



1 APPEARANCES (via Microsoft Teams continued):

2 For the ACC:

Caplin & Drysdale

BY: TODD PHILLIPS, ESQ.

3 One Thomas Circle, NW, Suite 1100  
Washington, DC 20005

4 Robinson & Cole LLP

5 BY: NATALIE D. RAMSEY, ESQ.

DAVIS LEE WRIGHT, ESQ.

6 1201 N. Market Street, Suite 1406  
Wilmington, DE 19801

7 Winston & Strawn LLP

8 BY: DAVID NEIER, ESQ.

CARRIE V. HARDMAN, ESQ.

9 200 Park Avenue  
New York, NY 10166-4193

10 Hamilton Stephens

11 BY: ROBERT A. COX, JR., ESQ.

12 525 North Tryon Street, Ste. 1400  
Charlotte, NC 28202

13 Gilbert LLP

14 BY: HEATHER FRAZIER, ESQ.

700 Pennsylvania Ave. SE, Ste. 400  
Washington, DC 20003

15 For the FCR:

Orrick Herrington

16 BY: JONATHAN P. GUY, ESQ.

DEBRA FELDER, ESQ.

17 1152 15th Street, NW  
Washington, D.C. 20005-1706

18 For Trane Technologies  
19 Company LLC and Trane U.S.  
20 Inc.:

McCarter & English, LLP

BY: GREGORY J. MASCITTI, ESQ.

825 Eighth Avenue, 31st Floor  
New York, NY 10019

21 For Travelers Insurance  
22 Companies:

Steptoe & Johnson LLP

BY: JOSHUA R. TAYLOR, ESQ.

1330 Connecticut Avenue, N.W.  
Washington, D.C. 20036

23 For London Market Insurers:

Duane Morris LLP

24 BY: RUSSELL W. ROTEN, ESQ.

865 S. Figueroa St., Suite 3100  
25 Los Angeles, CA 90017-5440

1	ALSO PRESENT	JOSEPH GRIER, FCR
2	(via Microsoft Teams):	521 E. Morehead St, Suite 440
3		Charlotte, NC 28202
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1 | P R O C E E D I N G S

2 (Call to Order of the Court)

3 THE COURT: Have a seat, those in the courtroom,  
4 everyone else. I assume you're already seated, so.

5 Okay. We're back in the Aldrich Pump case. The  
6 Notice of Agenda is filed in, at Docket No. 835. These are  
7 videoconference scheduling hearings this morning. So the usual  
8 ground rules apply. Try not to talk over one another. Please  
9 mute your receiver until it's time to talk and then unmute for  
10 us. And again, I want to stress. Try not to interrupt one  
11 another 'cause it's hard enough to get a discrete recording as  
12 it is without adding to the complications.

13                   As I understand it and in the interest of time, I'll  
14 announce appearances for you based on what I know and then you  
15 can correct or add to that as necessary.

16                   For today's purposes, appearing by video and  
17 designated as speakers are Brad Erens for the debtor.

18 | Todd Phillips and Natalie Ramsey for the ACC.

19 Jonathan Guy for the FCR.

20 Greg Mascitti for Trane Technologies and Trane USA.

21           Appearing by video but not anticipating the need to  
22 speak, Rick Rayburn, Jack Miller for the debtor.

23 David Neier and Carrie Hardman, Rob Cox, and Davis  
24 Wright for the ACC.

25 Joe Grier as FCR and on his own account.

1 Debra Felder for the FCR.

2 Joshua Taylor for Travelers Insurance.

3 Russell Roten for London Market Insurers.

4 And David McGonigle, special insurance counsel to the  
5 debtors.

6 Any corrections before we get additions? That got it?

7 (No response)

8 THE COURT: Anyone else that needs to announce?

9 (No response)

10 THE COURT: All right.

11 MS. RAMSEY: Your Honor, special insurance counsel for  
12 the Committee, Heather Frazier, is also on the line.

13 THE COURT: All right. Thank you.

14 MS. RAMSEY: Thank you.

15 THE COURT: Anyone else need to announce?

16 (No response)

17 THE COURT: Okay.

18 All right. We've got the Notice. It's been  
19 traditional in these cases to get a bit of updates as we're  
20 going along.

21 Anything by, preliminarily, before we get to the  
22 docket entries, Mr. Erens?

23 MR. ERENS: Good morning, your Honor.

24 No, nothing on a preliminary basis. All the updates  
25 have to do with the items on the agenda.

1 THE COURT: Okay.

2 Anything from the ACC?

3 MS. RAMSEY: No, your Honor.

4 THE COURT: Okay.

5 And the FCR?

6 MR. GUY: No, your Honor. Thank you.

7 THE COURT: All right.

8 Anyone else?

9 (No response)

10 THE COURT: Okay. Well, let's get right to it, then.

11 Any preferred batting order or we're just going to  
12 take these from the top?

13 MR. ERENS: Your Honor, I think, frankly, all the  
14 items on the agenda go together. If you recall --

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

17 MR. ERENS: -- at the Oct -- excuse me -- at the  
18 August omnibus your Honor directed all parties to file by  
19 September 24th any motions that they wanted to have considered  
20 at the October omnibus hearing, which is, I believe, October  
21 28th and that you set this as a status conference for  
22 scheduling --

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

25 MR. ERENS: -- with respect to those motions. We also

1 talked about the bar date/PIQ motion, which is Item No. 1 on  
2 the agenda which you may recall was filed in December of last  
3 year.

4 THE COURT: Right.

5 MR. ERENS: And your Honor heard that in, at the  
6 January omnibus hearing, deferred it until after the PI ruling,  
7 which obviously has now occurred.

8 So with that direction, your Honor, and at that time  
9 we also announced the deal we had, the debtors had with the FCR  
10 on funding a 524(g) plan, a deal that would pay asbestos  
11 creditors or, well, would fund the trust with, for asbestos  
12 creditors, both current and future, \$545 million. That was  
13 announced by press release by Trane the day we had the hearing.  
14 I think your Honor had the press release --

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

17 MR. ERENS: -- in court.

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

20 MR. ERENS: We indicated we had a term sheet at that  
21 time. The ACC had requested the term sheet. We sent it to  
22 them a few days after the hearing. So they've had it since  
23 then. And in connection with that, we filed the plan itself,  
24 which is Item No. 2 on the agenda, at Docket 831 incorporating  
25 that deal, again a deal for current and future claimants for a

1 524(g) trust with \$545 million.

2 On the 24th, which again was last Friday, we filed  
3 motions for the October omnibus at your Honor's direction, two  
4 motions, your Honor. One is a motion to estimate current  
5 claimants in connection with the plan and I'll describe that in  
6 a little bit more detail and then a motion to establish a  
7 qualified settlement fund to fund the plan in part. It's a  
8 little bit complicated but of the \$545 million 540, all but 5  
9 million is paid on the effective date of the plan. It is to be  
10 funded fully by the debtors at that time, but based on a deal  
11 that was negotiated with the FCR -- and this was a major  
12 concession by the debtors and their corporate affiliates -- the  
13 FCR requested, as opposed to waiting for the insurance  
14 reimbursements under the plan and having to be partner, for  
15 lack of a better word, with the insurers throughout the post-  
16 confirmation process, their request was that the debtors  
17 through the funding agreement prefund the insurance on the  
18 effective date of the plan. So effectively, the debtors would  
19 "buy out" the insurance, for lack of a better word. I mean,  
20 that's not quite accurate, but that's, effectively, what's  
21 going on.

22 So under the QSF that's now been agreed to by Trane  
23 Technologies, the non-insurance portion is being funded at this  
24 time. That's \$270 million. The other 270 would be funded on  
25 the effective date of the plan. The -- as I think we indicated



1 to your Honor in the past, the insurers, we understand, are  
2 supportive of the deal, or at least the lead insurer, but all  
3 of the documentation with respect to the insurance in  
4 connection with confirmation is not done. So the funding of  
5 the insurance portion, among other things, couldn't be done at  
6 this time since those deals are not fully documented.

7 So the QSF is a -- is a -- is the sort of non-  
8 insurance portion --

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

11 MR. ERENS: -- to be funded at this time under the, I  
12 believe, under the funding agreements.

13 So the debtors filed those two motions to be heard in  
14 October at your Honor's direction. We did get an e-mail from  
15 the ACC yesterday afternoon from Mr. Phillips, who's on the  
16 line, indicating that the ACC believes they need discovery in  
17 connection with the estimation motion and the QSF motion. We  
18 sent an e-mail back ask, well, indicating some surprise. We  
19 view the estimation motion as purely a legal issue, but  
20 obviously, the ACC will address that during the course of this  
21 hearing. We couldn't really understand why any discovery would  
22 be necessary there. We also don't see the need for any  
23 discovery in connection with the QSF motion. That's  
24 effectively giving the estate \$270 million at this time. We  
25 don't see any material disputed facts. To the extent there are

1 facts relevant to any of those motions, we think they're  
2 publicly available.

3 So we sent the ACC an e-mail back yesterday afternoon  
4 saying, "We're a little bit confused. We may just have to  
5 discuss this with the Court this morning, but please advise us  
6 as to what discovery you think you may need." We did not hear  
7 from them yesterday. So we'll hear it for the first time like  
8 your Honor will at this hearing.

9 But that's kind of, I think, what's up. Again, our  
10 view is no discovery would be necessary. It's a pretty  
11 straightforward set of motions. The estimation motion, again,  
12 we view as pure legal. It's an 11-page motion, fairly  
13 straightforward. The QSF motion speaks for itself. It gives  
14 the estate \$270 million through our QSF.

15 So we would ask your Honor to schedule both of those  
16 for the October omnibus on the 28th. We can set objection  
17 deadlines and reply deadlines, obviously, during this, this  
18 hearing.

19 With respect to the bar date and PIQ motion, you may  
20 recall that it was, again, fully argued in January. Your Honor  
21 again deferred it until after the PI ruling where, obviously,  
22 we are now. Ms. Ramsey always reminds us and the Court that  
23 your Honor also indicated that to the extent that were  
24 developments or facts or other things --

25 THE COURT: Uh-huh (indicating an affirmative

1 response).

2 MR. ERENS: -- that are relevant to the bar date and  
3 PIQ motion that have occurred since the January hearing, the  
4 parties would be able to argue that in October and we still  
5 think that that's the deal.

6 From the debtors' perspective, we believe that this  
7 motion is even more relevant than it was when we filed it in  
8 December. We now have a plan on the table, a proposal to  
9 estimate current claimants, and the bar date and the PIQ will  
10 obviously inform the estimation process.

11 So we would ask your Honor, also, to schedule that for  
12 final hearing in the October omnibus.

13 I think that's the update. Obviously, I want to  
14 reserve --

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

17 MR. ERENS: -- response to whatever the ACC indicates  
18 they may need for discovery.

19 The only other thing I'd point out, your Honor, when  
20 we sent the term sheet over to the ACC, I think it was  
21 September 3rd, it was coupled with a letter that was sent  
22 jointly by counsel to the debtors and the FCR indicating that  
23 we'd be willing and also interested in sitting down with all  
24 parties in person -- when I say "all parties," debtor, ACC,  
25 FCR, and principals -- around this time, towards the end of

1 September, to see where everybody is in this case. We have yet  
2 to hear a response from the ACC. That's consistent with the  
3 fact we've reached out to them as the FCR has several times in  
4 this case to talk about where we are in this case, see if  
5 there's opportunities for settlement. We have yet to hear from  
6 the ACC. Maybe we'll hear this morning.

7 I think that's the update, your Honor. I'll turn it  
8 over to the ACC and let's hear what they have to say.

9 THE COURT: All right.

10 Ms. Ramsey? Mr. Phillips?

11 MS. RAMSEY: Good morning, your Honor. Natalie Ramsey  
12 for the Asbestos Claimants' Committee, along with Mr. Phillips.

13 Your Honor, I think it's important that we start off  
14 by talking about exactly what it is that the debtor filed on  
15 Friday night by way of a plan, together with a plan support  
16 agreement and, as Mr. Erens indicated, an estimation motion and  
17 a motion for a QSF. That is all in aid of and all of a  
18 package, if you will, in connection with the plan that the  
19 debtor has filed which reflects an effort to disenfranchise  
20 entirely the consent and the vote of the present claimants in  
21 contravention of 524(g).

22 Since the very beginning of this case, the Committee  
23 has expressed concern that each time there, we see one of these  
24 divisive merger bankruptcy transactions it gets a little worse.  
25 As the Court is aware, from the very beginning we pointed out

1 the changes to the funding agreement which made this case even  
2 more disadvantageous from the perspective of the claimants,  
3 limited their rights, tied the Court's hands with respect to  
4 524(g) relief, and the Court noted some of those aspects of the  
5 funding agreement in its preliminary injunction decision.

6 We are concerned about, frankly, the direction of this  
7 case and you heard Mr. Erens say -- and you've heard him say it  
8 before -- that we don't -- that, that the Committee's been  
9 nonresponsive. We have had a couple of meetings with Mr. Guy  
10 that we were waiting on the preliminary injunction decision by  
11 the Court. Since we received that ruling, we have been  
12 reviewing our next steps. We do expect within the next two  
13 weeks that we will be filing papers that will propose a  
14 different path forward to resolution of this case, but this  
15 morning our primary reaction is that we are, the debtor is  
16 moving very quickly to try to force a resolution down the  
17 throats of current claimants, having come into this case with a  
18 representation it had full assets to pay the claimants, having  
19 asked this Court to accept jurisdiction to resolve the claims,  
20 and now looking to resolve the claims by, essentially, cramming  
21 them down without any say by the people who actually are  
22 injured, who actually have a, a serious concern. This is not  
23 just an economic concern. This is a concern about their entire  
24 wellbeing and life. For those who are still living, it's the  
25 difference between a more comfortable and a less comfortable

1 death and for those who are deceased, it is their only  
2 recompense for moving forward with the loss of someone.

3           So we are very troubled by the developments in this  
4 case. The Court is probably aware that these documents started  
5 being filed at 7:16 p.m. on Friday night. So we have not had a  
6 lot of opportunity to fully review them. We have not yet hired  
7 an estimation expert. So we're not going to be in a position  
8 immediately to respond to the, the estimation document. We  
9 have not had an expert review even the debtors' database. We  
10 also have not had an opportunity to review the QSF yet with our  
11 financial advisors and fundamentally, we think that the effort  
12 to move forward with procedures that are fundamentally designed  
13 to support a plan that we believe is one that the Court would  
14 find, consistent with what the Court found when a similar plan  
15 was filed in Kaiser patently unconfirmable or, as Judge Hodges  
16 said with respect to a similar plan in Garlock a sham, is  
17 simply not something we should be rushing toward. We think  
18 that we can move in a more appropriate speed. We can have all  
19 of the various paths before the Court and move forward in a way  
20 that makes the most sense. Just as we argued in DBMP and the  
21 Court ruled, we think that now that the, the debtor has filed  
22 this plan and an estimation motion, we ought to first have a  
23 hearing on the estimation motion. We ought to be looking at  
24 that initially. We ought to take that in the context, in the  
25 discovery, in the context of what the objective of the

1 estimation is.

2 Mr. Erens said we may need discovery. We're not sure.  
3 Mr. Phillips reached out and said we might. We're, we're  
4 thinking about it. There has been discovery in connection with  
5 the estimation motion, both in the Bestwall case and in the  
6 DBMP case. Mr. Erens says that these are legal issues.  
7 They're not entirely legal issues at the, at the face. What  
8 the Court is being asked to do is to assess the liability and  
9 there is a lot of information that is available, typically,  
10 with these debtors that is relevant to that.

11 So we are evaluating that. We don't have an answer to  
12 specify right now as we sit here today exactly what discovery  
13 we will need. We will have that answer, we expect, again  
14 within a week or so. We are taking a look at that. We're also  
15 continuing to evaluate what actions and response we might have  
16 to the other documents, the plan support agreement, the QSF  
17 motion. And, your Honor, October, the October omnibus is, is  
18 simply, we think, unrealistic. We think a more appropriate  
19 timeframe would be to take this up in, at the December omnibus  
20 hearing. We have an omnibus hearing on December 2nd. That  
21 would give us an opportunity since we're now at the beginning  
22 of October-- that's only, you know, really a short two months  
23 away -- to file the additional papers, to put motions in front  
24 of the Court as appropriate, and other pleadings addressing  
25 what the debtor has filed.

1           And to Mr. Erens' last point with respect to sitting  
2 down with the debtor and the FCR, we were surprised, as we told  
3 the Court at the last hearing, to learn that the FCR and the  
4 debtor had reached a deal. We had learned that the night  
5 before the last hearing and we have been, again, evaluating  
6 what we saw of the term sheet. We were advised that there  
7 would be a plan filed. We have been waiting to see what the  
8 plan said and we fully expect, now that we have seen it, once  
9 we have had an opportunity to review it with our other  
10 professionals, that we will be able to sit down and have a  
11 dialogue.

12           And then one other point, your Honor, before I cede  
13 the floor that I wanted to make is Mr. Erens mentioned that the  
14 insurance is an aspect of this and the insurance documents are  
15 not yet complete. We have special insurance counsel, also,  
16 that is going to need now to evaluate the entire proposal in  
17 light of what is essentially an insurance settlement that is  
18 part of this overall deal as well. And again, we expect that  
19 that will take a little bit of time, not excessive time, but we  
20 think that if we looked at the December 2nd date for estimation  
21 and worked our way back from that, that we could set up a  
22 rational briefing schedule that would give all of the parties  
23 an opportunity to put the issues before the Court in an  
24 organized way.

25           THE COURT: Okay.



1 MS. RAMSEY: Thank you.

2 THE COURT: Do you anticipate other motions being  
3 filed as they were in DBMP by the Committee?

4 MS. RAMSEY: Similar motions, your Honor.

5 THE COURT: Okay.

6 MS. RAMSEY: We do. And we expect that those will be  
7 filed within the next two weeks.

8 THE COURT: And you want those heard in December as  
9 well?

10 MS. RAMSEY: Yes, your Honor. I think we would like  
11 those heard in December as well.

12 THE COURT: Okay, very good.

13 What does the FCR say?

14 MS. RAMSEY: Thank you.

15 MR. GUY: Good morning, your Honor.

16 We're here for a status conference to schedule the  
17 various motions. I don't think the motions that are being  
18 presented, the, either the estimation motion or the QSF motion,  
19 present anything other than crisp legal issues and no one  
20 suggests that they're novel. They've been heard and ruled on  
21 multiple times with this Court.

22 But I, I don't want to argue anything about the plan,  
23 your Honor, or any of those motions. I, I know I'll have an  
24 opportunity to do that when you, when you set it for argument,  
25 whenever you do.

1 Thank you, your Honor.

2 THE COURT: Anyone else?

3 MR. PHILLIPS: Your Honor, if I might? Todd Phillips  
4 from Caplin on behalf of the ACC.

5 THE COURT: All right.

6 MR. PHILLIPS: I just wanted to follow up on a few  
7 things that Ms. Ramsey said and that Mr. Erens and, and Mr. Guy  
8 commented on.

9 Mr. Guy just said that the estimation and the QSF are,  
10 you know, routine or -- I forget the word he used exactly.  
11 Just so, just so you know, your Honor. The estimation motion  
12 is, is kind of different than some of the other ones we've seen  
13 before. It was filed late Friday as part of a, as a package, I  
14 think is what Mr. Erens said, and the QSF includes a 20-page  
15 trust agreement as an exhibit that identifies the trustee,  
16 trust counsel, has, you know, pages and pages of, of, of text  
17 about what the trust is going to be doing, how they're going to  
18 be using the money. We got all this on Friday and obviously,  
19 we'd never seen it before. So there's nothing like routine or,  
20 or, you know, ordinary about that.

21 I mean, I -- it's -- what the debtors -- the debtors  
22 are engaging in a fantasy here, I mean, to be honest. It's,  
23 it's a fantasy where the statutory voters don't matter and  
24 that's our constituency, current claimants. And, I mean, as,  
25 as Ms. Ramsey noted, this smacks of being a sham and your

1 Honor's familiar with that from the Kaiser case --

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

4 MR. PHILLIPS: -- where, you know -- I, I know you  
5 remember that. That was only a couple, you know, a couple  
6 years ago --

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

9 MR. PHILLIPS: -- when we were in front of you. And,  
10 and that was based on the Garlock, similar Garlock plan. And,  
11 you know, we're concerned about this being a wasteful, useless  
12 exercise, wasteful estate resources.

13 But ultimately, we just need, we need time to analyze  
14 this. Mr. Erens said that I sent him an e-mail last night. I,  
15 I didn't respond to it. My e-mail was very clear and I don't  
16 want to play, you know, he said he said here, but I will say,  
17 your Honor, I made it very clear that we're, we're analyzing  
18 and reviewing the filings and, and we may want potential  
19 discovery. I didn't say we want potential discovery. I said  
20 we need to build in, build in some time in case we do. Because  
21 we just got these filings. And, and it was, you know, very  
22 friendly outreach to try and work out a sensible schedule. And  
23 that -- and that -- that's kind of the long and short of it,  
24 your Honor.

25 THE COURT: Okay.

1 MR. PHILLIPS: Thank you.

2 Anyone who hasn't had a chance?

3 (No response)

4 THE COURT: All right. Back to the debtor.

5 Mr. Erens, any rebuttal?

6 MR. ERENS: Yes, your Honor, a number of items.

7 I guess my overall reaction, your Honor, I don't know  
8 if you remember the time in college basketball before they had  
9 a 35-second shot clock --

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

12 MR. ERENS: -- and you get to the end of the game and  
13 someone would start playing, I think it was called the four  
14 corners, and the whole point of it was just to delay the  
15 process and have the game end. I see that's what's going on.  
16 I think Mr. Guy had said in at least one hearing, "All we see  
17 is delay from the ACC," and that's all I see here. But  
18 nonetheless, let me respond to the specific points that were  
19 made by the ACC.

20 No. 1, they indicated -- I think maybe this is their  
21 primary point -- they see this as an improper process to cram  
22 down the current claimants. Your Honor, we don't see it that  
23 way. We have a deal now with 80 percent or more of the  
24 claimants, okay? We don't have a deal with the current  
25 claimants, but we have a deal with the future claimants which,

1 again, based on history -- and, you know, don't hold me to  
2 these numbers. I'm just trying to --

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

5 MR. ERENS: -- give you some sense. Garlock, again,  
6 is a good example. And again, the products here, a lot of the  
7 facts here are very similar to Garlock based on Judge Hodges'  
8 estimation -- the currents are about 20 percent of the  
9 claimants and the futures are about 80 percent of the  
10 claimants.

11 What we intend to do with the estimation -- and I  
12 didn't go into a lot of detail and I probably should have --  
13 basically, the estimation -- and Ms. Ramsey or, I can't  
14 remember if it was Mr. Phillips said this, that the estimation  
15 motion is different here. That is true and it's much simpler.

16 So given that we have a deal with the futures, we are  
17 simply seeking to estimate the currents and the request by your  
18 Honor is simply a determination that the 125 million, which is,  
19 roughly, 20 percent of the deal or maybe 25 percent of the deal  
20 that has been allocated for the currents is sufficient. The  
21 125 million is five times what Judge Hodges found to be the  
22 liability of the debtor to the currents under, again, very  
23 similar circumstances. Now obviously, that's not binding on  
24 your Honor. This case is not exactly like Garlock, but this  
25 case is actually very similar to Garlock.

1           So our point is we have put into the trust five times  
2 the amount that Judge Hodges found was the legal liability for  
3 the currents. We think that, obviously, is more than  
4 sufficient, but your Honor would have to make that  
5 determination. But we've simplified the estimation process.  
6 No futures, simple question of whether 125 million is  
7 sufficient.

8           If your Honor determines that 125 million is  
9 sufficient, our view is that the current claimants should take  
10 that view by the Court and support our plan. Now, of course,  
11 they don't have to, but the whole point of the estimation is to  
12 have a judicial determination rather than hearing it from the  
13 debtor that the amount of money in this plan for currents is  
14 more than sufficient. If that's where we get to, then we're,  
15 our hope is the ACC will say, "Fine. We'll vote for the plan,"  
16 and this case will be over. Of course, again, they don't have  
17 to do that, your Honor, but that's the intent to get there.  
18 It's to promote settlement. It's not to promote litigation.

19           Now if they don't support the plan, we'll have to  
20 figure out where we are at that point, but the idea is to get  
21 to that point. That's No. 1.

22           Ms. Ramsey, I think, had said, or maybe again  
23 Mr. Phillips, that, you know, they need all this time. They,  
24 they just saw the plan. Again, your Honor, we sent the ACC the  
25 term sheet for the plan on September 3rd. The plan doesn't

1 have economic terms that are different than the term sheet.  
2 The, the ACC has known about all the details of this deal now  
3 for almost a month.

4 So the idea that, that they just got this information  
5 and need to assess it really is probably not accurate.

6 Next, the ACC indicated they need more time because  
7 they haven't hired a claims expert in the case. Well, your  
8 Honor, the ACC has hired the same claims expert in each of the  
9 last like 50 bankruptcies. They know who they're going to  
10 hire, unless they're going to tell us otherwise, and that's  
11 Mr. Peterson. Mr. Peterson has done this drill, again, 50  
12 times. We went them the claims database back in December. As  
13 far as we can tell, they never opened it because, I believe,  
14 the links expired. We are going to send them an updated  
15 database in the next week or so. But that's delay on their  
16 part, not delay on our part.

17 Ms. Ramsey made some references to the Kaiser Gypsum  
18 and Garlock proceedings. I will not respond to that other than  
19 to say our plan is different and I don't think the statements  
20 made would apply to our plan.

21 The insurance is something we're going to work on as  
22 we move along in estimation. So that'll begin to crystalize.

23 And on the QSF, your Honor, Mr. Phillips said, "Oh,  
24 this is a complicated set of documents we've never seen  
25 before." Your Honor, the QSF is substantially identical to the

1 QSF that was filed in the Bestwall case that both Ms. Ramsey  
2 and Mr. Phillips are involved with. So this is not a new  
3 document they've never seen before. The only thing they  
4 haven't seen is the number. They now have the number. It's  
5 \$270 million.

6 So, your Honor, look, whatever you think is  
7 appropriate for scheduling, obviously, is fine with us, but we  
8 think we'd like to get this case moving and we think there's no  
9 question we can have these two motions heard in October.

10 THE COURT: Okay.

11 MR. ERENS: Thank you.

12 THE COURT: Well, folks, I, I have no doubt that y'all  
13 might be able to get it together and be able to hear it. I  
14 don't think I can. The bottom line is we've got DBMP teed up  
15 for five days of hearings in October, in addition to my regular  
16 calendar. There are 15 motions at last count on for that. And  
17 if y'all are filing pleadings through October and given what  
18 else I have on on my regular case docket, I've got fears that I  
19 wouldn't be able to read all the documents, much less be  
20 prepared to go in October. DBMP's got a time deadline in it.  
21 The, and I think the ACC will be filing some other pleadings  
22 that we haven't seen and then we'll have more emergency  
23 requests to continue and to schedule. And the bottom line is I  
24 just don't see that as tenable.

25 I think we're going to have to slow down a bit.



1 November is always the most difficult month of the year to  
2 schedule these type of hearings. We have not only two  
3 holidays, but a state bankruptcy seminar that we're obliged to  
4 participate in and a host of other things. So it's a short  
5 month and it's going to be hard.

6 I believe trying to shoot for having hearings on the  
7 merits of the motions in December -- I got the wrong date here.  
8 Let me get a hold of it -- the 2nd.

9 And my next question to all was going to be how much  
10 time are you going to require. Because I've got some latitude  
11 either on the 1st, the 3rd, and even spilling into the next  
12 week. But I need you to work a little bit with one another on  
13 what you're going to need and what you're going to need to  
14 file.

15 What I would say is let's pencil those days in for the  
16 hearings on the merits of the motions that we have here. If  
17 there's a need for discovery; talk about that and see if we  
18 can't figure it out. If there are going to be other motions  
19 being filed by the ACC, get those teed up and let's talk about  
20 working those in. I would suggest we use the October date for  
21 that to try to get everything squared up so we will be ready to  
22 go on the merits on all of the motions that first week in  
23 December.

24 Does that make sense?

25 MR. ERENS: Yes, your Honor. I apologize. The dates

1 you have available in December are what, again?

2 THE COURT: Well, we try not to schedule the first  
3 week of the month and we had to make an exception because of  
4 holidays and move you guys up there. But I have available the  
5 1st, 2nd, and 3rd, the 6th, 7th, 8th, the 9th is Kaiser and  
6 right now, we're not using Kaiser days. I would assume that  
7 we'll be in the same position.

8 But that, those first ten days of December at the  
9 moment are not calendared.

10 Madam Clerk, better backstop me.

11 'Cause we offer these dates to others as well.

12 Got anything showing that first week?

13 (No audible response)

14 THE COURT: So in any event, if you need more than one  
15 day, we can accommodate you right now. We just need to get  
16 everybody thinking about when we're going to do this.

17 MR. ERENS: Okay.

18 THE COURT: And the other part of that is --

19 MS. RAMSEY: Thank you, your Honor.

20 THE COURT: -- for November, I need to make some  
21 decisions in the other case and just looking at what's  
22 transpired in Bestwall, some of those motions took a while for  
23 Judge Beyer to decide. So I'm wanting to actually make an  
24 informed decision in the other case as well as this one.

25 So I'm going to need November for that, okay?

1 MR. ERENS: Okay.

2 So I guess what I'm hearing is the ACC -- we, we filed  
3 everything I think we're going to be filing at this point,  
4 although I do want to think about whether there's anything  
5 further we would want to file. Nothing comes to mind. I guess  
6 what I'm hearing is the ACC will file something, whatever they  
7 think they want to file, prior to the October omnibus? I'd  
8 like to get --

9 MS. RAMSEY: That's correct, your Honor.

10 MR. ERENS: -- some, some hard dates so that we have  
11 some time to read the papers before we go in there. But we've  
12 got plenty of time. So if you come up with a date at this  
13 time, that would be helpful. The omnibus --

14 THE COURT: Can we get that, Ms. Ramsey?

15 MR. ERENS: The omnibus is the 28th.

16 MS. RAMSEY: Yes.

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

19 MS. RAMSEY: Yes, your Honor. I, I think -- I'm just  
20 looking at the calendar. I think that we can, we can promise  
21 by, let's say the, Monday, the 18th. That'll still be ten days  
22 before and that'll give us that last weekend if we need it.

23 MR. ERENS: Okay. That, that's fine, your Honor.

24 And then we'll do October scheduling hearing, I  
25 assume, again virtual if it's just a scheduling hearing?

1 THE COURT: Yes, sir.

2 MR. ERENS: Okay.

3 THE COURT: The 28th.

4 MR. ERENS: Yep.

5 Your Honor, at some point we're going to have to come  
6 to Charlotte. We'll have been in bankruptcy now, oh, 16 months  
7 without having an in-person hearing.

8 THE COURT: You may rest assured that I would much  
9 prefer to have you here. I'm trying to accommodate everyone  
10 and the, the health concerns. I was reading an article about  
11 the likelihood of catching something on an airplane last night  
12 in The Wall Street Journal and --

13 MR. ERENS: Hmm.

14 THE COURT: Well, I'm the one who's not flying.

15 So in any event, I would like to do that and I'm  
16 anticipating all five of those dates I just mentioned in DBMP  
17 are in person and we'll be doing the same when we hear these  
18 substantive motions. But I don't see any reason to put you on  
19 the planes just to come down here and talk about a schedule.

20 MR. ERENS: Okay. We appreciate that, your Honor.

21 THE COURT: Okay?

22 MR. ERENS: Okay.

23 So I think that's the plan. As we did in the last  
24 hearing, I don't think we need an order. I think everybody  
25 knows the, the dates and we'll work with that.

1 THE COURT: Okay.

2 Everybody got it? All right.

3 What --

4 MS. RAMSEY: Thank you, your Honor.

5 THE COURT: What else do we need to discuss this  
6 morning, anything?

7 MR. ERENS: Nothing else from the debtors' side, your  
8 Honor.

9 THE COURT: Everyone good? Okay. Excellent.

10 Well, I'll be seeing some of you here shortly and I  
11 know you've been with Judge Beyer a good part of this month.

12 So I hope all stay well and we'll, we'll recess at  
13 this point and talk to you again next month, all right?

14 (Proceedings concluded at 10:02 a.m.)  
15  
16  
17

18 CERTIFICATE

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

23 /s/ Janice Russell

October 5, 2021

24 Janice Russell, Transcriber

Date

25