Docket #0247 Date Filed: 5/29/2026

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re ALDRICH PUMP LLC, *et al.*,[1] Debtors.	Chapter 11 Case No. 20-30608 (LMJ) (Jointly Administered)
OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS, Plaintiff, v. ALDRICH PUMP LLC, MURRAY BOILER LLC, TRANE TECHNOLOGIES COMPANY LLC, and TRANE U.S. INC., Defendants.	Adv. Pro. No. 21-03029
OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS, on behalf of the estates of Aldrich Pump LLC and Murray Boiler LLC, 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.	Adv. Pro. No. 22-03028

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

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NOTICE OF FILING UNREDACTED COPY OF THE COMMITTEE'S OPPOSITION TO DEFENDANTS' MOTION TO COMPEL THE COMMITTEE TO PROVIDE ADEQUATE RESPONSES TO DISCOVERY REQUESTS

The Official Committee of Asbestos Personal Injury Claimants (the "Committee" or "ACC") of Aldrich Pump LLC and Murray Boiler LLC (the "Debtors"), the Plaintiff herein, by and through its undersigned counsel, hereby files this Notice (the "Notice") of filing unredacted copy of *The Committee's Opposition to Defendants' Motion to Compel the Committee to Provide Adequate Responses to Discovery Requests* [Adv. Proc. No. 21-3029, Dkt. 207; Adv. Proc. No. 22-3028, Dkt. 137] filed in the above-captioned adversary proceedings (the "Opposition to Motion to Compel"). In support of the Notice, the Committee respectfully states as follows:

1. On February 19, 2026, the Committee filed the Opposition to Motion to Compel with certain redactions in accordance with the *Agreed Protective Order Governing Confidential Information* (Case No. 20-bk-30608, Dkt. No. 345). Also on February 19, 2026, the Committee filed a *Motion to File Confidential Documents under Seal* (the "Motion to Seal") [Adv. Proc. No. 21-3029, Dkt. 208; Adv. Proc. No. 22-3028, Dkt. 138] related to redacted portions of the Opposition to Motion to Compel.

2. Since the filing of the Opposition to Motion to Compel, the parties to the Adversary Proceedings have agreed that those portions redacted in the Opposition to Motion to Compel can be unsealed in their entirety

3. Accordingly, attached hereto as Exhibit A is an unsealed version of Opposition to Motion to Compel.

[Signatures appear on the following page]

Dated: May 29, 2026

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EXHIBIT A

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

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

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

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

PRELIMINARY STATEMENT

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

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

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

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

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

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

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

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

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

[6] *See infra* ¶ 42.

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

RELEVANT BACKGROUND

A. The Adversary Proceedings

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

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

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

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

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

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

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

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

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

8. Also on October 18, 2021, the Committee commenced the substantive consolidation proceeding ("SubCon Proceeding") against certain Defendants[14] by filing a complaint[15] and related *Motion for Substantive Consolidation of Debtors' Estates with Certain*

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

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

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

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

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

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

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

B. Defendants' Written Discovery Requests to the Committee

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

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

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

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

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

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

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

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

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

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

ARGUMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24. *Second*, Defendants' speculation that "other responsive documents likely exist" documents.[28] Defendants offer no factual basis to believe the individual members' or tort counsel's files contain relevant, responsive, and non-privileged information, and Defendants' theoretical assertions cannot support an order compelling production of documents or supplementation of the interrogatory responses. The practical reality underscores why. The

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

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

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

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

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

[30] For example, in response to SubCon Interrogatory No. 1, which asked for all facts supporting the assertion that creditors and asbestos claimants "dealt with" TTC and Aldrich Pump as "one legal entity," the Committee responded in detail explaining that before the Corporate Restructuring, TTC and Aldrich Pump "not only were 'treated' or 'dealt with' as one legal entity but actually were one legal entity—Ingersoll-Rand Company." Mot., Ex. B (SubCon Discovery Responses) at 12. In support, the Committee cited three documents produced by Debtors and the Court's Findings and Conclusions. Id. The Committee further explained that "[b]efore the Corporate Restructuring, creditors could not have relied on the separate identity of [the Debtors] because [the Debtors] did not exist," and that "[a]sbestos claimants and non-asbestos creditors alike looked to Ingersoll-Rand and Old Trane to satisfy the debts and obligations to them." Id. Again, the Committee cited Debtors' produced documents and other documents in support. Id.

Likewise, with respect to SubCon Interrogatory No. 2, which asked for facts supporting the Committee's assertions regarding unpaid settlements, the Committee provided detailed factual support in at least four ways: (1) The Committee explained that "Ingersoll-Rand and Old Trane faced hundreds of thousands of claims in the tort system for asbestos-induced personal injury and wrongful death" and "often pursued a settlement strategy in lawsuits that could not be dismissed." Id. at 37. (2) The Committee identified specific evidence, including the Debtors' schedules showing "5,176 instances of a 'confidential settlement amount' entered into by Ingersoll-Rand that were transferred to Aldrich" and "2,791 instances . . . that were transferred to Murray," as part of the Corporate Restructuring, all of which remained unpaid as of the Petition Date. Id. at 38. (3) The Committee cited the Debtors' Claims Database identifying "approximately 316 claims totaling approximately $7.50 million" and "approximately 184 claims totaling approximately $7.45 million" that "appear to be settled but not documented." *Id*. (4) The Committee explained that the Debtors' own metrics reveal that their assets are insufficient to cover their asbestos liabilities—directly responsive to the portion of Interrogatory No. 2 that requests "all facts you contend support any contention that Aldrich Pump or Murray Boiler have insufficient assets to pay any unpaid settlement agreement." *Id*. at 36, 40.

The Committee's response to SubCon Interrogatory No. 3 is adequate for the same reasons as Interrogatory Nos. 1 and 2, as the Committee explained how asbestos claimants "extended credit" to Defendants and their predecessors,

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

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

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

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and directed Defendants to its responses to SubCon Interrogatory Nos. 1 and 2 for information identifying dates, amounts of credit extended, terms and conditions, and other information that the request sought.[30] Mot., Ex. B, SubCon Resp. at 44-45.

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

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

A. The Committee Is Not Required to Supplement Discovery Responses in the Adversary Proceedings Based on Preliminary Estimation Expert Reports[32]

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

29. As specifically requested by Defendants, the Second Amended Case Management Order governing the Adversary Proceedings[33] establishes only *fact* discovery deadlines—not expert discovery deadlines. The Committee cannot, thus, be compelled to provide information that would necessarily inform or constitute expert testimony before expert discovery deadlines have even been set in the Adversary Proceedings.

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

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

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

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

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

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

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

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

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

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

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

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

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

B. The Committee Has Met Its Discovery Obligations

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

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

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

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

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

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

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

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

particularly where discovery remains ongoing.

2. SubCon Interrogatory No. 4

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

40. The interrogatory is also irrelevant to the Committee's claims and the Defendants' defenses in the SubCon Proceeding. It is undisputed that the Committee made the statement quoted in SubCon Interrogatory No. 4 in its motion to dismiss the Debtors' bankruptcies in the main case, not in any Adversary Proceeding. *See* Mot. ¶ 39. Defendants assert without authority that they "are not limited to seeking discovery that supports whatever position the Committee wants to take in these Adversary Proceedings." Mot. ¶ 41. But their proposed discovery exceeds the scope set forth in Civil Rule 26(b)(1). *See* Mot. ¶ 42.[41]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. SubCon Interrogatory Nos. 5 and 7

43. SubCon Interrogatory No. 5 asks the Committee to state its estimate of the dollar value of Debtors' aggregate asbestos liability as of various dates, while SubCon Interrogatory No. 7 asks the Committee to state all facts and reasons why substantive consolidation is necessary and to identify the amount of trust funding necessary to fairly compensate asbestos claimants. Civil Rule 33 requires a party to provide a full answer "to the extent [an interrogatory] is not objected to." The Committee objected to Interrogatory Nos. 5 and 7 as premature because they seek expert opinions that will be prepared and examined subject to the scheduling order in the estimation proceeding. Mot., Ex. B (SubCon Discovery Responses) at 49-50, 53-54. The Committee has satisfied its obligation under Rule 33. The Committee also made clear that it "would respond to these requests at the appropriate time, consistent with its disclosure obligations under the Civil Rules, the Bankruptcy Rules, the Local Rules, and the Discovery Plan." *Id.* at 51, 54.

4. Fraudulent Transfer RFP Nos. 1-4, 9, 21; SubCon RFP Nos. 5, 7, 21

44. The Committee has responded to the identified RFPs by explaining that the Committee did not exist prepetition and therefore has no responsive documents other than those that are publicly available or that were previously produced by Defendants, but nevertheless agreeing to produce responsive documents in its possession, custody, and control or identifying the responsive documents by reference to its interrogatory answers. The Committee has complied with its obligations under Civil Rule 34.

5. SubCon RFA Nos. 9 and 10

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distributed to equity holders ahead of asbestos creditors (id. ¶¶ 47-49), and the follow-on chapter 11 filings. Pl.'s Opp. to Affiliates' Mot. to Dismiss, No. 21-03029, ECF No. 31, at 8; Hr'g Tr. Apr. 1. 2022 at 22:7-9, 15-16 ("Here, I agree with the ACC again that as alleged, at least, all of the predicate facts have already occurred. . . . So I think it is, in fact, ripe."). The statement at issue in Interrogatory No. 4 does not change this analysis.

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

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

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

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

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

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

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

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

CONCLUSION

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

[signature page to follow]

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

Dated: February 19, 2026

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Exhibit 1

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

February 11, 2026

VIA EMAIL

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-and-

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Counsel to Non-Debtor Affiliate Defendants[1] (the "Non-Debtor Affiliate Defendants" and together with the Debtors, the "Defendants")

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

Counsel:

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

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

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

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

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

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

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

II. General Objections: Interrogatories

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

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

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

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

III. General Objections: Requests for Admission

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

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

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

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

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

- **ROG No. 9:** The deficiency in Debtors' assets "as of the date of [the Committee's] response" is irrelevant. The date of the transfer is the only relevant temporal inquiry for a fraudulent transfer. *See, e.g.*, *Callaway v. Novelli (In re Bouchard)*, Nos. 09-06110-8-RDD, 09-00223-8-RDD, 2011 WL 110901, at *2 (Bankr. E.D.N.C. Jan. 12, 2011) (ability to avoid a fraudulent transfer "is contingent upon whether the debtor was insolvent on the date that such transfer was made."). Further, the interrogatory is vague and ambiguous in that it asks for a "calculation of such amount," without identifying which amount. The Debtors' assets? The Debtors' liabilities? The difference between the two? All of the above? It's unclear. And any purported ongoing obligation to supplement the "calculation" on a periodic basis (as suggested by the "as of the date of Your response" language) is unduly burdensome and ignores the relevant temporal inquiry. Subject to and without waiving the foregoing, at the time the Corporate Restructuring was completed on May 1, 2020, according to Debtors' own metrics, their assets (without the unsecured and contingent Funding Agreement as defined and described in the Complaint) are insufficient to cover their asbestos liabilities. Court's Findings and Conclusions ¶ 63 (finding that, if the Funding Agreement is not taken into account, "Aldrich/Murray's assets were not then, and are not now, sufficient to satisfy their liabilities" (footnote omitted)); *id.* ¶ 72 ("According to the Debtors' own metrics, their assets (without the Funding Agreements) are already insufficient as they are less than their asbestos liabilities."); Hr'g Tr. 397:18–398:1, May 6, 2021 (Diaz Direct) ("So yes, the, the liabilities of Aldrich, if you exclude the funding agreement, are greater than the assets of, of Aldrich, correct."); *id.* at 398:18–23 ("On the Murray side, they picked up $127 million of assets, they picked up all of the asbestos liabilities, $193 million asbestos liabilities. Similar to Aldrich, the assets of Murray, $127 million, if you exclude the funding agreement, are less than the total of liabilities of 193, plus 1. So $194 million."). For additional explanation, see Objection/Response to Interrogatory No. 1 above.

- **RFA No. 3:** Payment of the Committee's professionals' fees incurred in connection with the prosecution of the FT Complaint against Defendants is irrelevant to any claim or defense. The Committee understands from Debtors and Non-Debtor Affiliate Defendants that TTC and TUI have satisfied funding requests of the Debtors under the Funding Agreements. Beyond that, RFA No. 3 is denied.

- **RFA No. 4:** The Committee lacks knowledge or information after a reasonable inquiry and the information it knows or can readily obtain is insufficient to enable the Committee to admit or deny the request. In any event, the information sought by this RFA is squarely within the possession, custody, or control of Defendants.

- **RFA No. 9:** As a threshold matter, this request is improper in that it asks the Committee to answer a legal question. *Abbott v. United States*, 177 F.R.D. 92, 93 (N.D.N.Y. 1997). Further, hypothetical questions, such as whether equity holders would have an interest in

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

* * *

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

* * *

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

Very truly yours,

HAMILTON STEPHENS STEELE + MARTIN, PLLC

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Exhibit 2

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

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

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

APPEARANCES:

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(TELEPHONE CONFERENCE)

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

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

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

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

THE COURT: Okay.

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

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

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

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

Rules of Bankruptcy Procedure.

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

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

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

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

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

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

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

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

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

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

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

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

Debtor's proof of claim form that he completed.

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

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

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

In exploring the pretest, the Debtor has proffered

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

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

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

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

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

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

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

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

resolve certain disputes.

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

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

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

other trust distribution procedures.

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

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

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

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

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

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

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

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

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

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

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

product doctrine.

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

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

intrusive means of testing Dr. Peterson's opinion.

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

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

association.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

order?

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

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

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

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

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

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

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

MR. SWETT: The Committee agrees, Your Honor.

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

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

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

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

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

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

THE COURT: Yes.

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

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

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

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

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

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

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

THE COURT: Okay, very good.

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

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

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

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

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

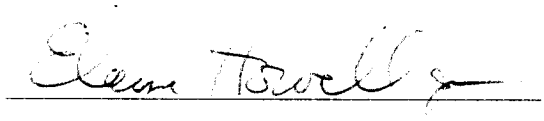
MR. KRESS: Thank you for your time, Your Honor.

THE COURT: Okay, thank you for listening.

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CERTIFICATION

I, ELAINE HOWELL, 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.



Date: October 3, 2003

ELAINE HOWELL

J&J COURT TRANSCRIBERS, INC.

Exhibit 3

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

IN RE:	:	Case No. 10-31607
GARLOCK SEALING TECHNOLOGIES LLC, ET AL.,	:	Chapter 11
Debtors.	:	Charlotte, North Carolina Monday, December 28, 2015
	:	2:03 p.m.

: : : :

APPEARANCES (via telephone):

For Interested Party, Coltec Industries, Inc.:	Parker Poe Adams & Bernstein LLP BY: DANIEL G. CLODFELTER, ESQ. 401 South Tryon Street Suite 3000 Charlotte, NC 28202
For Official Committee of Asbestos Personal Injury Claimants:	Caplin & Drysdale, Chartered BY: TREVOR W. SWETT, ESQ. KEVIN C. MACLAY, ESQ. JAMES P. WEHNER, ESQ. One Thomas Circle, NW, Suite 1100 Washington, DC 20005 Moon Wright & Houston, PLLC BY: TRAVIS W. MOON, ESQ. 227 West Trade Street, Suite 1800 Charlotte, NC 28202
For the Debtors:	Robinson Bradshaw & Hinson, P.A. BY: GARLAND S. CASSADA, ESQ. 101 N. Tryon Street, Suite 1900 Charlotte, NC 28246 Rayburn Cooper & Durham, P.A. BY: JOHN R. MILLER, JR., ESQ. SHELLEY K. ABEL, ESQ. 227 West Trade St., Suite 1200 Charlotte, NC 28202
For Creditor, Motley Rice LLC:	Motley Rice LLC BY: JEANETTE M. GILBERT, ESQ. 28 Bridgeside Blvd. Mount Pleasant, SC 29464
For Claimants Represented by Glasser & Glasser, P.L.C.:	Glasser & Glasser, P.L.C. BY: RICHARD S. GLASSER, ESQ. 580 East Main Street, Suite 600 Norfolk, VA 23510
For Certain Asbestos Claimants:	Brayton Purcell LLP BY: BRYN LETSCH, ESQ. 222 Rush Landing Road Novato, CA 94948 W. CLARKSON McDOW, JR., ESQ. Fee Examiner 738 Myrtle Drive Rock Hill, SC 29730

P R O C E E D I N G S

(Call to Order of the Court)

THE COURT: Have a seat, everyone. Good afternoon.

MR. WORF: Good afternoon.

MS. WRIGHT: Good afternoon.

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

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

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

THE COURT: All right.

Ms. Wright.

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

MR. MILLER: Afternoon, Your Honor.

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

THE COURT: Hold tight for one.

Ms. Wright.

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

THE COURT: Okay.

Now telephonic appearances.

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

THE COURT: Okay.

MR. MOON: Tom Moon, Your Honor.

MR. CASSADA: Your Honor, Garland --

MR. CLODFELTER: Judge, Dan Clodfelter for Coltec.

THE COURT: All right.

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

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

THE COURT: All right.

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

THE COURT: Any others?

MR. WEHNER: Jim Wehner for the Asbestos Committee.

MR. MACLAY: Kevin Maclay for the Asbestos Committee.

MS. GILBERT: Jeanette Gilbert for Motley Rice.

MS. LETSCH: Bryn Letsch, Brayton Purcell.

THE COURT: Any others?

MR. GLASSER: Richard Glasser, Glasser & Glasser.

THE COURT: Any others?

(No response)

THE COURT: Okay. Some of you may be on

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

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

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

(No response)

THE COURT: Okay.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

So that motion is denied.

Okay. Ready to move on?

(No response)

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

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

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

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

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

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

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

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

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

So I'm denying that motion as well.

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

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

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

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

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

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

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

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

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

repeated discovery demands, PIQs, motions, etc.

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

Ready to talk about fees?

(No response)

THE COURT: All right.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

So for the purpose of the present application of

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

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

Okay. So that's the first one.

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

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

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

So that application's approved as well.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: Yes, ma'am.

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

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

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

THE COURT: Okay.

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

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

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

THE COURT: Every --

MS. WRIGHT: -- it matters.

THE COURT: Surely.

MS. WRIGHT: Thank you.

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

MS. WRIGHT: Thank you, Your Honor.

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

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

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

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

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

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

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

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

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

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

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

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

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

So the behavior has gotten more extreme and

unreasonable and the firms' profit along the way.

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

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

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

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

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

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

right.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

to fees, things get very personal very quickly.

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

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

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

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

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

Ms. Wright.

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

comments today?

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

MS. WRIGHT: Simple.

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

MS. WRIGHT: Thank you, Your Honor.

THE COURT: Okay.

MS. WRIGHT: We'll do that.

THE COURT: All right.

Anything else today?

(No response)

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

All right. We'll recess now.

MS. WRIGHT: Thank you, Your Honor.

MR. MILLER: Thank you, Your Honor.

(Proceedings concluded at 3:09 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 December 30, 2015

Janice Russell, Transcriber Date