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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: Okay. Have a seat, everyone, those in the
4 courtroom and those without.

5 We're back in the Aldrich Pump/Murray Boiler cases and
6 pursuant to the Agenda at Docket No. 857. We were talking a
7 little bit of scheduling here today, I think.

8 Let me get your appearances for, looks like, a fairly
9 short list of those attending today. And so let me just read
10 out what I've got and then you can augment or correct, as
11 necessary.

12 These are being held by Teams video technology and as
13 I understand it on behalf of the debtor today is Brad Erens,
14 Jack Miller as well.

15 For the ACC Natalie Ramsey, Kevin Maclay, and Todd
16 Phillips.

17 And Greg Mascitti on behalf of Trane Technologies
18 Company and Trane USA.

19 Those were the speakers that we, we understood we
20 would have today.

21 Also appearing by video, not anticipating the need to
22 speak, Rick Rayburn for the debtor.

23 Davis Wright for the ACC.

24 Jonathan Guy for the FCR.

25 Joshua Taylor for Travelers.

1 Are there any corrections or additions to that list?

2 MR. MACLAY: Yes.

3 MR. GUY: Your Honor, this is Jonathan Guy.

4 MR. MACLAY: Go ahead, Jonathan.

5 MR. GUY: I do -- oh.

6 Thank you, Kevin.

7 I do plan on speaking. I believe Mr. Grier is on the
8 phone.

9 THE COURT: Okay.

10 MR. GUY: And then Ms. Wright and Ms. Felder are with
11 me.

12 Thank you, your Honor.

13 THE COURT: All right. Thank you.

14 MR. MACLAY: And, and also another correction, your
15 Honor. Todd Phillips is, is not attending this morning.

16 THE COURT: All right, very good.

17 Anyone else? Anyone who was not called, but needs to
18 announce an appearance?

19 (No response)

20 THE COURT: Okay, very good.

21 Well, are there any preliminaries, or we just go, are
22 going to talk about what has been teed up for, for hearings and
23 when to, when to schedule those? Any --

24 MR. ROTEN: Judge Whitley, it's Russell Roten. I just
25 wanted to announce my appearance. Good morning, your Honor.

1 THE COURT: All right. Mr. Roten, remind me who
2 you're representing.

3 MR. ROTEN: London Market Insurers.

4 THE COURT: Okay, very good.

5 MR. ROTEN: Thank you.

6 MR. ERENS: Your Honor, again, Brad Erens on behalf of
7 the debtors.

8 No preliminaries, your Honor, other than what will be
9 relevant to the items on the Agenda. I do think -- and you're
10 right. This is mostly a scheduling hearing -- but I do think
11 it makes sense as we go through the items on the Agenda to
12 provide some context and reminder of, of where we are and how
13 we got to where we are in the case and, and what we see going
14 forward, or potentially going forward in the case.

15 THE COURT: Okay.

16 Anyone else?

17 (No response)

18 THE COURT: All right. Well, why don't we just -- is
19 there a way that the parties believe this should be approached,
20 or we're just going to call them one at a time and talk about
21 the individual motions?

22 MR. ERENS: Your Honor, I think what I was intending
23 to do was, more or less, take the items on the Agenda in order,
24 provide some context as a reminder to your Honor of, you
25 know --

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

3 MR. ERENS: -- the history of the various motions and
4 how we got to where we are and, and again, provide context.

5 In terms of scheduling, I think it'll be pretty
6 straightforward. We've had two meet and confers with the ACC
7 and the FCR and there's general agreement on, on most points
8 with respect to scheduling subject to your Honor's consent on
9 what's being proposed.

10 THE COURT: Okay.

11 Anyone else?

12 (No response)

13 THE COURT: All right. Well, let's just call the
14 first one. We have, No. 1's the joint motion effectively for
15 the PIQ and the bar date, proof of claim form.

16 MR. ERENS: Okay. Your Honor, again, I'd just like to
17 take a second to take a step back before we go into --

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

20 MR. ERENS: -- the joint bar date and PIQ motion,
21 which was, you know, filed last December and was heard,
22 effectively, in full in January.

23 So as a reminder, your Honor ruled, obviously, third
24 week, roughly, in August on the PI. That order is final, has
25 not been appealed. So that --

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

3 MR. ERENS: -- litigation is now done. As it relates
4 to the bar date and PIQ motion as well, your Honor ruled back
5 in January that that motion would be pushed to after a PI
6 ruling and that's why it's still pending, even though it was
7 heard in January.

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

10 MR. ERENS: At the first omnibus hearing after the PI
11 ruling came out, we announced, you may recall, that we had a
12 deal on a plan with the FCR --

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

15 MR. ERENS: -- a \$545 million trust, 540 million paid
16 on the effective date of the plan, and a \$5 million note. We
17 had not had discussions with the ACC with respect to that plan.
18 As you recall --

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

21 MR. ERENS: -- the ACC had not been interested in
22 engaging with us or the FCR. We indicated at that time we
23 would file the plan in the near term as well as other pleadings
24 that relate thereto, including an estimation motion, and it was
25 agreed at the August omnibus that, I think, all parties would

1 file whatever motions they thought appropriate going forward by
2 September 24th and we would file the plan by September 24th and
3 at the September omnibus hearing, which was September 30th, we
4 would talk about scheduling at that time.

5 So on September 24th, we did file the plan. We filed
6 a QSF motion, which I'll get to which is on the Agenda --

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

9 MR. ERENS: -- and we filed an estimation motion,
10 which is also on the Agenda, which, again, we'll get to. The
11 ACC, to our surprise, didn't, didn't file anything and we went
12 into the September 30th omnibus hearing to discuss scheduling
13 and the ACC at that time requested that the debtor's estimation
14 motion be pushed to the December hearing. December 2nd is our
15 omnibus hearing.

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

18 MR. ERENS: Your Honor agreed at that time, in part
19 based on your schedule. You're obviously busy. That's
20 obviously become an issue.

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

23 MR. ERENS: And you indicated at that time, if nothing
24 else, you had a number of DB, DBMP hearings in October --

25 THE COURT: Uh-huh (indicating an affirmative

1 response) .

2 MR. ERENS: -- and maybe even November --

3 THE COURT: Uh-huh (indicating an affirmative

4 response) .

5 MR. ERENS: -- and you weren't, you weren't convinced
6 you would have enough time and attention to deal with the
7 estimation motion, as an example, at this hearing.

8 So it was agreed that the motions would be pushed off,
9 or the estimation motion, anyway, and the QSF motion would be
10 pushed off to December and that we'd come back today to again
11 talk about scheduling. Your Honor gave the ACC another
12 opportunity to file motions that they might want to have heard
13 in December, or thereafter, and a, and a date was agreed to
14 file those motions, which was October 18th.

15 The ACC did file motions on October 18th. And again,
16 they're on the Agenda and I'm sure we'll be going through
17 those, if nothing else, for scheduling. They filed a
18 derivative standing motion, very similar to what was filed in
19 the DBMP case --

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

22 MR. ERENS: -- and they filed substantive
23 consolidation pleadings, again very similar to what was filed
24 in the DBMP case.

25 So that's the totality of, really, what's in front of

1 your Honor today in terms of scheduling and, and dealing with
2 issues not on a substantive basis, *per se*, but on a scheduling
3 basis and that represents what's on the Agenda.

4 So I, I do want to provide a reminder and context as
5 to how we got here 'cause it may affect how the parties talk
6 about or your Honor addresses the scheduling.

7 THE COURT: Okay.

8 MR. ERENS: So, so then let's get to the Agenda. The
9 bar date and PIQ motion, again, was filed by the debtors in
10 December, a joint motion with the FCR -- again, it's not just
11 the debtors' motion -- for a bar date and a PIQ. Again, if
12 your Honor approved the bar date, then anybody who filed a
13 claim -- this is an asbestos bar date -- would then have to
14 fill out a PIQ based on the schedule that was set forth in that
15 motion.

16 The, the motion was fully briefed and argued at the
17 January omnibus, I think January 28th, although I do seem to
18 remember that I may have been in the middle of my reply and,
19 and your Honor stopped the hearing and indicated you were going
20 to push it off at the ACC's request to post, post PI
21 litigation. But effectively, it was fully argued and ready for
22 ruling. Ms. Ramsey, again -- we talked about this a couple
23 times now -- always reminds everybody -- and this was the
24 understanding and deal -- that it was agreed that when this was
25 back up in front of your Honor, which now will be December,

1 that, to the extent any parties felt the passage of time and
2 the events that have occurred since the January hearing
3 influence or are relevant to the requested relief, that they'd
4 have an opportunity to, to make that case at the, at the
5 hearing itself. And that's certainly fine. Either party can
6 do that. From our standpoint, we think it's even more
7 appropriate that this motion be heard and, and be approved.
8 The ACC will take whatever position they will take in December.

9 So that's on for hearing, but no further briefing will
10 be necessary. There'll be some additional argument. I do want
11 to come back to this motion maybe at the end only because it's
12 been so long since it was heard that maybe we talk about, a
13 little bit more about logistics since, you know --

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

16 MR. ERENS: -- by the time we get to December it's
17 almost a year since it was originally heard.

18 So that's bar date/PIQ. There is no, it's just legal
19 argument. There's no evidence being presented and the like.
20 And, and again, the hearing, effectively, has already occurred.

21 THE COURT: You want to stop? Do you want to stop
22 there before we go on and let's see whatever everyone --

23 MR. ERENS: Sure.

24 THE COURT: -- says about where we are and what you
25 want to do?

1 Anyone else?

2 MR. MACLAY: Your Honor, I would just make an obvious
3 point based on the transcript of that hearing which is,
4 although Mr. Erens says it's already been fully argued, I will
5 note that when your Honor was discussing at that time when it
6 would be continued to -- 'cause your Honor granted the ACC's --

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

9 MR. MACLAY: -- motion for a continuance -- your Honor
10 said that, "We will have one or two dates for that and if we
11 need two days," then you started to discuss scheduling.
12 Obviously, if your Honor felt the need at that point for two
13 additional days of hearing, it wouldn't seem to be completely
14 finished. It's sort of an obvious point.

15 Obviously, these are the sorts of details that the
16 debtor and we should be attempting to work out consensually
17 before you're presenting your Honor with any sort of dispute
18 and I don't think we have a dispute necessarily at this point.
19 But to be clear, some of the characterizations from the debtor
20 seem a little bit self-serving and I think it would be useful
21 for the debtor and the ACC to engage on any related issues
22 prior to presenting them to your Honor for resolution to see if
23 we can work them out, as we have done, I think, for the vast
24 majority of issues you're going to be hearing about today.

25 THE COURT: Okay. Well, I'm all in favor of working

1 things out before we come to the Court.

2 But does anyone feel like that there's anything else
3 to be set on? When I'm talking to you folks, things have a way
4 of morphing over time and when I said we could have two days
5 there, it was in anticipation that, for one, I thought that the
6 ACC was not content, if I'm thinking of the right case now,
7 that there was, might be more argument necessary. And I
8 remember the debtor saying that they thought it had been fully
9 briefed and argued and there was a little bit of a disagreement
10 about that.

11 So I don't have a preference at this point in time.
12 All I want to know is if y'all are all in agreement that it's
13 just ripe for ruling, I'll try to be ready to give you a ruling
14 on that day.

15 MR. RAMSEY: Your Honor, Natalie Ramsey for the ACC.

16 We, we are not in agreement that it is ready and ripe
17 for ruling. We do believe additional argument is likely
18 appropriate.

19 THE COURT: Do we need to do additional briefing or
20 we're just going to argue?

21 MS. RAMSEY: Your Honor, we have not --

22 MR. ERENS: Your Honor --

23 MS. RAMSEY: I'm sorry.

24 THE COURT: Yes.

25 MR. ERENS: I'll start.

1 MS. RAMSEY: Go ahead.

2 MR. ERENS: The, the understanding I always had -- and
3 we talked about it a couple times since January -- was it's
4 fully briefed. It can continue to be argued.

5 I don't remember a discussion about two days. I'm not
6 sure why we would ever need two days, even if it hadn't been
7 argued, to begin with. It's just legal argument. But we're
8 fine having argument either again or, again, supplemented based
9 on things that have passed. Because again, your Honor hasn't
10 heard this since January. So your recollection may be somewhat
11 fuzzy.

12 One of the things I was going to suggest is -- we
13 don't know how it works on your end -- but if you wanted us to
14 provide you the transcript from the hearing as part of your
15 preparation, we're happy to provide that. If your Honor's able
16 to get that with your own resources --

17 THE COURT: I can get that off the docket.

18 MR. ERENS: Okay. So that, that would be a reminder
19 of what was, what was said in January.

20 But again, happy to -- we can, we can reargue the
21 whole thing based on the same briefs. It may not be necessary.
22 Bug again, I don't remember couple days. I'm not sure that's
23 necessary. I think we argued for three or four hours already
24 in January.

25 THE COURT: I recall that and I also recall that what

1 I was thinking at the time was that there might be other things
2 that come up as well. I reserved for you the two days. I'm
3 not encouraging you to argue this motion for two days. So I
4 would appreciate it if you would only argue the new things. I
5 -- you can count on me to go back and, and look again at the
6 briefs before we get to that point.

7 But one of the, the challenges for the Court is that
8 as these cases all present similar issues but not identical
9 issues, it's very easy to conflate what happened in one into
10 the next and I'm trying not to do that. But if there,
11 realizing that the, there have been different allegiances here,
12 I also want to make sure that nothing gets missed. I'm not
13 going to simply assume from the first case that comes up that
14 that's the ruling for the second.

15 So if y'all need time to talk about that some more,
16 let's -- are we all in agreement no further briefing? We're
17 just going to talk about whatever other arguments might be
18 relevant?

19 MR. ERENS: That's correct, your Honor.

20 THE COURT: Everybody good with that? Okay.

21 MR. GUY: Yes, your Honor.

22 THE COURT: All right.

23 MR. ERENS: Okay.

24 THE COURT: So 12/2 at 9:30.

25 All right. Ready to move on?

1 MR. ERENS: Let me just clarify one thing so we're not
2 leaving it vague in anybody's mind. My understanding, although
3 we will talk to the ACC to get more specific, is, in general,
4 your Honor is looking for, for the most part, new issues that
5 have come up since as a result of the passage of time. It may
6 not be quite that strict --

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

9 MR. ERENS: -- but that's kind of the focus of the
10 argument, is my understanding.

11 THE COURT: Right.

12 MR. ERENS: Okay, fair enough.

13 THE COURT: Yeah.

14 MR. ERENS: Okay.

15 THE COURT: Please do not reargue what you've already
16 argued.

17 MR. ERENS: Okay.

18 THE COURT: You, you can count on me going back and,
19 and looking at my notes as well as the transcript and, and the
20 briefs, okay?

21 MR. ERENS: Okay, fair enough.

22 THE COURT: Anything else on that matter?

23 (No response)

24 THE COURT: All right. That takes us to the joint
25 plan.

1 MR. ERENS: All right. Your Honor, with respect to
2 the joint plan, again it's not a, a motion that's coming up,
3 obviously, but again, it does create some of the context for
4 the other motions that are on the Agenda.

5 So as a reminder -- I think I mentioned this already,
6 perhaps -- September 24th, we filed the actual plan that we
7 announced in court on the --

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

10 MR. ERENS: -- 26th of August. Again, is a deal that
11 we've negotiated with the FCR that we think is, roughly, 80
12 percent of the asbestos claim constituency.

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

15 MR. ERENS: \$545 million trust, 540 million paid out
16 on the effective date with a \$5 million note. We never were
17 able to engage with the ACC on discussions leading into that.
18 Even though the deal has been now public for two months and the
19 plan's been on file for more than a month, we still have not
20 heard anything from the ACC.

21 So we don't necessarily know their position, *per se*,
22 on this, but I, I guess their silence probably says that, you
23 know, they're not in agreement

24 I do know that a related issue, I suppose, came up in
25 the DBMP case where your Honor asked, it may have been

1 Mr. Maclay, "Look, on these divisional merger cases is there,"
2 you know, "are the parties able to negotiate a number or is
3 this really sort of an existential threat?"

4 THE COURT: Right.

5 MR. ERENS: And the ACCs are not really in a position
6 to negotiate. I suppose, you know, one of the questions we
7 have is existential threat to whom and we may come back to that
8 point.

9 We would point out that your Honor may remember in the
10 Garlock case a very similar transaction was done to get Coltec
11 into bankruptcy and its liabilities --

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

14 MR. ERENS: -- dealt with under the Garlock plan. A
15 very similar transaction was also done in the Paddock case up
16 in Delaware --

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

19 MR. ERENS: -- which recently reached an agreement at
20 \$611 million, same sort of zone that this case or this plan
21 provides. Paddock was an insulation manufacturer, you know,
22 where gasket manu -- or not manufacturer --

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

25 MR. ERENS: -- but used gaskets in our product.

1 So the ACC can say it's an existential threat, but
2 these deals have been done in other cases that have resolved.

3 Nonetheless, if that's the ACC's position, it's the
4 ACC's position. We would reiterate to the Court, your Honor,
5 that we do want to resolve these cases. From the debtors'
6 perspective, we'd like to get these cases over with. We think
7 it's unfortunate that's where the ACC is, but, of course,
8 that's their prerogative.

9 But we do have a deal now on the table for more than a
10 half a billion dollars and an arrangement with 80 percent of
11 the constituency. You know, with respect to the ACC, you know,
12 they're, they're an important constituency, obviously, but they
13 represent a smaller piece than the FCR and we think it is
14 unfortunate, again, that they're holding up the case, or at
15 least not willing to sit down and discuss where we are in this
16 case and try to resolve it based on the funding that's already
17 provided. You know, they are vocal, obviously, your Honor, and
18 they're, they're important. They have three law firms and
19 they've, you know, brought a number of pieces of litigation now
20 in this case.

21 And I will say it is confusing to the, to the debtors
22 -- and the FCR can speak for itself -- but, you know, if you
23 think about it, your Honor, if I were a current claimant --
24 again, these are current claimants. They already have a
25 complaint on file before the petition date -- I would want to

1 get paid. Now obviously, I'd want to get paid what I think I
2 deserve, but I'm not sure why I would spend a year litigating
3 the PI and now proposing a couple years, if, if not more, on
4 fraudulent conveyance litigation or other litigation.

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

7 MR. ERENS: So again, we think it's unfortunate where
8 we are. We'd like to sit down with the ACC and all parties and
9 try to resolve this case, but to date, I guess, that's not
10 going to be in the cards for the short term.

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

13 MR. ERENS: Again, I don't know if the FCR has other
14 things to comment upon with respect to that since our deal is,
15 is a deal with the FCR.

16 THE COURT: But from the debtors' perspective, the
17 plan doesn't need to move. There's no reason at this point,
18 for the clerk's benefit, to, to set this on for a disclosure
19 statement hearing? We're miles from there at the moment,
20 right?

21 MR. ERENS: That's, that's correct, your Honor. Our,
22 our intent is not to solicit the plan at this time, but to move
23 forward on estimation. I'll get to that next.

24 THE COURT: Anyone on the other side want to weigh in
25 about the plan?

1 MR. MACLAY: Yes, your Honor. This is Kevin MacLay
2 for the, for the ACC.

3 MR. GUY: Kevin?

4 MR. MACLAY: I'm sorry, Jonathan. Were you not
5 finished?

6 MR. GUY: I haven't started yet --

7 MR. MACLAY: Oh, okay.

8 MR. GUY: -- reporting to your Honor.

9 Can you hear me okay, your Honor?

10 THE COURT: Go ahead, Mr. Guy.

11 MR. GUY: Thank you.

12 Your Honor, I want to clear something up for the
13 record. And the FCR and myself have been listening to some of
14 the other hearings. And so we, we share your pain. And a
15 number of times my name's come up, which is sort of endearing,
16 but Garlock comes up a lot and there are a lots of theories
17 presented by various professionals, who I know and respect but
18 who weren't actually involved in the case directly, about why
19 it was a success.

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

22 MR. GUY: And some people say it's because of the
23 threat of the FCR vote. Some people say it was the RICO
24 actions or, no, it was the bar date or it was the fraudulent
25 transfer or it was the joint plan --

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

3 MR. GUY: -- or it was Judge Hodges' decision. And
4 they're all wrong. I was there. I know why it was. It was
5 the judge's adroit, your adroit handling of the case, your
6 Honor.

7 So the other thing that I have as a takeaway from
8 listening to these hearings is one of my favorite movies, your
9 Honor, is Groundhog Day.

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

12 MR. GUY: And I, I have two daughters. So we're a big
13 Rong Kong (phonetic) family and in that movie, if you've ever
14 seen it, you know, Bill Murray just does the same thing every
15 day and he still wakes up in the same overly floral bedroom.
16 And he does all these mean and nasty things to people and he
17 still wakes up the next day in the same floral bedroom and it
18 goes on and goes on, goes on.

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

21 MR. GUY: And he's making no progress until he figures
22 out, "Well, if I'm kind and reasonable," and then all of a
23 sudden he wakes up the next day.

24 And we can have that same happy ending here. We have
25 a plan on file. There is a number on file and that is a big

1 number. It was suggested that that was a number that the
2 debtors arrived at all by themselves. That's not. That's a
3 number that was arrived at with long, direct, and intense
4 negotiations with the debtors. And that's what the FCR's been
5 doing in this case, your Honor. You haven't heard very much
6 from us. We've been quiet and we don't feel the need to speak
7 unless there's a good reason and we've been working behind the
8 scenes to get a plan that can be confirmed. And this plan,
9 your Honor, is the Garlock plan that was confirmed and agreed
10 to by the ACC. This plan has a number that's greater than
11 Garlock by a very significant margin because the number in
12 Garlock was ten years ago, your Honor. This plan provides for
13 a number that's significantly more than what was agreed to by
14 the ACC in Paddock when you consider the asbestos liabilities
15 at play. Paddock was a "big dusty," your Honor. And in
16 Paddock, there's no existential threat.

17 For whatever reason and it still hasn't been explained
18 to us, the ACC, same professionals, same parties, same law
19 firms, they're perfectly onboard with the deal in Paddock, but
20 we cannot even get them to talk to us to tell us if there's a
21 number that they would accept. And I heard Mr. Maclay's
22 Churchillian speech, "We will never surrender. We'll fight on
23 the beach until the end." We have a, we have a real hard time
24 with that, from our perspective. They obviously have to choose
25 what they think is best for their constituency, but for the

1 class of the future claims going back to the tort system is not
2 a good result.

3 And I'm, and I will just close with this, your Honor.
4 I see that Ms. Abel has asked that the Johnson & Johnson case
5 be moved away to Delaware and I think she's on to something.
6 Because there's something in the air in Delaware that makes
7 everybody kind and reasonable and willing to work with each
8 other. I -- it -- they can't, it can't be the professionals
9 because it's the same professionals. It can't be the Texas
10 twostep 'cause that's what they have in Delaware. It was from
11 Delaware, the same divisional merger concept. It, it can't be
12 any of these claims about existential threat. It must be
13 something in the water cooler or the air in Delaware.

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

16 MR. GUY: So thank you, your Honor.

17 THE COURT: Was that Judge Silverstein, Paddock?

18 MR. GUY: I believe so.

19 THE COURT: Next time I talk to her I'll tell her that
20 y'all thought it was driven by the court in Delaware, so.

21 MR. GUY: Thank you, your Honor. I appreciate that.

22 THE COURT: Thank you.

23 How about the ACC?

24 MR. MACLAY: Yes. Thank you, your Honor. This is
25 Kevin Maclay for the ACC.

1 Well, we've just heard a lot with respect to a plan as
2 to which nothing is happening right now. So I feel compelled
3 to respond to some of the things that were said, even though I,
4 frankly, am not sure why any of them were said in the first
5 place.

6 The first thing I would like to respond to is this
7 analogy Mr. Guy made about Groundhog Day and how Bill Murray
8 does, in the words of Mr. Guy, "mean and nasty things" over and
9 over and over again, but the only thing that reaches a
10 successful resolution is when he becomes kind and nice. Well,
11 your Honor, the "mean and nasty things" are the Texas divisive
12 merger here and if debtors would stop trying to pervert the
13 Bankruptcy Code and twist it into forms to which it is not
14 intended and is not appropriate, perhaps successful resolutions
15 could be reached.

16 And that is so interesting to me when I keep hearing
17 this, this, this cry, why can't we do what was done in Paddock?
18 Well, the answer, your Honor, is you hear about this "very
19 similar transaction" situation, but I'm lead counsel for, for
20 the Paddock ACC and I can tell you that is, it is simply not
21 the case and leave it there. It is a different, a very
22 different transaction, and if the debtor here had acted
23 appropriately, if the debtor here had acted, in the Committee's
24 view, in good faith, we wouldn't be where we are. It's the
25 "mean and nasty things" that led us here and I suppose they

1 have the key to their own prison, your Honor. If they would
2 stop doing "mean and nasty things," maybe we would be able to
3 reach, you know, successful resolution of cases that are
4 brought, you know, in accordance with the Bankruptcy Code and,
5 and are appropriate.

6 And so it's not a very similar transaction. What was
7 done here was clearly done to separate the, the liabilities
8 structurally from the assets and unlike here, there is nothing,
9 there was nothing and still is nothing in Paddock precluding
10 people from suing their related affiliates. There was no
11 attempt to disadvantage the constituency as was done here.

12 Secondly, your Honor, you, you have just heard very
13 glibly Mr. Erens say that more than 80 percent of the
14 constituency supports this plan. Well, that's interesting,
15 your Honor, because I represent a hundred percent of the
16 constituency and none of them support this plan. You heard
17 argument in the Aldrich preliminary injunction hearing that the
18 FCR cannot substitute in for the required vote of current
19 claimants under the Bankruptcy Code, which is expressly written
20 into the Bankruptcy Code, and your Honor actually made some
21 findings about that in your ruling.

22 So it is interesting to hear that in spite of your
23 Honor's clear ruling that a 70 percent supermajority vote of
24 current claimants is required, as the statute clearly also
25 says, to hear you now be told just sort of disingenuously that

1 more than 80 percent of the constituency supports it, the
2 voting constituency, that is just not accurate. It's, it's
3 clearly wrong as a matter of law. Your Honor has already ruled
4 on it.

5 And I will say this. When they say the ACC was never
6 willing to talk with them, well, there is one thing I know for
7 sure, your Honor. They never said to us, "This is the amount
8 we're willing to pay. Let's talk about it." That never
9 happened. That conversation never happened. What would have
10 happened had that conversation happened we'll never know, your
11 Honor, because it didn't happen. What did happen was the ACC
12 [sic] and the FCR negotiated and have proposed a plan which has
13 the support of no one that will vote on it. That isn't a
14 useful paradigm. It obviously isn't going to move this case
15 forward one bit and, and of course, as Mr. Erens indirectly
16 referenced, the motion for substantive consolidation and the
17 motion for authority, those would move this case forward.

18 So it is certainly true that there is a path forward
19 and frankly, the only path forward that's being presented to
20 your Honor is that presented by the ACC in this case.

21 And so I think, frankly, that's really enough a
22 response to the, the sort of atmospheric that you've just
23 heard about the plan. Given that there's nothing on the
24 calendar, that nothing is going to be happening in the near
25 future, your Honor, I think we can move forward at this point

1 to the other items on the Agenda.

2 But I will notice, I will note, also, that I was in
3 Garlock. I have a very different view about it, but I don't
4 think every hearing needs to come down to an argument about
5 Garlock, your Honor. So I'm going to let that one go at this
6 hearing, although I'm sure, unfortunately, you're going to be
7 hearing about it again at, at other hearings.

8 THE COURT: Anyone else on this motion, on the plan?
9 Excuse me.

10 (No response)

11 THE COURT: All right. Let's move on, then.

12 We had the motion for estimation.

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

14 So with the context of the plan, again, on the 24th of
15 September, the debtors filed a motion for estimation.

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

18 MR. ERENS: It's a short motion. Since we have a deal
19 with the futures, the motion seeks only to estimate currents
20 and it's in the context of the plan in the following way, which
21 is the settlement that is reflected in the plan provides that
22 the currents will get no less than 125 million of the 500
23 million designated for claimants.

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

1 MR. ERENS: So again, to, I don't want to say short
2 circuit 'cause that may have the wrong connotation, but to
3 simplify, I guess is maybe a better word, the estimation
4 process and to try to have it streamline and move as quickly as
5 possible, the estimation motion seeks to have the Court
6 determine whether or not the 125 million is sufficient for
7 currents. Because if it is, while the ACC might say at the
8 time, "We're still not voting on the plan," obviously the
9 Court's ruling that 125 million reflects or is sufficient to
10 pay currents under the plan based on the debtors' liability
11 would be highly instructive to the case and discussions among
12 the parties.

13 Your Honor, the debtors obviously believe that the 125
14 million is more than sufficient. It's five times what Judge
15 Hodges found in his estimation ruling to be the liability for
16 currents in the Garlock case, again a case that has many
17 similarities to this both in terms of numbers and products.

18 So we did have, again, a meet and confer with the ACC
19 on objections and replies with respect to the estimation
20 motion. They did indicate that they do intend to object to
21 this motion. I believe that was discussion -- excuse me -- I
22 believe that discussion was after your Honor ruled in the DBMP
23 case approving estimation, but they do still intend to object.
24 We worked out the following schedule subject to your Honor's
25 approval: Objections would be due November 12th, replies would

1 be due November 24th, and then it would go to the December
2 hearing, presumably, December 2nd. The November 24th, I want
3 to make sure is okay with your Honor. That is the Wednesday
4 before the Thanksgiving holiday.

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

7 MR. ERENS: The hearing is the Thursday after the
8 Thanksgiving holiday.

9 THE COURT: Right.

10 MR. ERENS: So while, so while the parties,
11 apparently, you know, have no problem working during the
12 Thanksgiving week, the, the real issue is does that give your
13 Honor enough time after --

14 THE COURT: It's fine.

15 MR. ERENS: -- the close of briefing. Okay.

16 THE COURT: From my --

17 MR. ERENS: So we'll go with that --

18 THE COURT: From my perspective, it's fine.

19 MR. ERENS: Okay.

20 THE COURT: If everyone else is good.

21 MR. ERENS: All right. So we'll, we'll go with that
22 schedule.

23 At the September omnibus hearing, I think the ACC
24 indicated it might want discovery on this or the QSF motion.
25 The ACC has confirmed with us that they will not be seeking

1 discovery on the estimation motion, which we appreciate. We
2 think it's just a legal issue, especially in the manner in
3 which we've simplified the estimation proposal. So it'll just
4 be legal argument at the hearing.

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

7 How about from the FCR?

8 MR. GUY: Your Honor, nothing to add other than that
9 we do support the debtors and the estimation motion. And we
10 need to know what the Court believes the liability is for the
11 asbestos claims. And no one knows if the 545 number is right,
12 but we certainly need to show at confirmation that it's more
13 than what the Court believes the liability is. If the Court
14 thinks the liability is more than 545 million, obviously we're
15 back at negotiating table.

16 But the deal as struck with the debtors is that
17 whatever the Court's determination, the 545 number sticks,
18 which is why we're really keen and eager for the ACC to engage
19 with us, if they're so willing. To the extent we file
20 anything, your Honor, in support on this, it will be very brief
21 and we may just argue it when we get to the hearing because we
22 are in support of the debtors' motion.

23 Thank you, your Honor.

24 THE COURT: Mr. Mascitti, I, I'm afraid I have not
25 been calling on you from the Trane perspective. If you would

1 care to weigh in on any of these motions, please speak up.

2 MR. MASCITTI: I will, your Honor. Thank you.

3 THE COURT: All right.

4 Mr. MacLay? ACC? Ms. Ramsey?

5 MR. MACLAY: Thank you, your Honor.

6 Just very briefly. Mr. Erens accurately set forth our
7 agreement on the schedule, which I appreciate. It also seemed
8 like there was a little bit of atmospherics again on this
9 motion. So let me just say, your Honor, that your Honor
10 yourself commented at a prior hearing that from your
11 perspective the parties were farther apart after the estimation
12 proceeding in Garlock than they were before the estimation
13 proceeding and as someone who was in that case, your Honor, I
14 strongly agree with your Honor as the successor judge in that
15 case. They were farther apart. I don't really understand
16 fundamentally why a plan that isn't going to get any votes,
17 it's useful for that plan to have an estimation against the
18 objection of the people that won't be voting.

19 But the debtors have chosen their course and whether
20 it's a "mean and nasty" course, as Mr. Guy suggested was the
21 problem in Groundhog Day, or whether there's other problem with
22 their approach, clearly we've agreed to this schedule. We'll
23 proceed with this schedule, but I just don't want to let go
24 the, the comments about the value of the motion because from
25 the ACC perspective, those arguments are meritless.

1 THE COURT: Well, what would you propose, instead? I
2 mean, we are where we are. The, the divisive merger,
3 divisional merger has already occurred and from their
4 perspective, the ACC's not willing to negotiate with them,
5 right or wrong on that. What else do we do other than proceed
6 with the, with the estimation motion and your standing motion?

7 MR. MACLAY: Well, that, that's an excellent question,
8 your Honor, and I think it gets to the fundamental problem with
9 the way the debtors have approached this case. Obviously, the
10 substantive consolidation motion from the ACC perspective would
11 move this case along positively as would the standing motion.
12 And that's why those are the motions that we have filed.

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

15 MR. MACLAY: With respect to what else would I have
16 the debtor do, I will note, your Honor, that you've heard them
17 tell you on numerous occasions the ACC has been unwilling to
18 talk with them. From my perspective, that just simply isn't
19 accurate. You have heard what the Committee had to say in
20 CertainTeed and it may be you will hear the same thing here in
21 Aldrich, but that plan that was filed was filed without any
22 discussions attempted with the ACC, much less having occurred.

23 And so I don't want to mislead, your Honor. It is
24 quite likely, given the way the debtors have chosen to approach
25 this case, that their estimation motion is both pointless and

1 certainly, it doesn't lead us any closer to the ability to have
2 a negotiation. But it really takes the debtors and the FCR's
3 reaching out to us to attempt to have such a discussion,
4 though, for them to really be able to say to you those
5 discussions have failed.

6 So without misleading your Honor in any way,
7 obviously, we, we can't say whether those discussions would be
8 productive. We haven't had a discussion with the committee in
9 CertainTeed the way we have in Aldrich based on your Honor's
10 question. We can have that discussion and report back to at
11 the next hearing what will, no doubt, be no surprise to your
12 Honor, but just because the debtors have put themselves in a
13 position where they have no feasible way to get the vote that
14 they would have to get for a 524(g) case doesn't mean that they
15 should have the ability, your Honor, to pursue various motions
16 that appeared to be designed solely to inflict discomfort on,
17 on the asbestos victims who already have, frankly, suffered
18 enough, your Honor, and that just isn't a valid reason for them
19 to, to pursue motions that don't seem to get anywhere. Their
20 dead-end motions aren't necessarily appropriate because they
21 have no other path.

22 The path, I would respectfully suggest, your Honor, is
23 that, the one that we have proposed to you, the motions that we
24 have filed, which would move this case along and would get the
25 ultimate issues ready for a decision as soon as possible.

1 THE COURT: Well, Ms. Ramsey, did you want to say
2 something? You -- I saw you on --

3 MS. RAMSEY: Your Honor, I just wanted to supplement
4 Mr. Maclay's remarks slightly by, by just saying we may have
5 additional answers for your Honor's question of --

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

8 MS. RAMSEY: -- how else do we move forward in
9 connection with our response to estimation.

10 We're, we are cognizant of the, the fact that the
11 Court's desire is to find a path forward in these cases that
12 ends the case in one way or the other at the most, the, the
13 most expedient way.

14 THE COURT: Well, that was harkening back to DBMP --
15 and some of you weren't involved in that, I guess -- but the
16 same question comes up and having watched Bestwall, I would be
17 happy to send you folks to mediation. If this is just a
18 question of, of who blinks first and says "we need to talk," if
19 that's a problem, I can blink for you. But I am loathe to do
20 it if all we're going to do is spend a year's worth of time and
21 a lot of money mediating only to be in the same position. The,
22 you know, the arguments in Bestwall are, well, we're here four
23 years and we haven't accomplished much of anything other than
24 spending money. I don't want to do that again, but I am of the
25 mind where I would like to bring you closer together, if it is

1 possible. If we're going to have to litigate the case, then
2 I'm not much inclined to tell the parties what motions they can
3 file. I'll rule on them as best I can, but, you know, that's
4 the, the thing, is if there is some prospect here that
5 mediation would help, if it would start bringing you closer
6 together, we could talk about that. It's just not something
7 that -- I philosophically have never made any parties mediate
8 if they didn't ask for it themselves. The judge I worked for
9 was a strong believer that nothing settles cases like the
10 courthouse steps and that has been our philosophy, for the most
11 part.

12 So if y'all think that, want to talk about the
13 possibility of mediation, you know, pull your ear or something
14 and let me know to do that. But otherwise, I'm just going to
15 take the motions as they are and encourage you to -- you're all
16 very bright people and you're all very experienced in this and
17 you know how to work on a settlement, if you care to do so.
18 But if, if we're going to have to litigate, then talking about,
19 you know, what has been done already really doesn't help us
20 much except in the context of the motions that ask for other
21 relief, so.

22 All right. So with this matter, we're agreeing
23 objections are on November the 12th; replies November 24th. I
24 didn't hear you say anything about discovery between now and
25 then. Do you need any of that? Maybe you did say it and I

1 missed it, but are we --

2 MR. ERENS: Yeah, your Honor. What --

3 THE COURT: -- are we good?

4 MR. ERENS: -- you know, was, the ACC did inform us on
5 our last meet and confer that they do not need discovery on
6 this motion.

7 THE COURT: Okay, very good.

8 So --

9 MR. ERENS: Okay.

10 THE COURT: -- I would presume we will do something
11 like DBMP. I've marked out the two days for you, if you need
12 both days. Talk amongst yourselves. Get a batting order up
13 and let us know how you would like to approach it, okay?

14 MR. ERENS: Okay.

15 THE COURT: All right.

16 Ready to move on?

17 MR. ERENS: Your Honor, I did have, I did want to
18 follow up on your mediation point because I was a little
19 confused. I, I saw Mr. Maclay and Ms. Ramsey sort of shaking
20 their head no. So I, I think the ACC -- but they didn't speak
21 -- so I think they said they're not interested in mediation.
22 And I didn't know if the direction was to take it back and come
23 back to your Honor or discuss it internally. We have not done
24 so.

25 So I want to be clear what sort of, where, where,

1 where we're leaving that point, let's put it that way. I mean,
2 if the ACC is not interested, obviously there's no reason for
3 us to go back and discuss it internally.

4 THE COURT: Well, I would encourage everyone to keep
5 an open mind. Points and principle are great, but at the end
6 of the day the, the victims probably would rather be paid. So,
7 you know, you can -- a lot of the things about divisional
8 mergers and their propriety are being discussed in Congress.
9 So there are alternate forums for some of this, if we're
10 talking about principles. The group here today, we're talking
11 about a case and it, it's up to y'all. I don't tell the
12 parties what their position should be, either.

13 So I will just assume for now that we're not there and
14 if anyone has any feeling that a mediation might be
15 appropriate, I would urge you to at least discuss it with one
16 another and let me know and we'll, we'll take stock of where we
17 are.

18 All right. Let's move on.

19 MR. ERENS: Okay.

20 MR. GUY: Your Honor, may --

21 MR. ERENS: Thank you, your Honor.

22 THE COURT: All right. Now we're with --

23 MR. ERENS: Sure.

24 THE COURT: -- the qualified settlement fund motion.

25 MR. GUY: Your Honor, may I add one thing on the last

1 point --

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

4 MR. GUY: -- for the FCR?

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

7 MR. GUY: Your Honor, I, I would like to say that
8 there are a lot of excellent professionals in this case on all
9 sides and the ACC has their professionals that we've worked
10 with many times and that law firm, those law firms have
11 confirmed dozens of asbestos cases, dozens and dozens and
12 dozens. This case is different from the other cases, your
13 Honor, because we have put a number on the table. That's,
14 that's a real number and that's a real plan and all we need to
15 hear from the ACC is, "You know, that number's too low." I
16 don't think they can tell us because as far as I'm aware, they
17 don't have a claims expert in this case and haven't looked at
18 the claims database. But in terms of negotiations going
19 forward, we're, we have an open door. "Tell us if that
20 number's right or wrong and tell us what number you would
21 accept, if there is any" --

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

24 MR. GUY: -- "or tell us there's no number you would
25 ever accept," and then we'll know where we stand. That's all

1 we ask, your Honor.

2 Thank you.

3 THE COURT: Okay. Thanks.

4 Ready to move on?

5 MR. ERENS: Okay. Next is the QSF motion --

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

8 MR. ERENS: -- which is Item, I think, 4 on the
9 Agenda. Yes. Okay.

10 So again, we filed this at the same time. The debtors
11 filed this at the same time as the, the estimation motion and
12 the plan. The QSF motion provides that Trane pursuant to the
13 funding agreement would prefund its obligations under the
14 funding agreement in the amount of \$270 million into a
15 qualified settlement fund for purpose of funding the plan. If
16 you recall, your Honor, just roughly in the tort system, the
17 debtors, roughly, paid 50 percent of the liability and
18 insurance paid 50 percent of the liability, historically. The,
19 the plan is 540 million upfront with a \$5 million note.

20 So Trane was prefunding their, you know, the uninsured
21 portion or their portion --

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

24 MR. ERENS: -- of the liability. The -- as a result,
25 you know, assuming this motion were approved, from the debtors'

1 position the plan is, effectively, fully funded. The insurance
2 is in the estate. The 270 million is in the QSF. The debtors
3 also have other assets, you may recall.

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

6 MR. ERENS: I can't remember what number we put on
7 those assets on, on the petition date, but the value of cash
8 and subsidiaries, I think, was in excess of a hundred million
9 dollars.

10 So, you know, there's been a lot of discussion,
11 obviously, in connection with the PI and the derivative
12 standing motion and the like about the funding agreement, but
13 from our perspective the plan on the table with the FCR is
14 fully funded, assuming this QSF motion gets approved, and we
15 don't need to really worry so much about the, the funding
16 agreement itself. Again, more money than the Garlock case,
17 comparable with Paddock. We think it's a big number. It's
18 also in excess of the company's publicly available reserve
19 number in its SEC filings when it filed this case, or when the
20 case was filed.

21 We asked the ACC whether they intended to object to
22 this motion --

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

25 MR. ERENS: -- because while they, obviously, have the

1 right to object to any motion, it's putting \$270 million into
2 the estate. The ACC did indicate to us, I think, last night
3 that they do intend to object to this motion. Again, we're not
4 sure why, but again, it's their prerogative. It was agreed on
5 the meet and confer, again, that this would go on the same
6 schedule. Objections would be due on November 12th and a reply
7 would be due on November 24th.

8 THE COURT: Okay.

9 Others?

10 Mr. Guy?

11 MR. GUY: The FCR does support the QSF motion. We
12 obviously think that having money to pay asbestos victims is a
13 good thing.

14 Thank you, your Honor.

15 THE COURT: All right.

16 How about from the ACC?

17 MR. MACLAY: Your Honor, the, the accuracy of the
18 schedule is correct. We had agreed on the, on the schedule of
19 the 12th and the 24th with the hearing dates on the 2nd and 3rd
20 as with respect to the other motion that was discussed as well
21 as another one that you'll be hearing about in a minute.

22 Beyond that, let's just say I will reserve argument on
23 the merits until it's ripe.

24 THE COURT: Okay, very good.

25 Anyone else?

1 (No response)

2 THE COURT: All right. That's satisfactory with me as
3 well.

4 So let's move on.

5 MR. ERENS: Okay. Your Honor, I'd like to take the
6 items a little bit out of order and go to No. 6 and the reason
7 for that is No. 5 is a 2004 motion that relates to substantive
8 consolidation.

9 THE COURT: Right.

10 MR. ERENS Substantive consolidation is, is, is an
11 adversary at this point. It's Item No. 5 on the Agenda. So I
12 think it makes sense to take 5 and the adversary together. So
13 I'd like to just skip --

14 THE COURT: Anyone objecting?

15 MR. MACLAY: Well, your Honor, I don't object for
16 purposes of having this hearing go smoothly. I will note, as
17 our paper says, I disagree with this characterization with
18 respect to the adversary.

19 But in terms of the order of this hearing, there's no
20 point in quibbling about it, your Honor.

21 THE COURT: Okay, very good.

22 So you want to talk about No. 6, the --

23 MR. ERENS: Yes. No. 6, again, is the derivative
24 standing motion --

25 THE COURT: Right.

1 MR. ERENS: -- that the ACC filed on October 18th.
2 Your Honor obviously has also ruled on this issue. The motion
3 that was filed --

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

6 MR. ERENS: -- was, effectively, the same as in the
7 DBMP case. That's my characterization. Maybe the ACC has a
8 different one, but effectively the same. Your Honor has ruled
9 on the motion in the DBMP case. We obviously realize that.
10 Nonetheless, we do have something from the estate perspective
11 to say on this motion, in large part -- it won't surprise
12 anybody -- related to what I just talked about before, which is
13 at this point, assuming the QSF motion gets approved, the plan
14 on the table is fully funded. The -- all of the assets are in
15 the estate. Actually, more than the necessary assets are in
16 the estate, given the insurance and the debtors' own assets in
17 the form of valuable subsidiaries and the like.

18 So we will be filing an opposition to the derivative
19 standing motion. It was agreed on the meet and confer that,
20 again, the same schedule would apply. The debtors would object
21 by November 12th and the reply from the ACC would be due on
22 November 24th.

23 THE COURT: Okay.

24 Others?

25 Hang on, Mr. Guy, We're having a problem hearing you.

1 Might want to try the -- there you go.

2 MR. GUY: Your Honor, that was, that was someone else,
3 actually.

4 THE COURT: Oh, was it? Okay.

5 MR. GUY: I -- I --

6 THE COURT: Very good. I thought that was you.

7 Whoever is speaking -- hang on.

8 Whoever is ---

9 THE COURTROOM DEPUTY: I muted them.

10 THE COURT: Pardon?

11 THE COURTROOM DEPUTY: I muted them.

12 THE COURT: Muted, good. All right.

13 I was going to say someone was speaking with the, the
14 receiver turned on. So we have muted you at this point in
15 time. If you need to say something later -- what is it, Star
16 6 --

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

19 THE COURT: -- to get unmuted?

20 MR. LAMB: Just unmute it on their computer.

21 THE COURT: Just unmute on the computer. All right,
22 very good.

23 All right. Mr. Guy, do you have anything there?

24 MR. GUY: No, your Honor. I do not.

25 Thank you.

1 THE COURT: ACC?

2 MR. MACLAY: Your Honor, Mr. Erens accurately set
3 forth the agreement on the schedule, which is for the 12th and
4 the 24th as the other two motions you've heard about.

5 I will just note it's pretty clear to the ACC that we
6 are going to need the two days, the, the 2nd and the 3rd --

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

9 MR. MACLAY: -- just for scheduling purposes.

10 But we, we agree with, with the schedule and we'd
11 already agreed to the schedule. So that's fine.

12 THE COURT: Okay, very good.

13 All right.

14 MR. ERENS: Okay.

15 THE COURT: Now where?

16 MR. ERENS: All right. Next, then, your Honor, we'll
17 jump to the adversary proceeding and the, the 2004 motion,
18 which is Item 5 on the Agenda.

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

21 MR. ERENS: Again, this is substantive consolidation
22 litigation. Again, from the debtors' perspective -- but the
23 ACC can indicate if they feel otherwise -- this is,
24 effectively, the same set of pleadings that was filed in the
25 DBMP case.

1 From the debtors' perspective that we don't have to
2 get too much into the merits, you know, we've all been
3 practicing for a long time. We all understand kind of the
4 prototypical substantive consolidation case. You have two
5 debtors, usually small companies. They didn't really keep
6 books and records. The creditors sort of thought of them as
7 one. When you look at the assets and liabilities, you can't
8 tell between the two debtors whose are whose. And as a result,
9 the court says, "I can't untangle this. I'm going to treat the
10 two debtors as, as one."

11 THE COURT: This --

12 MR. ERENS: Our view of this --

13 THE COURT: This may be a good time for me to tell you
14 that I read those briefs in DBMP yesterday. So you can give me
15 the short-play version if you want.

16 MR. ERENS: Right. That -- you're, you're talking
17 about the, the debtors' reply or objection?

18 THE COURT: Yeah, uh-huh.

19 MR. ERENS: Okay.

20 So look, from our perspective, without going into a
21 lot of this, but I do want to set the table. We, we think the
22 facts here are, obviously, completely different than a typical
23 substantive consolidation case and, of course, the, the
24 pleading seeks substantive consolidation of a nondebtor which
25 is almost unheard of and again, we think is, doesn't fit the

1 facts at all of a substantive consolidation case. And again,
2 the debtors are solvent. So it's not even clear to us the, the
3 basis for substantive consolidation, to begin with.

4 So like in DBMP -- and this is the point -- the
5 debtors do intend to file, as well as Trane, will file motions
6 to dismiss the complaint --

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

9 MR. ERENS: -- based on service and the like. It was
10 agreed, I understand, that those motions to dismiss would be
11 due on December 20th. As a result, the substantive
12 consolidation issue, for the most part, itself will not be up
13 on the December hearing. The motions to dismiss will not be
14 filed until December 20th and then, presumably, I guess in the
15 January omnibus we'll be dealing with these issues.

16 We -- that does leave open, however, one point, which
17 is -- well, actually, let me, let me just say what was filed.

18 So there was three things filed. There was the
19 complaint for substantive consolidation. I just mentioned
20 that.

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

23 MR. ERENS: Motions to dismiss will be filed December
24 20th. Then there was a separate motion for substantive
25 consolidation. I don't --

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

3 MR. ERENS: -- fully understand procedurally why, but
4 my understanding is -- and we confirmed this in the meet and
5 confer -- that both in DBMP and in, in this case that motion
6 will be put aside. I mean, the first step will be file motions
7 to dismiss the actual complaint. And then there's a third
8 motion which we do need to talk about. It's really more
9 between the ACC and Trane and that is there is a 2004 motion --

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

12 MR. ERENS: -- to get, from the ACC, to get a list of
13 all of Trane's creditors --

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

16 MR. ERENS: -- I understand for purposes of noticing
17 them of this substantive consolidation proceeding. And, your
18 Honor, from the debtors' perspective -- and I'm going to let
19 Trane talk about this -- we don't see why that motion would
20 need to be heard and is even relevant until the, until your
21 Honor rules on the motion to dismiss to see whether this
22 litigation's really going forward. And, of course, from our
23 perspective, based on the comments I just made we don't see how
24 it can go forward.

25 But I'll turn it over to the ACC and Trane to talk a

1 little bit more specifically about the 2004 motion for the
2 creditor list.

3 MR. MASCITTI: Your Honor --

4 MR. MACLAY: Go ahead, Greg.

5 MR. MASCITTI: Okay. Greg Mascitti on behalf of the
6 nondebtors.

7 Your Honor, in this motion, the 2004 exam motion, the
8 ACC asks for a list of all current and potential creditors of
9 the non-debtor affiliates for the purpose of serving those
10 entities with notice of the substantive consolidation motion,
11 you know. And I think it's important to distinguish between
12 the two. The information of itself is not necessarily
13 problematic. It's, it's what the ACC intends to do with it.
14 We have 26,000 employees in the United States. We have 15,000
15 trade creditors. We have 45,000 contracts and counterparties
16 to those contracts. We have 4,000 contractors.

17 So to the extent the ACC is proposing some type of
18 notice program to those entities and individuals with respect
19 to the substantive consolidation relief they seek, our view is
20 we should do that after the motion to dismiss has been decided.
21 It's premature at this point. If the motion to dismiss is
22 granted, no notice will ever need to have been served. If the
23 motion to dismiss is denied and the case proceeds, there will
24 be more than enough time available for the Court to consider
25 the scope of any notice and the best means for providing

1 notice. It may be that publication notice makes more sense in
2 this case.

3 So, you know, that, that's where we are, your Honor.
4 We think that there are certainly, from what we've heard today,
5 enough ripe issues for us to argue about that it doesn't make
6 sense at this point to be arguing about hypothetical issues and
7 as I said, if, if the case, if the subcon case does proceed,
8 there'd be more than enough time for us to provide notice to
9 any relevant constituencies.

10 Thank you, your Honor.

11 THE COURT: All right.

12 Others?

13 MR. MACLAY: Thank you, your Honor. Kevin Maclay for
14 the Committee.

15 Let me address the, the 2004 motion first, your Honor.

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

18 MR. MACLAY: As we stated in that motion and as the
19 authorities we set forth in that motion illustrate, there's an
20 argument that we need to serve all the current claimants
21 against the entity that we're seeking to substantively
22 consolidate with the debtor. And so we have asked for the
23 identities of those people so we can fulfill that, that task.

24 In the CertainTeed case, we did agree with Mr. Gordon
25 on behalf of that debtor to a resolution, which I will just

1 read to you from the September 17th transcript. And this is
2 Mr. Greg Gordon's words.

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

5 MR. MACLAY: (Reading):

6 "So on this one, your Honor, the parties have agreed
7 to defer this motion until after the Court adjudicates
8 the debtor's and New CertainTeed's motion to dismiss
9 the substantive consolidation complaint, but we've
10 also agreed that if the motions to dismiss are denied,
11 New CertainTeed would produce the service list that's
12 being sought by that motion within 14 days after an
13 entry, after entry of an order denying the motions to
14 dismiss and, of course, if the motions to dismiss were
15 granted, the 2004 motion would become moot."

16 That is what Mr. Gordon announced on the record
17 correctly.

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

20 MR. MACLAY: We, we did reach that agreement, or at
21 least my firm and, and Natalie's firm reached that agreement in
22 the CertainTeed case. And we were willing to reach that same
23 agreement here, your Honor. We were willing to say to the
24 debtors, we, in fact, offered, "If you will agree to do what
25 CertainTeed agreed to do and give us this list 14 days after

1 the order," in our view, denying the motions to dismiss, "we
2 would be satisfied with setting aside this motion that's No. 5
3 on the Agenda." But they didn't agree to what CertainTeed
4 agreed to do. They haven't agreed to give us that list 14 days
5 after your Honor's ruling on the motion to dismiss and that's
6 why we're here.

7 Obviously, we filed the notice of motion with our
8 motion. It provides that responses to it are due on November
9 1st and that the hearing will be November 17th. And, of
10 course, as your Honor noted, you know, absent agreement,
11 parties have to pursue the paths available to them and that's a
12 path we now have to pursue, given their, their unwillingness to
13 agree to the CertainTeed resolution.

14 But I will say, your Honor, in an interest in being
15 efficient, we would be willing to move that hearing date to the
16 December 2nd and 3rd hearing date with the other motions that
17 are being heard to give them that extra time if they need it,
18 although our paper is about seven pages long. And so your
19 Honor can hear it all at once and not have a hearing just on
20 this issue. I would agree that that would be appropriate and
21 we're happy to do that.

22 But absent an agreement on the 14 days that we, we got
23 in CertainTeed, we don't want to provide a recipe for
24 additional unnecessary delay. Obviously, what we're concerned
25 about, your Honor, is their motion to dismiss will be denied

1 and then months and months will go by, we still won't have what
2 we need to pursue substantive consolidation. That is not
3 appropriate. That's not an appropriate motive. That wouldn't
4 be an appropriate outcome.

5 And so that's why, your Honor, given the failure of
6 the debtors and their affiliates here to agree to the
7 CertainTeed resolution, we would ask your Honor set this for
8 hearing on December 2nd and 3rd at, at those hearing dates.
9 And, and as your Honor suggested, we will negotiate and no
10 doubt consensually work out with the parties here the
11 allocation of argument time as was successfully done in
12 CertainTeed.

13 And so that's what I have to say about this. I do
14 have some other comments to make about the, the substantive
15 consolidation motion itself, but I would like to sort of stop
16 here, your Honor, and to see what, what your Honor's views are
17 on this and if anyone has any responses to this before I go
18 back to that.

19 THE COURT: Any --

20 MR. ERENS: Your Honor?

21 MR. MASCITTI: I, I have a response, if I may, your
22 Honor?

23 THE COURT: Mr. Mascitti, go ahead.

24 MR. MASCITTI: Yeah. The -- arguing this on December
25 2nd and 3rd, obviously, will be a waste of everyone's time,

1 energy, and the Court's resources. The, the motion to dismiss
2 is returnable on, will be returnable on December 20th. If, if
3 notice to creditors ever is required, there will be more than
4 enough time after a motion to dismiss is decided to provide
5 that notice to creditors and to give them an opportunity to be
6 heard. There's no way that that, that the Committee is any, is
7 prejudiced in connection with asserting its subcon claim or
8 pursuing its claim by virtue of holding off on providing notice
9 to creditors until it's determined (1) whether that notice is
10 even necessary and (2) some thought as to the proper scope and
11 means of providing that notice. Those are just not today
12 issues. They're not December 2nd and 3rd issues. If anything,
13 they're issues to consider after December 20th.

14 MR. ERENS: Your Honor?

15 MR. MACLAY: Your Honor, could I respond?

16 THE COURT: Wait a minute.

17 MR. MACLAY: Oh, go ahead, if you have something.

18 MR. ERENS: Yeah, I'd like to --

19 THE COURT: Let's get them all on one side first.

20 Mr. Erens.

21 MR. ERENS: Right. Yeah. Your Honor, we, we agree
22 with Trane. I mean, look, nothing at the December hearing is
23 otherwise going to deal with subcon. Subcon'll, I guess, come
24 up in January. It seems to us, your Honor, first of all, we
25 got a lot of stuff to do in December. So, you know, we should

1 try to shorten the schedule --

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

4 MR. ERENS: -- if we can. But your Honor would be
5 able to rule on the 2004 motion at the same time your Honor's
6 ruling on the motion to dismiss. So you'd have the context of,
7 you know, whether it's appropriate to provide the creditor
8 list. If you're dismissing subcon, it's, obviously,
9 irrelevant. Even if you're not dismissing subcon, you'd have
10 the context of all of the subcon issues in front of you. It
11 just seems to us to make much more sense to have the 2004
12 motion heard at the same time as the motion to dismiss.

13 And then in terms of timing, which is what Mr. Maclay
14 said he was concerned about, your Honor can rule, for instance,
15 if you think it's appropriate, that the Trane entities provide
16 the list. You can order the list be provided. I think
17 Mr. Maclay said it was a 14-day provision that was worked out
18 in DBMP. Well, your Honor, obviously, can order the same list
19 to be provided in 14 days.

20 So I don't, I don't really see the delay issue and it
21 just seems like let's have all the subcon issues be decided
22 together so you'll have full context of how to rule on both
23 motions.

24 THE COURT: Mr. Maclay?

25 MR. MACLAY: Well, your Honor, what you just heard

1 from Mr. Erens poses an interesting question, which is if your
2 Honor could order them after the motion to dismiss to produce
3 the list within 14 days, why aren't they just agreeing to do
4 that now as was done in CertainTeed? And my, my concern, your
5 Honor, is that the answer is they're going to tell you then,
6 "Oh, it takes more than 14 days to get this information
7 together, your Honor," and all of a sudden we're going to be
8 put into this extended, unnecessary, and wasteful process. And
9 this is the motion that we have filed.

10 So in terms of what's up for today, the issue is when
11 should our motion be heard. The merits of this motion are not
12 in front of your Honor today.

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

15 MR. MACLAY: And what I would suggest to your Honor as
16 a reasonable compromise, instead of insisting on the November
17 17th date, which we noticed it for, we're willing to move it to
18 the December 2nd and 3rd so things can all be heard at once so
19 we don't have to have a hearing just about this. That is, I
20 think, a very reasonable compromise of the positions you heard.
21 But I don't think it's fair to put upon the Committee and its
22 constituents the risk that it's going to take them more than 14
23 days to get their act together after your Honor rules.

24 So we would ask either that your Honor order, your
25 Honor rule now as, as Mr. Erens seemed to be subtlety

1 suggesting, that they be prepared to produce their list within
2 14 days after the ruling, effectively putting into place the
3 agreement that they failed to reached with us earlier, or
4 letting us move forward with our motion on the, on the 2nd and
5 3rd and your Honor can hear the merits of that motion at that
6 time. Either of those resolutions would be acceptable to the
7 Committee.

8 THE COURT: Mr. Mascitti, if the other motion went
9 against you, would your client be in a position to, to produce
10 such a list in 14 days?

11 MR. MASCITTI: It depends on what the list is, your
12 Honor, and, and what it's to be used for, for example, a
13 threshold question as to whether or not there's a need. If the
14 motion went against us, I think it would depend on the basis
15 for why the motion went against us. For example, a notice to
16 creditors, primarily the purpose served by that is if a
17 creditor's claim, in the event that's to be consolidated, is
18 going to in some way be diluted by virtue of the consolidation.
19 I'm not, you know, I don't know that that's going to be the
20 case.

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

23 MR. MASCITTI: I don't know if the Court's decision
24 will address that issue. But if a creditor's claim is not
25 going to be diluted, they don't need to receive notice.

1 Secondly, your Honor, you know, in terms of the scope,
2 would this notice have to go to the 26,000 employees in the
3 United States? Would it have to go to the 45,000
4 counterparties to the contracts? Is it going to the 15,000
5 trade creditors? Is it going to the 4,000 contractors? That
6 is going to create, as you can imagine, your Honor, a
7 significant disruption to the business. It'll cause confusion
8 among all these parties and I imagine will cause a lot of calls
9 to the Court trying to figure out what's going on.

10 So --

11 THE COURT: Okay.

12 MR. MASCITTI: -- as an alternative to those lists,
13 what I would consider is we may at that point, if we're not
14 willing to provide the list -- we don't think that's the proper
15 way to do it -- there may be a way to agree to a publication
16 notice that would accomplish the same due process concerns that
17 the Committee's expressing. There's certainly a way to address
18 due process concerns if this case goes forward short of sending
19 a list to tens of thousands of potentially interested parties.

20 THE COURT: I'll take that as a -

21 MR. MASCITTI: So --

22 THE COURT: -- depends answer. And one of the -- I
23 don't want to get into arguing this motion today. It's not on
24 for today. My thinking is that we ought to put this one over
25 to the January date and that's a court resources matter as well

1 as everything else. Y'all know the other stuff that's going
2 on.

3 MR. ERENS: Right.

4 THE COURT: Bottom line is I can't prepare but for one
5 case at a time and we've got a lot between here and those
6 dates.

7 So the January date would be the time to hear the, the
8 2004 and the, and the consolidation motion, in my opinion. Now
9 we may have more to talk about on, on that, but I don't want to
10 try to jam this in on the, on the November sic] 2nd-3rd dates,
11 okay?

12 MR. MASCITTI: Thank you, your Honor.

13 THE COURT: All right. We ready to talk about
14 substantive consolidation, that last motion? Anything more
15 that we need to discuss there?

16 MR. MACLAY: Well, your Honor, just to, you heard
17 Mr. Erens talk a little bit about the alleged inappropriateness
18 of substantive consolidation. And so I think just under the
19 goose-gander principle, I will note that when someone in the
20 Committee's view inappropriately separates assets from
21 liabilities in a goodco and a badco, putting those two
22 companies back together seems like the most appropriate
23 resolution. That's why substantive consolidation is, of
24 course, the --

25 THE COURT: Uh-huh (indicating an affirmative

1 response) .

2 MR. MACLAY: -- preferred remedy.

3 I will also note that with respect to the, the timing
4 of the substantive consolidation, it, it would be, it would be
5 potentially useful to get your Honor's ruling on the 2004
6 motion before the, the (indiscernible) substantive
7 consolidation ruling just so we have a chance to potentially
8 provide the notice that would be necessary, arguably, under a
9 series of precedents.

10 But with respect to that, your Honor, let us consult
11 with the debtors and see if we can work out a schedule on the
12 substantive consolidation consistent with, with your Honor's
13 comments that make sense and, and report back to your Honor if
14 we're able to do that.

15 THE COURT: Okay, very good.

16 As to the notice to creditors issue, one of the,
17 without getting into the details, one of the things that I will
18 be interested in is, is that really necessary in a circumstance
19 like this where we've already found, at least preliminarily and
20 all would seem to agree, that these entities have the ability
21 to pay all the asbestos claims? Do we really need to drag all
22 of the creditors into this as well? I know it might have a
23 good tactical effect, but is it really necessary to go to that
24 trouble and affect the parents in this manner if we all agree
25 on the frontend that, that the ability to pay is there? If I

1 were to grant substantive consolidation, they'd be able to pay
2 everyone.

3 That's one -- I'm just throwing that out as a question
4 in my mind. So you can address it when we get to the briefs,
5 all right?

6 MR. MACLAY: Thank you, your Honor.

7 THE COURT: What, what else? Anything?

8 MR. ERENS: I think, your Honor, that's mostly it. So
9 we addressed bar date. Your Honor indicated you're going to
10 hold two days, I guess. It's all legal argument. So I
11 actually think we can get it done in one day, but I suppose
12 it's prudent to do two days.

13 So are we talking December 2nd and December 3rd?

14 THE COURT: I, I said November, didn't I? That, that
15 is not my intention.

16 Yes. We were talking about the 2nd and 3rd, Thursday
17 and Friday.

18 MR. ERENS: Okay.

19 THE COURT: It would be great if, if we can do it all
20 in one day, but things have a way of expanding in the doing.
21 So I will reserve both of them for you.

22 The other thing as to that date in January I wanted to
23 ask you. That is a Thursday date that's followed by a
24 divisional court date and the question is on the consolidation
25 motions, do you think we can do everything in one day? If not,

1 I can back you up a day and start on the 26th.

2 Why don't y'all talk that --

3 MR. MACLAY: If, if I can --

4 THE COURT: -- that one over and -- I don't know what
5 else you've got in your pockets that you're going to tee up for
6 resolution then, but the point is if you'll let me know soon,
7 then I'll reserve that date as well for you. I don't want to
8 needlessly reserve dates for obvious reasons at the moment.
9 We're struggling enough to find time to hear all of you. And
10 so if necessary, we'll do that.

11 But for now, assume January 27th is a one-day hearing,
12 okay?

13 MR. ERENS: Okay.

14 THE COURT: All right. What else?

15 MR. ERENS: So yeah. December, just to be clear, to
16 finalize bar date; PIQ argument, not rearguing what's already
17 been argued; estimation motion, legal argument; QSF motion,
18 legal argument; derivative standing motion, legal argument.

19 So from my perspective, I think we get it done in a
20 day and, in fact, we'll talk to the ACC about maybe time limits
21 on motions. I'm not going to say they have to occur, but it
22 might be in everybody's interest to have this as a one-day
23 hearing. So we'll try to work that out. If it's not possible,
24 it's not possible.

25 In terms of otherwise, we have a November omnibus day,

1 which I believe is November 17th.

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

4 MR. ERENS: You know, it's earlier in the month,
5 obviously -

6 THE COURT: Right.

7 MR. ERENS: -- because of the holidays. I don't
8 believe, your Honor, we will likely have anything up for that.
9 Matter of fact, the, the deadline to file motions for that
10 hearing is today, I believe. We don't intend to file any
11 motions. I don't think there'd be anything else that's up. I
12 don't think there's anything that's pending.

13 So since your Honor's time is scarce -- we need to
14 maybe confirm this -- but I think we can probably release that
15 date.

16 THE COURT: Anyone feel differently?

17 Is the clerk showing --

18 MR. MACLAY: I agree with Mr. Erens, your Honor. I
19 agree that we could release that date.

20 THE COURT: Well, since we're doing DBMP in the
21 morning, that would be a boon to us 'cause that might run
22 longer than expected. You never know.

23 But in any event, if everyone is in agreement, we will
24 not set anything, not anticipate seeing you on November 17th,
25 all right?

1 MR. ERENS: Okay.

2 THE COURT: Very good.

3 MR. ERENS: And then I think it's, it's sort of
4 obvious, but I wanted to make the point since we have not had
5 one in-person hearing in this case since it started, since it
6 started during the pandemic, that we obviously assume December
7 2nd and 3rd are in person.

8 THE COURT: Yes.

9 MR. ERENS: Okay. And we look forward to finally
10 seeing your Honor in this case.

11 THE COURT: Word about that. We are trying, unless
12 the health situation goes differently, we're trying to get back
13 to where we're doing substantive motions in the courtroom. I'm
14 willing to, to do procedural scheduling motions like this in
15 this way to save you the travel and time and all the expense.
16 That, I don't particularly want to do that for substantive
17 motions for a variety of reasons, but that includes IT
18 resources.

19 But if you need to do something by videoconferencing
20 means, remind us of that ahead of time so I can schedule my
21 staff. The IT people have other things they do. Sitting in
22 here in the courtroom is kind of an add-on for them and I need
23 to clear their schedules as well, so.

24 The other thought I had was it would be helpful to me
25 at this point in time if you can be succinct in your briefing.

1 I'm seeing a lot of motions to wave the page limits. Sometimes
2 that's necessary if it's a broad topic. I would appreciate
3 you, even if you have to refer back to the facts that have been
4 found previously, just make reference to them. We all know
5 what happened.

6 So try to keep it within the normal page limits, if at
7 all possible. I want to read everything you have, but there's
8 a lot of repetition in these briefs, so, and, you know, maybe
9 that's not a problem, but it would be better to have shorter
10 rather than longer briefs, all right?

11 What else?

12 MR. ERENS: Okay.

13 THE COURT: Anything today?

14 MR. ERENS: That's it from the debtors' perspective,
15 your Honor. Thank you for the time.

16 THE COURT: Anyone else?

17 (No response)

18 THE COURT: Okay.

19 MR. MACLAY: All done, your Honor.

20 THE COURT: We'll recess. Thank you all.

21 (Proceedings concluded at 10:42 a.m.)
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23
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25

