to tell you where things stand so you --

THE COURT: Right.

MS. HARDMAN: -- kind of know all of that in the background.

We have finalized our search terms and custodians list. It is done, your Honor. I promise you. We have reached agreement. It required a little bit of motivation by way of a motion that was filed and then withdrawn. So we managed to get

there. The parties were able to resolve that dispute just ahead of the hearing in January. So that obviated the need to, to have that dispute for your Honor.

So in January, in an effort to move things forward, we've got that agreement. That started that six-month window, as you might recall, for substantial completion of discovery production on behalf of the defendants in those actions.

We also served some discovery requests in the form of interrogatories and requests for admission, not document requests, but those interrogatories and requests in January and the response deadline for those requests is, actually today, if my math serves. We spoke with the parties on Monday, and they asked for an extension of time to respond to those. We do believe they're relatively straightforward and look a little bit like theirs of us. And so in an effort to, to be courteous here, your Honor, we granted that extension. So they now have until sometime in March to respond to those requests for admission and interrogatories.

So right now, I think we are basically waiting for the documents to be produced in response to our requests, now that we have parameters for those requests. We also are waiting for the responses to the requests for admission and rogs in March. We also hope and look forward to not receiving all of those documents on July 6th, the day before the July 7th deadline. Hopefully, we'll get a rolling admission and

productions in the near, near term.

So assuming for the sake of argument that those documents will come our way and the responses will be received, we anticipate, big picture, these litigations would proceed as the normal course for litigations do. We would take some depositions. I will take, I will say, your Honor, we expect those to be rather limited and, in scope, and quick, given we do have some of the history from the preliminary injunction proceeding. We're intending to make those narrowed and focused.

From there, we would then move on, as one does in litigation, to an expert discovery area. Your Honor had said at our last hearing on the CMO motion, the Case Management Order, that we would come back to your Honor at that point to say, "Okay. Now where, now where we are, here's the dates and deadlines." I would hope that the parties at that point can, perhaps, come to agreement on some dates and present them to you so that you're not calling balls and strikes on those issues. But we would envision that going forward at that point.

With respect to expert discovery, I just want to be clear on this. We're expecting that to also be very truncated. We recognize that there is a proceeding going on simultaneously right now, which will certainly inform some of what we do in the fraudulent transfer action. But there's other aspects of

valuation and the reasonably equivalent value issues in, perhaps, fraudulent transfer, as an example, that have some specific areas where an expert may be needed to opine a little bit further.

So I think at that point we would be talking about a truncated expert discovery plan before your Honor and then try to move these along as well.

That all said, as mentioned, I think by Mr. Torberg, we learned in the reply this week, as well as discussions with defendants, that they wish to file further briefing and we can get to this towards the end, if you'd like. When you adjourned the motion to stay out to April, our understanding was that was premised on the six months running from agreement on search terms and custodians. We also had told you that we really expected to reach agreement within about two weeks of that hearing before your Honor. So you were doing the math, I think.

THE COURT: Right.

MS. HARDMAN: At that point --

THE COURT: I think you were hopeful it would be the end of October, or something.

MS. HARDMAN: We sure did.

THE COURT: Yeah.

MS. HARDMAN: We sure hoped. It, it ended up being, we got down to the nitty-gritty and there were a few last out-

hanging issues and we reached agreement in January, instead of October.

So I think from our perspective, we were envisioning that that timeline would probably scooch simply because the adjournment you had in mind was "let's get through this discovery piece and then we'll talk further about this." So I think, you know, from our perspective it would just slide to, perhaps, July. That is when our current deadline is for the completion of fact discovery. Up to your Honor. We can certainly talk about that as we go, but I just wanted to kind of under, level set where we thought we were the last time we talked about this.

As far as what the supplemental briefing would be, I think we've heard today it's regarding developments in this case and perhaps others. I don't know what those are to know if we dispute that. So I'm not sure what the issues are that would be briefed. Your Honor, of course, will decide what you want to hear or not hear and we can talk about whether that's necessary. I envision that would be at a status conference, perhaps, when we get to that point.

But again, your Honor, that's entirely your choice as to whether or not you want to hear more briefing on the, the issue that was briefed and argued back in October.

So with that said, I, I think, your Honor, from our perspective, we might be getting ahead of ourselves to discuss

briefing now, but happy to talk about it when we get to that point later in the discussion today.

So to get to the gist of the motion before your Honor today, sort of the plan of action from our side, your Honor, is for me to address the broad strokes. I will do my best to address some of the specific issues raised in oral argument today as well. But if I don't -- if I do it a disservice, I have backup here, your Honor, who may have more intimate familiarity with a particular request if your Honor has a question about one. So I just want to, I want to raise that to your Honor just in case some of those details I have an insufficient answer. I suspect others may be able to help back me up. And I appreciate your, your grace on that, your Honor.

Before we get further into the parts of the motion and the substantive request here -- and I know your Honor has -- I just want to get something out of the way as well -- and I know your Honor has said you will only give due weight to comments and statements made in pleadings and on the record.

Your Honor, when a party references in passing 9011 in a document, it causes me a significant amount of pause, as it would any attorney, I suspect. It's not a doc, it's not a rule that we use lightly, I think, in these courts. And when there are statements made that myself as counsel or our committee members as individuals are being harassing, evasive, or noncompliant, instead of simply asserting differing positions

on the law, I feel compelled to just clearly state for the record that neither the Committee, its professionals, have engaged in any sort of conduct warranting such allegations. We heed your comments from the last few hearings to stay within the bounds of decorum.

So I will stop there, while I'm, perhaps, behind, but I just want to make sure that your Honor understands for the record that our silence on this issue doesn't mean we acquiesce to those positions. So our staunch disagreement with the characterizations and the accusations made of both our clients and us, we certainly disagree with.

So thank you for allowing me to get that off my chest, your Honor. We'll get to the motion.

There was --

Next slide, please.

There was a lot of discussion in the pleadings that we needed to wade through in terms of the hay made about what was relevant, what issues are addressed here, what is the actual issue in terms of what we have or have not responded to. And your Honor, I tried my best to make this as clear as we understand it to be. I know Mr. Torberg referenced the committee members and tort counsel as needing to respond to requests. I think it's important to recognize in the committee capacity these individuals carry many hats. And so we need to recognize what's being asked of us. You can't just say it's

all one thing. That's not exactly how it works. And that's not what the case law supports.

So from our perspective, we were talking about two discovery buckets. And I will give all credit to somebody who found these cute buckets, but it wasn't me. The committee members, in their capacity as committee members, is one bucket. That is the blue bucket on the left. And then there's the committee members in their personal individual capacity. I think they're two different things. And I think it's relevant here for your Honor's consideration. We certainly agree with responding on behalf of the blue bucket. And it seems we have disagreement about whether or not we are obligated under the law to respond and are in a position to respond to the white bucket.

So going to the blue bucket to start, given that we have some agreement here in our role acting as capacity as committee members, this would include discovery of the committee members in their committee member capacity. It would also include myself, your Honor. I would not dispute that I'm within that possession, custody, and control, as well as committee's personal counsel, to the extent that they're operating with their committee member in their committee member capacity. I don't believe anyone has dispute as to that part of the scope.

Here, we did our diligence with our clients and took

the time to respond and have answered the 121 requests that we received from defendants to the Committee in a compre, comprehensive set of responses that exceed 200 pages. It's somewhere around 220. I'm not sure why. I don't know exactly the number, but it's about 220. We reviewed the documentation that was provided in the preliminary injunction proceeding. We provided information where possible, including from, your, from us, your Honor, counsel, which involved, where applicable, citations to documents that are in the record, including those provided by defendants in preliminary discovery and the PI, and we've otherwise responded. We've met multiple times with the defendants to discuss their purported concerns with our responses. And when we asked for specifics, your Honor, as to what was missing, where is this reported hole, we were told to simply review the request again. We did that, your Honor. We've done our best to make a response. We took a thorough time with getting these responses back. And so we were a little bit at a loss as to what the concerns were.

That said, we continue our obligations and supplement where applicable. And as noted in our extensive responses, much of the documents and information we're relying on for our complaints and, and pursuing our actions are documents that come from the defendants.

Besides those documents, from our diligence, again, we confirmed that each committee member in their capacity as a

committee member, beyond the work and communications that they have with us regarding litigation strategy and, and things of the like that are protected by privilege, there wasn't anything else. As I mentioned, you know, discussions with myself, perhaps, emails from me going back and forth about Legal strategy and how to respond to pleadings, what pleadings to bring, all of that is covered by rightful claims of privilege, work-product protection, or other related protections. These members, in their role as ACC members, signed the protective order as well so that they could engage with us in litigation strategy discussions. Given our members have actually signed a protective order themselves, I imagine your Honor would not be surprised to hear that our committee members have a very healthy sphere of speaking out about anything that goes on within their committee role.

So it's entirely consistent with our responses on these points. We've answered where we could. We've provided answers with respect to the factual bases that we have and otherwise, other than that, nearly everything else the Committee has done in its committee capacity is protected by privilege, work product, or other similar protection. Despite doing all of that diligence, despite all of the responses that we have provided, defendants seem convinced that other responsive documents likely exist, is what was said, which, to their mind, is this hole that must be explored. But there's no

real clear explanation as to where these holes actually exist. They cite certain requests where we have provided responses, again referencing their documents, and explain that that's deficient.

Your Honor, we, I'll get into this, but we need to rely on their documents. These are pre-petition actions that we are investigating and pursuing. Our side would not independently have this information about the actions that they took and why. So I'm not entirely sure why it's deficient. Defendants are welcome to disagree with our position on the merits, but that doesn't mean we failed to respond to their request. Your Honor, we're entitled to put on our case as we see fit, in the manner that we see fit. Simply because defendants disagree with our positions on those issues doesn't mean we manufacture or are required to manufacture different support for those positions. When we're talking about defendants' disagreement with how we pursue our actions, it's probably time for us to just discuss, discuss the overall picture of how, how and why we're here.

I won't belabor this point too much, your Honor. I'll try to go quickly. I, I just think it's important to note here that the litigations we're talking about, the issues, the claims and defenses underlying these adversaries, relate to that red box right there, the defendants' actions, the Texas twostep. You will see on July 7th of 2020, that is when our

Committee was formed. It's no secret that we believe the defendants' pre-petition conduct may be subject to challenge and rightful challenge as a fraudulent transfer, breach of fiduciary duty, or have the remedy of substantive consolidation as part of all of this. We appreciate that defendants disagree with those positions. Defendants were also in no position on their own as estate representatives to investigate those pre-petition actions as they would have been investigating themselves. Based solely on the finite discovery we did in the truncated period of time in the PI proceeding, we were able to establish colorable claims for fraudulent transfer and the related claims. And Judge Whitley gave us the green light for standing to pursue those estate claims accordingly.

I would say, your Honor, for a set of parties who staunchly believe that their pre-petition actions were beyond reproach, the Committee sure has faced some significant attempts to block our investigation and pursuit of these claims every step of the way. I'll butcher a quote, but it's one of those "doth protest too much" situations. We think these parties would rather simply prove their position on the merits in the action, as they claim is the case, rather than continue to set up roadblocks. Why don't we just stress test it, your Honor? In total, to simply proceed with a fraudulent transfer and sub con litigation excluding motions to dismiss -- I'm not knocking motions to dismiss -- we faced at least five attempts

to interfere with our investigation and pursuit of these pre-petition actions. The first, despite clear conflicts on their side, defendants opposed our request for estate standing. Judge Whitley overruled that opposition. Next, defendants asked the Court to reconsider that standing that was granted. Judge Whitley denied that request as well. Then defendants moved to withdraw our derivative standing. Judge Whitley denied that request as well. And fourth, defendants filed the motion to stay these adversary proceedings last October. Your Honor continued that placeholder to April, as we discussed earlier. And now, for No. 5, in the motion before your Honor today, defendants have mentioned, as well as in their reply, that the adversary proceedings should be stayed and plan to file further briefing. At some point, your Honor, respectfully, the parties should be permitted to just simply utilize the judicial process that is there for this intended purpose, to determine the merits of the claims that Judge Whitley determined were colorable.

Your Honor, from our perspective, at some point, enough needs to be enough. We should be able to, to proceed.

Going back to the point of this particular motion, your Honor, the litigations and the causes of action, again, for fraudulent transfer, fiduciary duty, and related claims, as well as for substantive consolidation, relate to the defendants' actions prepetition. They all arise from actions

and defenses and require an examination of the defendants' actions. For example, the elements of an actual fraudulent transfer. It's a transfer of an interest of the debtor made or incurred within two years of the petition date with the actual intent to hinder, delay, or defraud creditors. That actual intent is not ours. We know the law is very clear on that. It's not the, it's not a claimant's interest. It's certainly not the transferee's interest. It is, actually, the actual intent of the transferor. Here, there's some muddling, given we don't, the parties were one and the same at the time of the transfer.

With respect to constructive fraud, it's whether a debtor transferred an interest in property within two or four years, depending on federal or state law, where the debtor received less than reasonably equivalent value and was rendered insolvent. Again, it's the debtor's transfer. There's no reference to facts that would come from an affected claimant. Instead, it comes from the debtor or recipients of the transfers. Here, the defendants are both the transferee and the transferors in the subject fraudulent transfer transfers. They are the entities and individuals who planned, orchestrated, and executed these transfers. And with respect to the substantive consolidation elements, your Honor, whether the creditors dealt with the entities as a single economic unit and the creditor reliance that I'll get to in a second in

extending credit or whether the affairs of those debtors are entangled is an issue that clearly has all of that information in the hands of defendants. They would know how they represented themselves to creditors.

And to address this point, and you'll have to forgive me, your Honor. Going second means some of my slides might be slightly out of order in terms of how I address certain issues. The defendants have claimed today, as well as in their pleadings, that this requires evidence of actual creditor reliance. But Judge Whitley already ruled on this issue, your Honor. Specifically, the issue came up in the motion to dismiss the sub con complaint where defendants argued that they couldn't, that we couldn't establish that the creditors extended credit in reliance on the defendants holding themselves out as one profitable enterprise. Judge Whitley already said no and said he agreed with us that the claimants involuntarily extended credit when they entered settlements that were arrived at and ultimately remained unpaid.

So when it comes to discovery on a point like this, your Honor, where claimants involuntarily extended credit, the evidence would be the settlements that Judge Whitley was referencing, I would presume. Who has records of all of the settlements entered by the defendants? Each individual claimant? Certainly not. I will tell you, your Honor, I'll go back to my point that we don't believe we have possession,

custody, and control over every claimant in this case. The defendants themselves would have that evidence. It's certainly not this Committee that has that evidence when they weren't the parties to enter those settlements.

And more than that, when we're seeking to compel discovery, you usually focus on discovery of an issue you actually dispute, as I understand it. I'm not sure why defendants would be pressing the Committee, who didn't enter those settlements, when they may not actually dispute that they've entered a number of settlements in advance, on the eve of the petition date. These are entities that either held themselves out to their creditors in a way that warrants substantive consolidation, or they didn't. In either case, that information, again, is in the defendants' hands.

Conversely, the Committee didn't control how the defendants held themselves out to creditors. On the fraudulent transfer front, the Committee and its members didn't participate in the pre-petition transfers at all. In fact, as our complaint alleges, the defendants kept those transactions a secret from their asbestos claimants on purpose. So to now seek discovery from us for information that's prior to our very existence when we couldn't have committed any of that is a little bit absurd, from our perspective.

But in any case, your Honor, the Committee has fulfilled its duty to respond to the discovery sought within

this bucket as permitted by applicable law.

With respect to the second bucket, the white bucket, defendants seek discovery from the Committee and, by extension, personal counsel acting in their personal capacity, meaning discovery unrelated to their role as a committee member. So I thought about this for quite a while to try and come up with examples of what that would look like, what, where in these requests would that be something that I either do or do not have possession, custody, and control of. I'm certain there are others, but these few examples here are the ones that came to mind. Given defendants are seeking both pre and post-petition discovery when, save certain targeted searches, we've reached agreement that they will not be producing post-petition discovery themselves, I would think the requests would include documents and information, like a claimant's discussion with its torts counsel during its pre-petition litigation about litigation strategy. I would think that them talking to their tort counsel about their litigation strategy prepetition might be something that falls in this bucket, right, a personal issue.

At this point, we're talking about a time when the Committee didn't exist. So also, that's not something I have possession, custody, or control over. A claimant's discussion of its potential recovery on account of its personal claim, that's certainly something that any committee, any committee

member may have or may want to discuss. And your Honor raised this a little bit in the earlier oral argument today when you're discussing whether a particular creditor wants to participate and has an interest. Your Honor, there are -- a, a creditor who chooses to sit on the Committee is going to have its own personal interests, and it will have its role as a committee member. We know the duties of a committee member. We also understand a committee member's personal interests in learning about its recoveries. That's a separate discussion that I certainly will not have with our committee members. That is not my role, and it is not a role for the Committee to investigate.

And then another example we were trying to think of that falls within this bucket is, perhaps, our committee members in their personal capacity might discuss their health concerns related to the exposure that Trane subjected them to. Your Honor, I would argue that under some of the requests that have been provided they believe this is responsive, but that's not information that I have a right to provide. There's an avenue for that, and it is not through the Committee. Committee does not represent the individual claimants who serve on it. I don't have an engagement letter with each committee member at all. I represent the Committee as a whole.

So when seeking discovery from me in my role as Committee, that is who I can respond on behalf of. These

individual members are not the plaintiffs in our adversary proceedings. The Committee is. Defendants cite a number of cases regarding the practical ability to obtain in this context in an attempt to establish my control over the individuals in their personal capacity, but not a single one of those cases cited was in the committee context. In fact, some of the practical ability to obtain cases explain that defendants appearing in different capacities are actually not subject to discovery in that capacity. For example, the Spring v. Board of Trustees case explains how a school board of trustees doesn't have control over individual members in its board.

Defendants haven't cited a single case in the committee context to support the position that when you volunteer to serve on an official committee, you have agreed to be the subject of personal discovery. And there's a reason for this, your Honor. This isn't the law. There's a very strong practical policy at play here. I understand that there's been discussion about chilling involvement, but your Honor, if all it took was subpoenaing or requesting of a committee information to get directly to a personal committee member, no committee member in their rational, right mind would serve. This is not just specific to asbestos where we have individuals. That would also apply to any committee in any Chapter 11 case.

More than that, if defendants' position were the rule

of law, every single committee constituent would, arguably, subject, be subject to our ability to seek discovery. If their position is correct, a request of me means a request of all of the thousands of constituents. Courts like those in Trantex, which was 10 B.R. 235 at 238 -- it's a bankruptcy case in the District of Massachusetts -- recognize that that's not a reasonable position to take.

And moving forward.

Your Honor, again, while the defendants haven't cited any committee context cases, we did. I recognize that they believe these are not on point because they dealt with certain other aspects of the case. But your Honor, I will say this. The issue was whether or not discovery can be sought through the committee of individual members. Garlock and G-I Holdings in this court and in the District of New Jersey refused to create this new law permitting committees to provide discovery of their individual committee members or their personal tort counsel, by extension. The G-I Holdings court specifically found that the committee doesn't have the power or authority to bind individual creditors. They're viewed, effectively, as nonparties; and thus, rejected the idea that individual claimants' discovery was within my possession, custody, or control as a committee. And the same thing happened in Garlock here, your Honor. You can see that.

So from our perspective, defendants' interpretation of

the possession, custody, or control rule is not only unsupported by the law, it's also unprecedented. The Committee's made up of individuals, in this particular committee, who are dying as a result of asbestos exposure, something they're dealing with every day. This is not an appropriate or an additional burden that these claimants should be forced to carry.

So in sum, on the scope issue, your Honor, we responded in our committee capacity, and the law doesn't support this second bucket in terms of, of what we have possession, custody, and control over.

I have one last slide, your Honor, and I've already addressed the first, the first issue here, your Honor, with respect to creditor reliance. I have two more, and they are relatively overlapping in issue.

There's, much has been made about the solvency or valuation arguments today, as well as in the pleadings, with respect to these issues. From our perspective, it comes down to one thing. Defendants want the Committee to establish its valuation in the adversary proceedings before we've had a chance to truly get to the part of the process in discovery where you actually get to this issue. And that, from our perspective, is the expert area. Defendants claim that the initial expert reports in the estimation proceeding require us to answer differently than we have in our responses and

objections. We disagree.

First of all, as you well know, your Honor, expert discovery in estimation is ongoing. There still isn't a right, there's still a right to supplement that first report and rebuttals aren't even due yet. And second, while I certainly appreciate the value of the estimation work being performed, and it's certainly a good start with respect to both the estimation proceeding and the fraudulent transfer, when it comes to the fraudulent transfer valuations, there are a few more steps involved after the estimation value is complete. As mentioned earlier today -- I know Mr. Torberg referenced this -- estimation is evaluation that's established as of the petition date. And with respect to the actions in the adversaries, there's a slightly different date. I understand they believe that's just immaterial, from our perspective. We may agree; we may disagree. That is an issue for our experts to decide.

More than that, your Honor, it's not just valuation. It's the issue of whether reasonably equivalent value was provided. That is an issue that is unique to fraudulent transfer. It has nothing to do with estimation. And it is an issue that I don't believe any professional in the room is going to suggest that they do without expert testimony when they deal with these types of actions.

So your Honor, while we think it's a great starting

point to have the estimation proceeding as far along as it is, we expect estimation -- excuse me -- we expect expert discovery here to be informed by that, but also truncated as a result, and we need that opportunity to go through that process. We were asked the questions about valuation and reasonably equivalent value. We've answered and we've answered honestly. And a lot of this will come out in expert discovery, and we will supplement, as is required, when that time comes. Defendants provide no support for their position that we should somehow disclose an expert opinion, which they have, in a different aspect of the case that doesn't fully address our position in these adversary proceedings on valuation and reasonably equivalent value.

So your Honor, we can agree to its relative, we can disagree as to the relative import of that valuation process, but the disagreement itself doesn't render our answers incomplete.

As to the financial distress and alternative positions -- I know Mr. Torberg referenced that today -- I think this is the second or third time that this has been raised with respect to various requests for relief, that they believe are alternative positions regarding financial distress is somehow a basis to compel a different response to our discovery responses, different to their discovery requests. Defendants say in their reply that the Committee should be compelled to

answer differently and it says "regardless of whether their answer serves its purposes in these adversary proceedings." So we should be compelled to answer whether it has to do with this proceeding or not. Your Honor, respectfully, we disagree with that and suggest that we stay within the bounds of this adversary proceeding. And that was in their reply toward the end.

On the financial distress point, defendants again have made much to do about our alternative arguments. We've already litigated this issue when they sought to challenge our standing the first time -- excuse me -- the second time. And Judge Whitley rejected defendants' position when he denied the defendants' motion to withdraw our standing on that basis. So I'm not sure why we're discussing it again here. It appears that from the reply that maybe this is just a vehicle to reference some merits arguments with respect to a citation to Love v. Red River Talc.

Your Honor, on the Red River Talc front, I understand that there are decisions that the defendants believe are favorable to them coming out regarding the Texas twostep, or various derivations of that. There's language coming out on the merits of the Texas twostep in our favor as well, your Honor. Some courts have called it a well-crafted and methodical plan to pursue a sham Chapter 11 bankruptcy for a stooge subsidiary of a fully solvent company to coerce

favorable settlements. One court even called it obscene and counter to the fresh start intended by bankruptcy in the first place.

Your Honor, what does that have to do with discovery responses? Respectfully, we argue it has nothing to do with this. So we won't belabor the point other than to say that early merits argument has no bearing on the relief the defendants request.

Further to this financial distress point that they've raised, we've asked our discovery, in our discovery of them for their position on this issue to figure out if there's actually a dispute of fact. Were Aldrich and Murray in financial distress sufficient to warrant this bankruptcy case or were they not? We look forward to the defendants' responses come March to see if we really have a dispute of fact on this issue or not.

Before I get to the other, my, my quick summary, your Honor, I have -- I do it through Post-it Notes, much to everybody's dismay -- but I want to make sure I've addressed any points that Mr. Torberg has raised. I think I've raised the point that the defendants here have indicated that there's just one set of discovery they're seeking. I've indicated to your Honor that we believe it's two different buckets. It's not an exception. It is simply to explain that there's areas that we do not have possession, custody, and control over.

Essentially, what they're asking for with respect to the expert testimony here and the expert discovery, is asking us to supplement before that information is ripe. There was a reference to Footnote 31 of our pleadings where we went over one of their requests. This request asked for literally anything related to the bankruptcy case. It's not tied to the adversary claims and defenses. We believe that's overly broad and we'll rest on our position that's contained in Footnote 31 on that issue.

There was a discussion about how our requests asked for pre-petition and post-petition information. Your Honor, as that update I mentioned earlier, we've reached agreement with the parties that our information will be sought largely prepetition and with some targeted searches, they will go for some post-petition information. So I believe that issue has been resolved.

And Mr. Torberg referenced an example today of a claimant explaining their position that they're recovering elsewhere from other defendants in other actions. That's their personal claim, your Honor. That's not the claims of the Committee as a whole. That's not the Committee's role as a whole. I would assert that if they want to believe that's relevant, there's probably an avenue for that, but it's not through the Committee.

And so, your Honor, with respect to personal claims

and the analysis of one individual's personal claim and whether they believe they've been sufficiently satisfied or not is not an issue for the Committee to opine on, nor do we have possession, custody, control.

So in sum, there's been a lot of hay made here, but, getting down to the requested relief, we've received 121 requests in our litigation regarding defendants' pre-petition actions. We did our diligence and carefully responded. Defendants appear to disagree with our positions, and that's fine, but it doesn't warrant us changing our answers to satisfy their dispute, nor does it warrant a stay of our litigation, as has been laid in the motion and in reply. We should be permitted, as your Honor has already authorized, to get through fact discovery. Defendants should not be permitted to use this intentional confusion to evade responding to our discovery in actions regarding their pre-petition conduct. We look forward to their responses and productions and moving this adversary forward.

Thank you. Unless you have other questions for us.

THE COURT: No.

MS. HARDMAN: Okay.

MR. GUY: Your Honor, I rise not to say anything about the merits, but may I, colleague be excused? Because we, we don't have an issue in this.

THE COURT: Oh, yes, yes, of course.

MR. GUY: Good luck.

THE COURT: Okay.

MR. TORBERG: Okay. Your Honor, I think I can be brief because a lot of what we heard from Ms. Hardman didn't have much to do with the actual three buckets that are at issue here. And a lot of their arguments really were kind of divorced from the actual issues that we raise in the motion.

I am going to just kind of go through some of the slides. Slide 2, they have a bucket of committee members in their personal capacity and committee members in the capacity of, as committee members. I think the, the point of the slide was to say, "We are producing stuff in blue, or, "We are searching for stuff in blue, but not in white." And I think I explained already why that does not work, particularly as to like when we're trying to get their contention, their answers for creditor reliance on the sub con interrogatories. That does, that doesn't have anything to do with their Committee work. It's how they might have relied prepetition. So that, that doesn't work.

I also -- it's my understanding that they have refused to, to search for documents with respect to RFPs 28 and 29, including stuff that falls in the blue bucket 'cause they think it's irrelevant and overbroad.

With respect to Slide 4 and 5, this is Ms. Hardman's argument that everything in this case resides in the possession

of defendants. It's all about their restructuring and bankruptcies. And -- and I -- this sort of is emblematic of the one-way street of discovery that we've been seeing. In fact, we think -- I, I think I explained why evidence is in the possession of the Committee and its members, including as to credit reliance, including as to their position on asbestos liability, and their position on financial distress insolvency. Unless they want to take our position on the latter two points, then what they have is relevant. And those are the three issues that we're talking about. And, and they don't have a good basis to say that all the evidence in those three buckets is in our, is in our possession.

THE COURT: So this is interesting to me because I, you know, I, what I'm hearing is they have a different theory of substantive consolidation, not the traditional, not looking at the traditional reliance, you know. I had a big substantive consolidation issue a few months ago and so spent a lot of time with it and in that, you know, really did have creditors come forward and testify, describe, you know, that they viewed them as the same. That does not seem to be this. I mean, I could be -- correct me if I'm wrong -- but that doesn't seem to be the theory at all.

MR. TORBERG: Well, well they certainly have a much different theory for sub con than any case I've ever been in --

THE COURT: Right.

MR. TORBERG: -- okay? I will grant you that and one that --

THE COURT: Oh, I think they don't have it. Why they don't say they just don't have it --

MR. TORBERG: Yeah.

THE COURT: -- I don't know, but that's what I'm hearing. That's, it sounded like that's what you were saying, that you just -- you don't -- you didn't actually know of any -- you're, you're relying entirely sort of on the involuntary settlements. You, you don't actually have a traditional sort of allegation of reliance, is that correct?

MS. HARDMAN: Your Honor, so two, so two points on this. One, I think you are correct at this stage, right? Discovery is ongoing. I want to say that to be, to be clear. We may --

THE COURT: Well, it's your complaint. So --

MS. HARDMAN: Right.

THE COURT: -- when you filed the complaint, your theory was not on --

MS. HARDMAN: That's correct.

THE COURT: Right.

MS. HARDMAN: We put this in front of Judge Whitley already --

THE COURT: Right.

MS. HARDMAN: -- and made that very clear in the

motion to dismiss stage and gone through kind of what our position was. And we made that very clear and laid that out to him, that this is based on a set of settlement agreements, which is a, it's a reliance --

THE COURT: Right.

MS. HARDMAN: -- of creditors in a way, right, your Honor? And I think Judge Whitley said, "I understand that. It might be specific to this circumstance."

THE COURT: right.

MS. HARDMAN: And it's -- it -- and in this circumstance where the only creditors are asbestos claimants --

THE COURT: So if you still don't have any, you need to say that. And if you come across any of the other type --

MS. HARDMAN: Supplement.

THE COURT: -- you need to do it.

MS. HARDMAN: Your Honor?

THE COURT: But you need to answer and say right now you don't have it.

MS. HARDMAN: Your Honor, that's --

THE COURT: That's, that's not --

MS. HARDMAN:. And if I have not been clear today, your Honor, I, and in our response, we've made -- I, I thought we did -- made very clear. And if we need to --

THE COURT: That at this point, you're --

MS. HARDMAN: -- come in again to say --

THE COURT: -- only relying on this --

MS. HARDMAN: -- we don't have anything else.

THE COURT: -- the involuntary settlement theory, which does not include anything about evidence that they could provide. That's, that's what I'm getting.

MR. TORBERG: Yeah. Except they specifically alleged in responding to our motion to dismiss that asbestos creditors relied upon the creditworthiness of these old entities. That's their allegations, not mine. And you know, if, if they have someone who wants to say that, there's some cross-examination that needs to happen about that. Because that's a factual statement that needs to be challenged. So really, how did you rely upon the combined? Did, did you have financial statements in front of you? Why wasn't it sufficient that Aldrich had, itself, tens of millions of dollars and your settlement amount was $5,000? Like, there's lots of questions that could be asked about that.

MS. HARDMAN: Your Honor?

MR. TORBERG: And --

MS. HARDMAN: I'm sorry.

MR. TORBERG: -- we want the opportunity to see what evidence are they going to put, or they're going to put. I don't know what's going to be sufficient for this Court to establish creditor reliance, but we need to make sure we know what it is that they may put forward.

And to be clear, Judge Whitley never decided this question. He denied a motion to dismiss on sub con grounds. He never said what would suffice for creditor reliance. And this is the first time we've heard this argument. It was never put in the brief, never seen in any letter. It's curious it's not on a slide what, what he actually held. Because he didn't hold that.

So I wanted to respond to that.

And then let me -- you want -- can I finish my comments?

THE COURT: Yes. Yes.

MR. TORBERG: So Slide 6, there's these discovery buckets. They say that we're seeking evidence on pre-petition litigation strategy, personal client recovery, personal health concerns caused by Trane. I, I don't know where they're getting that from our motion. Like, the motion sets forth what's at issue. It's the three things I identified at the beginning of my presentation. None of this has anything to do with that.

So I think, I don't know if this is some sort of strawman argument or what, but it really, it really is not responsive to what, what we're arguing about here.

With respect to the G-I Holdings and Garlock cases that she, that Ms. Hardman cites on, on page 7, first, we said in our brief it's distinguishable on the facts. And second,

it's, it's worth noting that this is talking about responses to document requests. The standard for interrogatories is different. They need to provide information that's reasonably available to the party. And the case law is that if information is reasonably available without undue burden from a party, it needs to be collected and produced. They haven't provided any indication it's not reasonably available.

So we don't think these cases have much to do at all with interrogatories and really not that informative on RFPs, either, because they're distinguishable on the facts.

With respect to estimation, Ms. Hardman commented that we, we haven't provided any support that they must take a estimate in one proceeding and make it their estimate in a different proceeding. And the best support I can provide is that's what they told us they were going to do. That's what they said they were going to do. They don't even deny that, that they, that they flipped course here. And in any event, if they have an estimate, they should be provided. There, there's no rule that, that says I can just wait till expert testimony. I don't have to respond to any discovery requests that relates to an estimate. That's, that's not the law.

With respect to the last issue on financial distress, there's no dispute that they really haven't answered the request. You can see in the, in the slide. we ask, "Tell us why you claim the debtors are not in financial distress." And

they responded by providing reasons why they were in financial distress. It's not, it's not responsive, and they, and they cite no, no proper objection in, in not responding to it.

That's all I have. Thank you.

And then I'll, I'm going to let Ms., Mr. Erens respond to the briefing issues when we're done.

THE COURT: All right.

Anything further?

MS. HARDMAN: If I may --

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

MS. HARDMAN: -- your Honor?

THE COURT: Yes.

MS. HARDMAN: Just a couple of points from what Mr. Torberg raised.

With respect to the issue that you were asking us questions about, your Honor, we put in our response -- I just didn't have it right in front of me -- that we've relied on the claims database and the debtors' schedules that contains information about those settlements. We have answered the question. I understand if they believe there should be more, but we just disagree about what we're relying on with respect to our position. And if they believe that's sufficient or not, that's a merits argument to have down the line before your Honor. We've said that in our responses. That's how we've

answered.

I will say, your Honor, as is normally the case, we also believe, and I've said this probably more times than I can count today, that our discovery, we believe, any further discovery in support of our position is in the hands of the defendants. And so when we receive information, we will supplement, as is required by the Federal Rules, and we will do that. And if there's an issue further about that issue, happy to discuss it when that time comes. But when I don't have their documents in hand, I can't say if I'm also relying on a new document that's just come in.

So once that happens, we will supplement, if, if need be.

The point raised about Slide 6, I just want to be very clear. Those were just examples of where we were thinking in this sort of outside bucket that's not within our control of information that might really not be things that the Committee has, but a claimant may have in their personal capacity. I was just trying to give your Honor examples. It's more a demonstrative than anything.

With respect to the issue about extending credit again, the, the issue in terms of where Judge Whitley referenced it, it was in the hearing on April 1st of 2022. Just for reference, it starts on page 24 about the involuntary extension of credit, your Honor, just for reference.

There was an issue raised that the Garlock and G-I Holdings, with respect to requests, don't, weren't in the interrogatory context. Your Honor, we addressed that issue and their point in our Footnote 21 of our pleading and actually addressed those cases and said that it's actually more, we find some cases on, in the interrogatory context that say what's within our control and what isn't. So the issue still remains whether it's an interrogatory or an RFA.

So I just point your Honor to Footnote 21 of our pleadings.

And I think to button this up, there was mention about our expert report, your Honor, in the estimation proceeding. Again, that is a different proceeding. The estimation process and the expert process there is still pending. They already have it. At this point whether we choose to rely on that has not been decided. And so until, once it is decided, we will supplement and provide the answer when applicable.

And finally, we talked a lot about our theories today, your Honor, and whether they're novel or not, they're our theories. And if they disagree on the merits of those matters, happy to deal with that. But that's not a motion to compel a different answer from us in the discovery context. We will discuss it at the merits of this action when the time comes.

So I think other than that, I, I think that kind of addresses the points that Mr. Torberg raised. Unless you have

any other questions for me, your Honor.

THE COURT: Not at this time.

MS. HARDMAN: Thank you.

THE COURT: All right. So I'm not going to go through all of your, your, your questions question by question. I'm not sure what you're looking for. But you know, as everyone knows, no, no judge likes to hear discovery disputes, right? So right now, some broad concepts that I'll put out there.

First of all, the Committee's reading, I believe, on what documents it has to produce is, is too narrow. I review the law in the Fourth Circuit as also talking about a practical ability, not just legally. So, to obtain documents. And you can certainly make an inquiry and describe what you've done to look for anything that's requested in your response, you know. I think, you know, making a reasonable inquiry of, of the members certainly falls within what the Committee has a practical ability to produce.

So if there's, then, something that you come up with that says, you know, legally, you know, someone's refusing to, you know, that's, that's different. But, you know, you can ask. So you know, I -- I don't -- I don't -- I don't see why you don't have to ask.

So I don't know if that helps with that, the documents.

MR. TORBERG: Can I just ask one clarification on

that?

THE COURT: Yeah.

MR. TORBERG: Would that also apply to the interrogatories, seeing information on the interrogatories?

THE COURT: So I think you need to answer as far as -- well, to me, what I'm hearing, which is what I was trying to point out earlier, is instead of saying you don't have anything you don't. Because that's not your theory. You think, you're thinking you don't even have to then ask people. But they're entitled to, you know, as their defense, to still have you ask. It's an alter, you know, because if you have people who say, "We didn't rely on it," they're entitled to know that.

So I mean, I don't, I don't think you can use it as a shield in that way, saying, "That's not our theory." That's what I'm saying.

MR. TORBERG: I had a second follow-up question.

THE COURT: Yes.

MR. TORBERG: I'm sorry. Did I cut you off?

THE COURT: So again, I think you just, you need to ask.

MS. HARDMAN: Your Honor, just to, just to, before we get to a different --

THE COURT: Right.

MS. HARDMAN: -- point on this. I want to be very clear. We asked our committee members with respect to

discovery in their role as committee members, since that's the pleading we filed, right, in our role as a Committee. And so I, I have not -- and, and I want to be very clear about what I'm saying here, your Honor, so there's no confusion. The Committee isn't relying on information that we would have obtained from our individual committee members in their individual capacity. That's not information that we are utilizing to pursue a complaint.

So I want to, I just want to understand your Honor's ruling.

THE COURT: So then you need to say that. I, I haven't heard -- is that -- have you heard --

MS. HARDMAN: That's what I meant --

THE COURT: -- that articulated?

MS. HARDMAN: -- about the two buckets.

THE COURT: No.

MR. TORBERG: No, I have not heard that. I mean, that's what we were trying to get. We had a long meet and confer about this where we made very clear -- this is why we're pressing this. We need to know are you going to come forward with evidence from these people --

THE COURT: Right.

MR. TORBERG: -- or not? That, that's why we're here today. Unfortunately, we, I couldn't get that answer from them then.

MS. HARDMAN: Your Honor, I, this is not meant to be --

THE COURT: Okay.

MS. HARDMAN: -- obtuse, truly.

THE COURT: Right.

MS. HARDMAN: I, we filed a -- I -- and maybe this is me assuming some things. We have filed a complaint on behalf of the Committee, not Committee and each of the 11 individual members, right? We didn't do that because none of them are providing the discovery upon which we are basing our --

THE COURT: I think it's the --

MS. HARDMAN: -- complaint.

THE COURT: -- cause of action. At least, that's confusing to me.

MS. HARDMAN: Sure.

THE COURT: Substantive consolidation.

MS. HARDMAN: Sure.

THE COURT: You know, the elements that are --

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

THE COURT: -- just typically looked at --

MS. HARDMAN: Right.

THE COURT: -- would involve necessarily. Even though the Committee has standing to bring the action, it would involve, generally, you know, or I would say the usual way you

see the cases around the country and certainly in the Circuit --

MS. HARDMAN: Sure.

THE COURT: -- it, it does look at, then, pre, prepetition, you know, the, the, you know, that the creditor relied, you know, basically that --

MS. HARDMAN: Right.

THE COURT: -- they were held out as one and the same, right?

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

THE COURT: And so that's why, of course, they're looking for that. They're asking that question.

MS. HARDMAN: Right.

THE COURT: But that's not what you're --

MS. HARDMAN: And I think -- I now understand the confusion.

THE COURT: Right.

MS. HARDMAN: So I think, your Honor, what I'll say, a couple of things. And I -- and I'm not -- this is not going to -- I need to finish the sentence, is the first half is we, we, we've told you what we relied on. It's in our response. We've relied on the claims database and we relied on the settlements and information contained in the schedules of the debtors and, the debtors themselves, right? That's the information we're

relying on to support our claim with respect to that issue. If that, they believe, is insufficient from a merits standpoint, meaning they want to say that we should have proof of something somewhere else, that's a choice down the line. But when we're answering it, we've answered as to what we are, in fact, relying on.

There's not much more I can say. If you disagree with the sufficiency of that, that's a, that's up to you, and we believe we're going to put on our case. And Judge, you're going to call balls and strikes at some point. But that's our answer.

THE COURT: Right. I don't know that you responded in -- that -- that that was your written answer. But I understand what you're saying now.

MS. HARDMAN: Okay. I, I want to make sure I'm --

THE COURT: Right.

MS. HARDMAN: -- getting it across.

Okay. Thank you, your Honor.

MR. TORBERG: My second just question I'm clarifying. Tradition -- I, I believe they've been taking the position that when they're searching for members, they're also searching for documents in possession of the individual counsel for the members. I would assume that that, that your ruling that they need to search for members also includes their individual tort counsel.

THE COURT: Yes. They just, you just inquire, you know. Obviously, then, you can assert privilege. You can assert whatever. But that doesn't take it out of sort of the practical ability to, to ask people, right --

MS. HARDMAN: Okay.

THE COURT: -- if they have something.

MS. HARDMAN: So I just want to make sure I understand so that we have the proper marching orders, your Honor, is we have asked our claimants. In their role as the actual plaintiff, you want us to -- the, the rule that you're establishing --

THE COURT: So -- well --

MS. HARDMAN: -- is that we then ask them in their individual personal capacity if they have responsive information.

THE COURT: So are you or are you not relying on anything anyone did --

MS. HARDMAN: In their personal capacity.

THE COURT: -- in their personal capacity? Nothing in your claim?

So how -- how -- how would you have a substantive consolidation? I don't even understand how that works, your claim. I realize --

MS. HARDMAN: Your Honor, we're getting into the merits of our claim.

THE COURT: I, I'm just trying to get my -- 'cause I, to decide what's relevant, I --

MS. HARDMAN: Right.

THE COURT: 'Cause the Committee only came into existence postpetition.

MS. HARDMAN: Correct. So we're, as we've said in our -- it's in our answer, in our response that's attached to the pleadings here -- we're relying on the claims database. We're relying on the schedules where they assert all these settlements. And that is the position we're taking. We've also said today that we expect some of our requests are geared toward getting information from the defendants, who would have it, relative to how they've held themselves out to their creditors.

So when we talk about the settlement discussions and we talk about whether or not our underlying claimants, upon which we represent as a Committee, relied in settling with defendants, the defendants will have that information. And so we are going to them as a party to this action for that information, for anything further.

So discovery is still ongoing in that respect. Your Honor may decide one way or the other with respect to merits at some point. I look forward to presenting you all of our evidence at that point. But that's not what's before you today.

THE COURT: Comment?

MR. TORBERG: I don't know how the defendants would have information about the creditor's state of mind and, and how they relied.

THE COURT: My understanding is they're not using --

MR. TORBERG: Yeah.

THE COURT: -- that traditional theory of substantive consolidation.

MR. TORBERG: Yeah. And I just, I have to say again. If you look at the responses they gave --

THE COURT: Yeah.

MR. TORBERG: -- to the motion to dismiss and to the interrogatories, they've said that asbestos creditors relied when they settled claims on the combined creditworthiness of the old entities. I didn't say that. It's not in our documents. They said it. Are they, are they saying now they're not going to make that allegation?

THE COURT: That's what, that's exactly what --

MR. TORBERG: That's what I'm hearing.

THE COURT: Yeah. Yeah.

MR. TORBERG: That's new to me.

THE COURT: So that sort of -- then -- they -- then you don't have to answer it if that's not, you know, if that's not what is going to be an issue at all.

MS. HARDMAN: Your Honor, with respect to this point,

just to be very clear, there's other aspects of the reliance that we've discussed, right, reliance that they're all one entity. I can make an -- I feel like I'm getting into the merits here again -- but we can make the argument that it's clear from their communications. If they put themselves out to, to creditors prepetition that "this is the Trane Enterprise settling with you," I don't think it requires a lot of institutional knowledge about the financial statements of the Trane Enterprise for a creditor to say, "Oh, that multi-billion dollar company? They can afford to pay me." I don't think that requires a lot of demonstration if they're holding themselves out to be the Trane Enterprise. If they said, "You know what, actually? I'm a separate subsidiary that was formed yesterday. I'm a subsidiary that doesn't have enough assets."

If they changed courses when they were settling, maybe that's a discussion we need to have and that's discovery we're going to get from defendants as to how they held themselves out to our creditors when they settled. Were they the Trane Enterprise? Was it Trane Technologies? Was it Aldrich Pump? Was it Murray Boiler?

THE COURT: So what you just described, though, is touching on someone's subjective state of mind. Like, so -- how -- you're just going to make that argument without actually any evidence?

MS. HARDMAN: Well, we're going to have the documents,

right?

THE COURT: Okay.

MS. HARDMAN: And so, your Honor, we provide responses and objections early in the discovery process, right? We have an obligation to supplement as more discovery becomes available. I'm telling you we've asked and look forward to receiving documents on this issue in our substantive response, sub con requests. That's pending with them. If they have nothing to give us, we'll deal with it then. If they have something to give us that we're relying on, we then supplement and say, "This document you gave us, we're relying on this."

Your Honor, we would then, as I mentioned before, go into depositions and testimony. We can talk about that at some point as to who might be subject to deposition. They will have notice. We'll all be participating together. That is the process that carried out.

THE COURT: So I want you to answer the questions more clearly, then, that, that you are not, you know, you are not relying, the Committee is not relying on any individual claimant's experiences, you know. That way, we know. That --

MS. HARDMAN: Right.

THE COURT: -- that -- so you don't need to answer it. You know what I'm saying?

MS. HARDMAN: Can I ask you a hypothetical, your Honor, in that context, right?

THE COURT: Right.

MS. HARDMAN: So say we have an email from the Trane Technologies group where they settled with John Smith. They said, "Trane Technologies can settle with you." And John Smith says, "Great. I look forward to this." Or they have an email that says, "No. Actually, it's the subsidiary that was formed yesterday," and there's some discussion between them and John Smith or John Smith's counsel, however it may be. We are then entitled -- that's newly discovered information for us to then go forward and ask, perhaps, for John Smith's information, to ask John Smith a question. Right now, I don't have that information to know if that's what we're relying on. But if that were to come out, then there's further discovery and then we supplement our responses. That, to me, is how that might play out. But right now, I don't have it.

So that is, my answer is, as far as I can go with the information we do have.

THE COURT: All right. And you've made a reasonable inquiry?

MS. HARDMAN: Of our --

THE COURT: Or you're --

MS. HARDMAN: Yes.

THE COURT: Yeah.

MS. HARDMAN: Of our committee members in their committee member capacity. I'm not going to make a reasonable

inquiry of 40,000 claimants because that's not the position that we're choosing to take in terms of an evidentiary support for our merits.

THE COURT: All right. So I think it's just a very narrow claim that they have, which this, this, this definitely helps.

MS. HARDMAN: Okay.

THE COURT: I understand. So I mean, to me, I want you guys to work this out.

Do you need more?

MR. TORBERG: I mean, if they're willing to, to stipulate that, that they're not going to put any evidence of a, any claimant's state of mind --

THE COURT: Unless they supplement.

MR. TORBERG: Yeah. -- then --

THE COURT: Yeah.

MR. TORBERG: But I mean, I think they still owe us a response to the outstanding interrogatories.

THE COURT: I agree.

MR. TORBERG: Have you looked? Have you asked about whether you prepetition relied on it? I think we're entitled to, to that.

Again, this gets back to the, you know, the hole we were trying to fill.

THE COURT: And they'll say they haven't. Because

they are not, that's not their theory.

MR. TORBERG: Yeah.

MS. HARDMAN: It, it's a contention interrogatory, your Honor.

THE COURT: Right.

MS. HARDMAN: So it's our contention, right? And if our contention is here, you can't ask me to answer over here. That's --

THE COURT: So you need to be clear on what your, what your theory is and what, that you're not making that contention essentially, right?

MS. HARDMAN: Respectfully, your Honor, I, I'm not trying to be difficult. We thought we did this. And so --

THE COURT: Well, I didn't get it. So you know.

MS. HARDMAN: Okay.

THE COURT: I mean, and maybe some of it is my bias coming from other substantive consolidation --

MS. HARDMAN: Sure. Understood.

THE COURT: -- you know. So that --

MS. HARDMAN: And it being a different theory.

THE COURT: Yeah.

MS. HARDMAN: Yeah. Understood. Understood. I, I, I mean to say in our responses I don't -- at this point, they're suggesting it should have different contentions and we don't have them. We answered based on our contentions at this

moment.

THE COURT: Right.

MS. HARDMAN: And so I don't know what I supplement there beyond what our current contentions are. And so that's where I just want to make sure I'm adhering to what your Honor wants, but I don't know what else to give if those are our contentions.

MR. TORBERG: I was trying to get the basis for what their argument is --

THE COURT: Right. Right.

MR. TORBERG: -- so we know what to deal with at trial. I mean, if they think what they're going to put up is sufficient to establish reliance in order of sub con, that's a question for your Honor.

THE COURT: Right.

MR. TORBERG: I don't think it is, but that's not -- that -- that --

THE COURT: That's not, that's not the question.

MR. TORBERG: That's not an argument for today.

THE COURT: Right.

MS. HARDMAN: So I understand that there's --

THE COURT: So I mean, if, if nothing more is needed, I mean, in this -- in this -- given this information, do you, is it still your position something more is needed to change the answer? I mean --

MR. TORBERG: Well, I think that they need to tell us, clearly, that they have searched for information and documents from committee members and their counsel that is responsive to those requests that are at issue.

THE COURT: I think they have, but --

MR. TORBERG: Okay. So once they put that in writing so it's clear, will, I think will be resolved.

THE COURT: Okay.

MS. HARDMAN: Your Honor, I -- I -- it's, it's written in black and white in our pleadings. I, I don't know --

THE COURT: I think in the actual answers.

MS. HARDMAN: Okay. So we will take the statements we've already made and make that clear in the response.

THE COURT: Right.

MS. HARDMAN: Okay.

THE COURT: And then as to the documents, you know, make, also make an inquiry, please, that what you have the practical ability to, to get, again understanding your, your, you know, theory now of liability.

So is there anything else we're missing?

MR. TORBERG: No. I, I appreciate you having them put it in the interrogatory responses. Because a lot of transcripts in this case.

THE COURT: I know.

MR. TORBERG: I spend most of my time litigating this

case trying to find something I heard in the last hearing.

THE COURT: I know.

MR. TORBERG: And we need to be able to find it.

THE COURT: Let me tell you. As a judge coming in years later trying to put it together, it's so difficult. So that's why once or twice I've done little orders myself just because I'm thinking, you know, to follow things. It's so difficult. I don't know how on appeal the, the courts are doing it, so.

So yes. So go ahead and just make it clear.

So I need, I need an order from someone, or we can continue this to next month if there's still more stuff that needs to --

MS. HARDMAN: Your Honor, I, if, if you're comfortable with it, it can be as discussed at this hearing we are required to supplement our responses as has been articulated at this hearing. I don't envision it being much more than that. And we will do that by a date certain. We can agree to a date, or something like that. If that is okay with your Honor.

MR. TORBERG: If we can't work it out, we'll come back to try to get an order.

THE COURT: Okay.

MR. TORBERG: I think that's how I propose to go forward to see if they get what they're saying they're going to get it in, in responses.

THE COURT: Right.

MR. TORBERG: And we believe that they are responsive to what the Committee, what the Court --

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

MR. TORBERG: -- has instructed, then I, I think we, I think we'll be okay with just a short order that says what --

THE COURT: Right.

MR. TORBERG: -- Carrie said.

THE COURT: Right.

MR. TORBERG: And then I think we still have the, the other two issues on the, on the estimation and the financial --

THE COURT: Right.

MR. TORBERG: -- distress interrogatory.

THE COURT: So on the estimation, I'm not really sure what we're, what you're, you're fighting about so much. You obviously know the number. I don't know why you won't tell them the number and put a *caveat*.

What, what is the downside of that, of the current expert, which they already know?

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

THE COURT: If you're, if you're only going to rely on after estimation, that only, I mean, to me, this is exactly why this should be stayed. Because, you know, it's just too soon if, if you want to go through all of estimation before you talk

about what your, what the number, the liability is, the amount.

MS. HARDMAN: So your Honor is suggesting that we acknowledge the expert report, but put all of the *caveats* about its relative import to this action?

THE COURT: I mean, I think --

MS. HARDMAN: I --

THE COURT: -- that's what they're asking you to do. I mean --

MS. HARDMAN: It kind of goes back to the point that we've been talking -- I'm sorry to interrupt, your Honor.

It goes back to the point of what are we relying on, your Honor. And if we aren't currently relying on that as part of our position --

THE COURT: So what are you relying on right now?

MS. HARDMAN: With respect to the issues, we -- I don't have it in front of me, but we have answered this question with respect to their positions on valuation and explained that it is subject to the expert process. Do we need to give every step of that, of the estimation process that's not part of this adversary yet? We may believe that that's sufficient. We may not. We may believe that the expert process in fraudulent transfer requires further analysis before we actually give what we're relying on.

And so I guess my thought is that that's premature to say there's this thing in estimation. We don't, we don't know

if our expert in fraudulent transfer believes that that's relevant here or not, has an import here or not or can the --

THE COURT: But so when you filed the complaint, what were you --

MS. HARDMAN: Our plan --

THE COURT: -- what was the position?

MS. HARDMAN: -- is to go through the expert process --

THE COURT: Okay.

MS. HARDMAN: -- as you would in fraudulent transfer, anyway, right, with respect to value exchanged and all of those issues, so,

MR. TORBERG: Yeah. I, I was going to stand up for the third time on sur, surrebuttal, but I decided not to to respond to the point that she made about "we're not relying upon it. So we don't have to produce it." That's not discovery. We're, we're, we're allowed to issue discovery to get what their position is. Just because they may decide not to rely on that two years from now, that, that's not a basis for not responding to an interrogatory. It's not, it's not an objection. I mean, I've never seen an objection that says, "I, I'm not answering this because I'm not going to rely upon at trial." That's, that, that is not an objection in any form at all.

And then, and then we, we also have some RF, some RFPs

we haven't dealt with, which are the 28 and 29, where they refuse to search at all because they think they're too broad. We haven't touched on those yet.

MS. HARDMAN: Your Honor, with respect to the expert issue, it's, our response is that this is subject to expert testimony, which is a sufficient response when it comes to your set of responses and objections. The law is supportive of that. We will supplement when we have our position, right? They're asking what are we relying on. We're telling you we will give that to you when we have completed our expert process. And so I --

THE COURT: Well, so what is -- so you can respond as to what's the factual basis of --

MS. HARDMAN: Sure.

THE COURT: -- of it.

MS. HARDMAN: And we, and we have.

THE COURT: All right?

MS. HARDMAN: Yep. And we -- but we've said that we believe that valuation is the subject of expert testimony, which is a sufficient response when you're talking about valuation on that issue. And so that has been the answer we've given. It's not intended to be obtuse. We assumed that they would also rely on their own experts.

So at this point, I'm not sure -- we're happy to go through that process, once we've gone through the expert

process and it's complete, and supplement that response.

THE COURT: All right. I'll, I'll, I'll let you wait on that one.

And then as to the financial distress? That's the last category?

MR. TORBERG: Yes. And then the, I raised a couple of additional requests for production that we moved on.

THE COURT: Right. Which, can you point me to those?

MR. TORBERG: They're 28 and 29. Basically, they are requesting communications with committee members or their counsel with any third party about this bankruptcy. I had a bit of an argument about why we think those are potentially relevant.

THE COURT You want to go ahead?

MR. TORBERG: Yeah. So I made the argument before, but I'm happy to do it again.

THE COURT: Yeah. Just --

MR. TORBERG: So -- yeah, sure. It's been a long day.

Basically, they, they have refused to produce any documents responsive to these two requests, which is uncommunication, unprotected communications by the Committee or its members and tort counsel about the bankruptcy. And they said that's overbroad, it relates to post-petition events, and is irrelevant. And our response is, well, it's not overbroad because you actually say in your own brief that they didn't

have many communications. So it shouldn't be a hard lift. And two, they've taken incon, inconsistent positions in this case about various things. And we'd like to know if they said something that's unprotected to somebody else about this case, it might inform what their true position is, as well as, you know, they have this, this whole theory that these cases were designed to delay asbestos claimants. And we really need to have sub con in order to settle this case. We can't have a resolution unless the Non-Debtor Affiliates are brought in the case. Well, there might be communications that they've made that bear directly on the very basis for which they want sub con.

So we, we think that's relevant and should be produced.

THE COURT: All right. To the extent that it's related to sub con, then it should be produced --

MS. HARDMAN: Your Honor?

THE COURT: -- right.

Yes.

MS. HARDMAN: If, if you, if you don't mind, in our slides, Slide 5 has the Request 20 --

Is that the wrong -- these are not ours. Whose are these? Oh. Do we have it? Yeah.

(Pause)

MS. HARDMAN: We have -- I'm sorry. I realize that

this is not in front of you. Let me see if we can find the reference in the actual documents for you, your Honor, to Request No. 28. 'Cause I just need to show you we answered the question. So that I can --

THE COURT: Right. Well, if you, if you answered it with --

MS. HARDMAN: I can read it to your Honor.

THE COURT: Including any, you know -- so to the extent -- I, I agree it's slightly broad 'cause "relating to any bankruptcy" is incredibly broad --

MS. HARDMAN: Yep.

THE COURT: -- but it's, to the extent it is related to the substantive consolidation, then it does need to be answered.

MS. HARDMAN: Your Honor, okay. So with respect to Request No. 28, it says, "Produce all documents and communications between the Committee and any third party."

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

MS. HARDMAN: It says "and members or representative" -- I'm not disputing that -- "including, without limitation, PR firms and law professors concerning this bankruptcy."

Your first point I would raise is this bankruptcy is beyond the claims and defenses of this action. So I would, we have objected, rightly, to the scope of the request, as one

would when you ask for moon and stars. You keep it closer to the actual adversary proceeding. We responded to this and said, "We supplement our initial response as follows: We provided certain news publications, including not limited to, Law360, Reorg Research, and Bloomberg, all third parties, your Honor, have sent us unsolicited requests for comment. And in one instance, committee counsel provided a reporter with pleadings from the bankruptcy case. However, none of these are relevant to the claims and defenses. There's, it's providing documents.

But we've answered the question, right? There's this third-party documents that we have received. They, this is what exists. No other responsive documents exist with respect to this request. We have answered the question, your Honor, I've told you, and we'll put in our supplement what we did. We asked our clients in their committee capacity, "Did you speak to a reporter?" I actually had this conversation, your Honor. An example, "Did you, committee member, speak to a reporter about this in your role as a committee member, saying, 'On this Committee I sit and I think this is nonsense,' did you do that? Do you have an opinion? Did you say something to a third party?" The answer was, "I've signed a protective order. I'm absolutely not going to do that."

So when we're talking about this, we're talking about them in their role as committee members. That is the diligence

we've done. It's the party we represent and we've answered the question. There's no responsive documents.

MR. TORBERG: So this is subject to the objection that they've made that they're not looking for documents within the possession of committee members or tort counsel?

THE COURT: Right.

MR. TORBERG: So --

MS. HARDMAN: In their personal capacity, your Honor.

MR. TORBERG: -- So -- whatever that means.

So that's why we're pressing this. I appreciate the supplement that they provided and said here. Ms. Hardman and committee counsel have only had these communications, but they've, they've avoided producing communications from the members and their counsel. That's what we're after.

MS. HARDMAN: May I clarify that?

THE COURT: Right.

MS. HARDMAN: We have. In -- there's -- I, I've mentioned two buckets. We've asked both them and their counsel, in their role as a committee member, "Have you done X, Y, and Z?" The answer was, "No." If they've done something else, talked to their sister or brother in their personal capacity, not as a member of this Committee, I don't have control over that, your Honor. I don't. They have their own representation. It's separate from me. It's not a committee member role.

THE COURT: So who is making the call as to whether it was in their personal capacity or, or as a committee member?

MS. HARDMAN: I'm sorry?

THE COURT: Who, who is deciding? Are you reviewing the documents to decide whether it's in their personal capacity or as a committee member, the communication?

MS. HARDMAN: We've done the diligence to inquire if they've, if they've represented themselves in their committee capacity in any way, shape or form in any type of responsive request. So --

THE COURT: But, but who is -- are you reviewing all the documents to determine which are in their committee capacity and which are in their personal capacity?

MS. HARDMAN: So I will -- I will -- to answer your question, if we were to get those documents --

THE COURT: Right.

MS. HARDMAN: So say that existed first. I have no idea if it does. Let's just start there. If it did, if something was personal, there's a layer of privilege that may exist between --

THE COURT: Well, then you need to raise that. But that's not, that's, that's separate privilege.

MS. HARDMAN: That's --

THE COURT: Right.

MS. HARDMAN: I thought that's what we argued in our

opposition to explain this issue, that there's a layer of complication here that isn't within my control.

THE COURT: Well, so you can get, you, you, you can get all the documents.

MS. HARDMAN: Sure.

THE COURT: And then you can go through them and see to, and sort out the ones that are in the committee's capacity.

MS. HARDMAN: Your Honor?

THE COURT: Like, I, I don't think it's the committee member, the individual who needs, who should be deciding which capacity they were acting in.

MS. HARDMAN: Well, often we have -- in, in normal circumstances, you're doing discovery. You ask your clients, "Hey, do you have things responsive to this," right?

THE COURT: Right.

MS. HARDMAN: And you, they either say yes or no. and they say, "Oh," you know, "So and So worked on it. So and So worked on it." You kind of get an understanding and they help you navigate who would have responsive documents, right?

Similar here, we said I have a limited role. This is the Committee itself. "I'm asking you, when you're operating as a committee member, when you're holding yourself out there publicly as a committee member, do you have anything that you would have done in that respect? Have you spoken to Bloomberg in your role as a committee member? Have you spoken to Law360

in your role as a committee member?" And the answer is, "I have not done that. I have a protective order that I have to abide by. I have not said a word beyond talking to you and talking to my tort counsel. That's it." To my mind, your Honor, if you ask me to go the step further, it's asking for their personal information for which they deserve to have individual representation. I can't, I can't protect that.

THE COURT: Well, you can ask them. You know, again, this is sort of within that practical ability, you know. I -- I mean -- I think it's a very complicated line that you're drawing at times for someone who's actively a committee member.

MS. HARDMAN: My concern that -- my honest --

THE COURT: Right?

MS. HARDMAN: -- concern is --

THE COURT: And they all have counsel who can help them, correct?

MS. HARDMAN. Yeah. I guess my concern that I have here, your Honor, is a couple of issues, is that this would cause any committee member ever to possibly be subject to inquiries of their personal nature, right?

THE COURT: Only as to the substantive consolidation. Isn't that what we're talking about here? Yeah. So it's just --

MS. HARDMAN: But it says here this request is concerning the entire bankruptcy. So if they're talking about

their own personal claim --

THE COURT: I just said --

MS. HARDMAN: -- that has nothing to do --

THE COURT: -- as to the substantive consolidation earlier. Sorry if I wasn't clear.

MS. HARDMAN: So we're narrowing the request?

THE COURT: Yes. Yes.

MS. HARDMAN: Okay. I'm sorry, your Honor. I'm sorry. Okay.

THE COURT: So as to the substantive consolidation --

MS. HARDMAN: Proceeding itself.

THE COURT: Yes.

MS. HARDMAN: The causes, the claims and defenses in that action?

THE COURT: Yes.

MS. HARDMAN: Okay. I follow, your Honor.

THE COURT: Okay.

MS. HARDMAN: Okay.

So -- and then --

MR. TORBERG: I think we're to the last issue on financial distress.

THE COURT: Right.

MR. TORBERG: I, I think you were going to start, and then I weaved you into something else.

THE COURT: Yes.

MR. TORBERG: And I apologize.

THE COURT: All right. So that one as to the facts and reasons, that one, that one needs to be answered.

MS. HARDMAN: I'm sorry, your Honor.

THE COURT: So if you could --

MS. HARDMAN: I apologize.

THE COURT: -- answer that question.

MS. HARDMAN: I apologize.

THE COURT: Right.

MS. HARDMAN: I was --

THE COURT: This is as to the financial distress.

MS. HARDMAN: What, and what is the question, your Honor? I, I apologize.-

THE COURT: What I have is the -- the -- 4, right? That's what we're talking about, "State all the facts and reasons you contend." You can answer the question, and you can supplement it later.

MS. CONCANNON: Your Honor, on that question, we answered what our contention is in the sub con proceeding, which is that the debtors are in financial distress. That is our contention there and we provided a fulsome response as to that.

THE COURT: So you stated all the facts and reasons that you contend support that position?

MS. CONCANNON: That the debtors are in financial

distress. They're asking us to provide reasons that the debtors are not in financial distress, but that's not what we're contending.

THE COURT: Right. So --

MS. CONCANNON: So with respect to what we are contending, we provided an answer.

THE COURT: So did you answer that you're not contending?

MS. CONCANNON: We can supplement and say that we are not contending that in this proceeding.

THE COURT: All right.

MS. CONCANNON: That the debtors are not in financial distress.

THE COURT: Is that satisfactory?

MR. TORBERG: I think the Court ruled at the outset correctly. We, we issued a request --

THE COURT: Right.

MR. TORBERG: -- asking for the facts and reasons why they argued in the main case that debtors are not in financial distress. And you, you instructed them to answer that interrogatory.

THE COURT: Right.

MR. TORBERG: And they should do so.

THE COURT: Unless they're --

MR. TORBERG: It doesn't matter what their position in

this case is. They can take alternative positions if they, if they choose to. I'm not sure it's appropriate, but they're, they're doing that. But we have a right to know the parameters of both positions in this case. That's what we're asking for.

THE COURT: To be clear, you can set forth what it was and you can say you are not arguing that now.

MS. CONCANNON: We can supplement to say that we are not arguing in the sub con proceeding that the debtors are --

THE COURT: Right, but you still need --

MS. CONCANNON: -- not in financial distress.

THE COURT: -- to state all the facts and reasons that you contend to support the assertion the debtors are not in financial distress.

MS. CONCANNON: But that's not our contention. So that's not relevant to this proceeding. And relevance is what the --

THE COURT: Well, you can state it in the past.

MS. HARDMAN: Your Honor, respectfully, we've -- we've --

Sorry, Serafina.

MS. CONCANNON: Okay.

MS. HARDMAN: We contend in these actions --

THE COURT: Right.

MS. HARDMAN: -- that they are in financial distress, right? They're asking us to say, "Contend why you've said

elsewhere that you're not." That's not the con, that's not the confines of this complaint.

THE COURT: Right. I'm telling you, you need to answer the question, all right? And if you want to put the *caveat* that you're not, that is not your position in this --

MS. HARDMAN: Okay. And just say --

THE COURT: --this case --

MS. HARDMAN: -- that's not our position.

THE COURT: Yes. Bat's not our position.

MR. TORBERG: Thank you, your Honor.

THE COURT: Right.

This is why discovery disputes should not come to the judge because no one will be happy, right?

MR. TORBERG: Okay.

THE COURT: So anything further?

MR. TORBERG: Did you want to address the briefing question?

THE COURT: Right.

MR. TORBERG: Brad?

MR. ERENS: Yes.

So the outstanding question that we had was the request for stay is up for continued hearing April 23rd, which is when it was set at back at the October hearing. So as we indicated in our briefing, we think a number of both legal developments and factual events have occurred since the October

hearing that are relevant for your continued consideration of the stay. And we'd like to do briefing on that. We don't have to decide now on timing. Our proposal to the Committee was let's just treat this like the normal motion schedule. We would file our supplemental briefing on February -- excuse me -- on April 2nd, which is 21 days in advance, and have 14 days to respond. We would have a right to reply. That schedule is fine with us.

I think one question we got from the Committee preliminarily -- we only talked about this yesterday -- was they wouldn't, they wouldn't necessarily mind having a little bit more time, and I think we can accommodate that. We're still more than a month away in terms of when our brief would be due.

THE COURT: Right.

MR. ERENS: So I don't think we give them a lot more time, but we give them some more time and we're happy to have those discussions and work it out. If not, we'll make an inquiry of your Honor in terms of scheduling.

THE COURT: I mean, my thought would be the default schedule that we use.

MS. HARDMAN: Your Honor, this literally came up last night. So --

THE COURT: Right.

MS. HARDMAN: -- I simply said, "I don't know if your

issues are 45 pages long. I don't know if your issues are five pages long. I don't know what the issues are that you're raising." So I don't know what we're dealing with.

I also did indicate our understanding of the fact that the stay motion was intended to, to track with our near completion of fact discovery so that you had kind of where we all are as opposed to being halfway through the process. And I recognize that it took a little bit longer than all of us had hoped to get to that point, which has pushed off that fact discovery timeline.

So your Honor, I, I recognize what we're talking about here, but I also want to be cognizant that you had said, essentially, let us get --

THE COURT: I don't want to hear the stay motion in July. That's not going to be -- we'll, we'll be dealing with prepping for the --

MS. HARDMAN: For the trial.

THE COURT: Right.

MS. HARDMAN: Okay.

THE COURT: So I, I mean, I can always hear the stay motion and say you're going to finish what you're doing now and then stay it. I mean, you know. I'm, I'm a creative judge.

MS. HARDMAN: Understood, your Honor. I guess my thought was if we are making substantial headway in this process, as you had suggested, if we're talking about May or

June, that makes more sense if we've received our responses by then. I just don't really know what they're raising as new issues. And so I don't know how to respond and I don't actually know if these issues are in dispute or what the positions are that they're taking. So --

THE COURT: Well, it's only February, right? Yeah. So I mean, there should be plenty of time. But you know, if you can't, if more time is needed, we can, you know -- I'm sure you can work it out -- but we can -- but at this point, April seems to me the way to go. That's what we set. I mean, it's not really, you know. Again, I can consider the issues of whether to stay it and, and have that be, you know, not that, that day that it's stayed, you know. I -- so I just don't think -- I think it's a good time to do it.

MS. HARDMAN: Okay. So you're willing to hold further briefing and we can discuss the merits of all of that in April?

THE COURT: Yeah. I mean, I don't, I just, you know, again, I think once we get, well, not, not you, but a lot of, a lot of us, as we get into the summer, is going to be, our focus is going to be very much on the Phase 1, right?

So I think this is -- April is as good a time as any to go ahead and revisit the issue. And there have been a lot of changes, certainly with appeals and coming back and different things. So we can just look at it.

MS. HARDMAN: Okay.

THE COURT: So. And if there is a compelling reason to move out, say to May, I'm not saying that's out of the question. But I can tell you now I'm not just bumping it out to July. That's not a day that I want to be dealing with the adversary proceedings.

MR. ERENS: Okay.

THE COURT: All right.

MR. ERENS: Yeah. No, we, we definitely think it should be in April. I mean, frankly, based on developments, we should have suggested it be moved to this date. This would have been a good date to have this hearing.

THE COURT: Right.

MR. ERENS: But we didn't do that.

In terms of --

THE COURT: Seemed to have worked it out so we have something in each month.

MR. ERENS: Yeah.

THE COURT: Yeah.

MR. ERENS: So on scheduling, so today is the deadline for filing motions for the March hearing. We haven't seen any, you know. Nothing's come in today. We don't intend to file any motions. I don't know if the Committee --

THE COURT: We have these motions to seal.

MR. ERENS: Yeah. I mean, that's something I think will get resolved. It certainly doesn't require a separate,

you know --

THE COURT: Okay.

MR. ERENS: -- everybody coming here. So our assumption is April will be our next hearing.

THE COURT: Okay.

MR. ERENS: Yeah. We will not be doing a March hearing.

THE COURT: All right. That works for me, certainly.

MR. ERENS: Nothing else from our end, your Honor.

THE COURT: Okay.

Anything else?

(No response)

THE COURT: No? All right.

Thank you.

MR. TORBERG: Thank you, Judge.

MS. SIEG: Thank you, Judge.

(Proceedings concluded at 12:44 p.m.)

CERTIFICATE

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

/s/ *Janice Russell* March 2, 2026

Janice Russell, Transcriber Date