Docket #1182 Date Filed: 5/20/2022

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re	Chapter 11
ALDRICH PUMP LLC, *et al.*,[1]	Case No. 20-30608 (JCW)
Debtors.	(Jointly Administered)

REPLY IN SUPPORT OF MOTION OF THE DEBTORS FOR AN ORDER AUTHORIZING THE DEBTORS TO ISSUE SUBPOENAS ON ASBESTOS TRUSTS AND PADDOCK ENTERPRISES, LLC

Aldrich Pump LLC ("Aldrich") and Murray Boiler LLC ("Murray"), as debtors and debtors in possession (together, the "Debtors"), submit this Reply in support of the *Motion of the Debtors for an Order Authorizing the Debtors to Issue Subpoenas on Asbestos Trusts and Paddock Enterprises, LLC* [Dkt. 1111] (the "Motion")[2] and in response to objections to the Motion filed by the Official Committee of Asbestos Personal Injury Claimants (the "ACC") [Dkt. 1162] and Paddock Enterprises, LLC ("Paddock" and, together with the ACC, the "Objectors") [Dkt. 1161].[3]

Preliminary Statement

The Motion seeks discovery of the **same type of information**—subject to the same anonymization, notice, and confidentiality requirements, and the same access and use restrictions—approved by this Court just three months ago in DBMP. In Bestwall, Judge Beyer approved

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

[2] Capitalized terms herein will have the definition attributed to them by the Motion unless otherwise defined in the Reply.

[3] The objection filed by the ACC is referred to herein as the "ACC Objection" or "ACC Obj." Likewise, the objection filed by Paddock is referred to herein as the "Paddock Objection" or "Paddock Obj."

2030608220520000000000001

discovery of the same type of information more than a year ago. In each case, the Court approved the discovery primarily in connection with an estimation proceeding. And, in each case, the Court expressly opined that the discovery was relevant to, and necessary for, that estimation proceeding. Just two days ago, Judge Beyer denied, in large part, the Bestwall ACC's motion to strike a subpoena that Bestwall issued to Paddock, which requests the same type of information sought from Paddock in these cases.[4]

The ACC asserts that the type of information that the Debtors seek from various trusts is not the same as in DBMP. See ACC Obj. at 2. That is incorrect. Apart from the request to obtain information from Verus and Paddock, the differences between the Proposed Order and the DBMP Order are minor.[5] And the reasons the Debtors are seeking information from Verus and Paddock are set forth in the Motion, (see Mot. ¶¶ 27-30), and again in this Reply.

In light of the recent DBMP and Bestwall precedent, as well as similar relief granted in this jurisdiction in Garlock, the Motion should not be controversial. The same issues previously decided by the Courts in this jurisdiction in these asbestos cases do not need to be relitigated. Nevertheless, the ACC—neither a target of the requested discovery, nor a representative for any discovery target (or any claimant whose information would be implicated)—and Paddock vehemently attack the Debtors' request. In the face of the existing precedent in this jurisdiction

---

[4] See Transcript of May 18, 2022 Hearing, In re Bestwall LLC, No. 17-31795 (attached hereto as Exhibit A) at 20-25. Notably, Judge Beyer held that the information Bestwall sought from Paddock is not highly personal, sensitive, confidential, or privileged, does not raise identity theft concerns, and that there is nothing problematic about the discovery Bestwall sought. Id. at 21-23.

[5] Other than conforming changes to fit these cases, the only changes to the DBMP Order are modifications to paragraph 9 of the Proposed Order that (a) establish a 7-day deadline for Producing Parties to provide notice to Matching Claimants following their identification; and (b) clarify that motions to quash must be filed by Matching Claimants in the court of compliance for the Producing Party. The Debtors do not view these adjustments as material or substantive, but identify them for the sake of transparency.

(and others) supporting the Motion, the Objectors attempt to rely on overly technical, procedural arguments. None have merit. The Motion should be granted.

I. Multiple Legal Bases Support the Requested Relief.

A. The Motion Is Consistent with Precedent in this Jurisdiction and Is Procedurally Appropriate.

1. Notwithstanding the Objectors' assertions, (see ACC Obj. ¶¶14-15, 25; Paddock Obj. ¶¶ 8-10), there is no procedural defect in the Debtors' prosecution of the Motion in this Court. The practice in this jurisdiction (in Garlock, Bestwall, and DBMP) has been to seek trust discovery through the Bankruptcy Court first, and to obtain that relief from the Bankruptcy Court even after an estimation process has been ordered. In each of Garlock, Bestwall, and DBMP, the Court granted trust discovery after ordering estimation.[6] And, in Garlock, the Court ordered estimation before the debtors filed the trust discovery motion that was ultimately granted.[7]

2. Likewise, arguments that subpoena-related matters ultimately will be addressed in the court of compliance do not preclude the requested relief. See ACC Obj. ¶¶ 14-15; Paddock Obj. ¶¶ 8-10. The Debtors are not "seek[ing] to circumvent the process envisioned by FRCP 45." Paddock Obj. ¶ 10. In the event the Court grants the Motion and the Debtors serve the subpoenas, the subpoena recipients will likely follow the same playbook used after similar

---

[6] **Garlock**: *Order Granting Debtors Leave to Serve Subpoena on Delaware Claims Processing Facility, LLC*, **May 23, 2012** [Dkt. 2234]; *Order for Estimation of Mesothelioma Claims*, **Apr. 13, 2012** [Dkt. 2102].

Bestwall: *Order Granting Debtor's Motion for Bankruptcy Rule 2004 Examination of Asbestos Trusts and Governing Confidentiality of Information Provided in Response*, **Mar. 24, 2021** [Dkt. 1672]; *Order Authorizing Estimation of Current and Future Mesothelioma Claims*, **Jan. 19, 2021** [Dkt. 1577].

DBMP: *Order Granting Debtor's Motion for Bankruptcy Rule 2004 Examination of Asbestos Trusts and Governing Confidentiality of Information Provided in Response*, **Feb. 17, 2022** [Dkt. 1340]; *Order Authorizing Estimation of Current and Future Mesothelioma Claims*, **Nov. 29, 2021** [Dkt. 1239].

[7] Compare *Motion of Debtors for Leave to Serve Subpoena on Delaware Claims Processing Facility, LLC*, **Apr. 27, 2012** [Dkt. 2143] with *Order for Estimation of Mesothelioma Claims*, **Apr. 13, 2012** [Dkt. 2102].

motions were granted in Bestwall and DBMP and move to quash those subpoenas under Rule 45 of the Federal Rules of Civil Procedure (the "Federal Rules").

3. Common sense, prudence, and orderly case management all weigh in favor of seeking relief from this Court first. Recent events demonstrate expected fallout if the Debtors had failed to do so. In Bestwall, the debtor recently served subpoenas on DBMP, Aldrich, Murray, and Paddock (seeking the same type of information the Debtors seek from Paddock here). See ACC Obj. ¶ 25. A firestorm of litigation followed, with the ACC in Bestwall filing a motion to strike in that case,[8] the ACC in DBMP filing a motion to quash in that case,[9] and the ACC in these cases filing a motion to quash here.[10] Ultimately, by not first involving the Bankruptcy Court, a subpoena process very similar to what the Debtors request here wound up precipitating litigation in the Bankruptcy Court anyway (and in not only one bankruptcy case, but three). By bringing the Motion to this Court first, the Debtors have sought to avoid such an outcome and the consequent delay and unnecessary expense of resources by all parties.

4. Nevertheless, the ACC argues there is no legal basis to bring the Motion to this Court.[11] It is wrong. Again, the process the Debtors are following in this Court is the same

---

[8] See *Official Committee of Asbestos Claimants' Motion (I) Objection to and Motion to Strike Subpoenas Issued by Debtor to Aldrich Pump LLC, DBMP LLC, Murray Boilers LLC, and Paddock Enterprises, LLC; or (II) in the Alternative, to Determine that the Debtor has Waived Privilege to the Case Files of Any Matched Claimant*, In re Bestwall LLC, No. 17-31795 (Bankr. W.D.N.C. Mar. 21, 2022) [Dkt. 2470].

[9] See *Motion by Official Committee of Asbestos Personal Injury Claimants to Quash Subpoena Sent to Debtor*, In re DBMP LLC, No. 20-30080 (Bankr. W.D.N.C. Mar. 18, 222) [Dkt. 1373].

[10] See *Motion by Official Committee of Asbestos Personal Injury Claimants to Quash Subpoenas Sent to Debtors*, In re Aldrich Pump LLC, No. 20-30608 (Bankr. W.D.N.C. Mar. 19, 2022) [Dkt 1056].

[11] The ACC's suggestion that the Motion somehow does not comply with Bankruptcy Rule 9013 and is therefore procedurally deficient, (see ACC Obj. ¶¶ 1-6), is yet another example of the ACC attempting to elevate form over substance. As the ACC Objection admits, the "particularity requirement" in Bankruptcy Rule 9013 "must be read liberally." Id. ¶ 3 (citation omitted). And, in any event, the Motion sets forth various grounds supporting the requested relief, which are supplemented by this Reply.

process followed in Garlock, Bestwall, and DBMP, and the courts there clearly believed they had the authority to grant the requested discovery even though an estimation process already had been ordered. To the extent that the ACC still asserts the Debtors must articulate a statute or rule to support the Motion, section 105(a) of the Bankruptcy Code, Bankruptcy Rule 2004, and Federal Rule 26 all provide that authority.

B. The Court Has Authority to Grant the Motion Under Section 105(a) and Its Inherent Powers.

5. As this Court previously recognized in approving the personal injury questionnaire in these cases, bankruptcy courts have broad authority to approve discovery:

> As to the source of authority, while many courts cite Rule 2004, I don't think either it or Rule 26 are our only options. The power to require those questionnaires likely exists separate and apart from Rule 2004 under the Court's inherent powers. Wall v. Siegel [sic] makes mention of that. And 105 would be another, the Fourth Circuit's Robins decisions, maybe there are even other authorities. I think the Court has some discretion to try to help the parties obtain the information they need in the case.

Transcript of Jan. 27, 2022 Hearing at 32:1-9.[12]

6. As the Court noted, a bankruptcy court possesses inherent powers to grant relief so long as such actions do not contravene specific statutory provisions. See Law v. Siegel, 571 U.S. 415, 421 (2014); see also 2 COLLIER ON BANKRUPTCY ¶ 105.01[2] (16th ed. 2022) ("Bankruptcy courts, both through their inherent powers as courts and through the general grant of power in section 105, are able to police their dockets and afford appropriate relief."). Section 105 of the Bankruptcy Code permits a bankruptcy court to issue "any order, process, or judgment that is necessary or appropriate to carry out the provisions of" the Bankruptcy Code. 11 U.S.C. § 105(a). "Section 105(a) is understood as providing courts with discretion to accommodate the unique facts of a case consistent with the policies or directives set by the other applicable

[12] Excerpts of the January 27 Hearing Transcript are attached hereto as Exhibit B.

substantive provisions of the Bankruptcy Code." In re Oi Brasil Holdings Cooperatief U.A., 578 B.R. 169, 201 (Bankr. S.D.N.Y. 2017) reconsideration denied, 582 B.R. 358 (Bankr. S.D.N.Y. 2018). Thus, although "section 105(a) does not give the bankruptcy court carte blanche—the court cannot, for example, take an action prohibited by another provision of the Bankruptcy Code . . . —it grants the extensive equitable powers that bankruptcy courts need in order to be able to perform their statutory duties." Caesars Entm't Operating Co. v. BOKF, N.A. (In re Caesars Entm't Operating Co.), 808 F.3d 1186, 1188 (7th Cir. 2015).

7. Here, the Objectors have not identified any statutory provision that the proposed discovery contravenes. Granting the Motion is a proper exercise of the Court's discretion and authority under section 105.

C. The Court Has Authority to Grant the Motion Under Rule 2004.

8. The Motion is also proper under Bankruptcy Rule 2004. "The scope of discovery afforded under Bankruptcy Rule 2004 is unfettered and broad." In re Public Service Co. of New Hampshire, 91 B.R. 198, 199 (Bankr. D.N.H. 1988) (internal quotation marks and citation omitted). A Rule 2004 examination need only relate in some way "to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge," including in a chapter 11 case "any other matter relevant to the case or to the formulation of a plan." Fed. R. Bankr. P. 2004(b).

9. Discovery under Rule 2004 is appropriate when "good cause" exists for the taking of the examination. See In re DeWitt, 608 B.R. 794, 798-99 (Bankr. W.D. Pa. 2019); In re Hammond, 140 B.R. 197, 201 (S.D. Ohio 1992). "The movant must show some reasonable basis to examine the material sought to be discovered . . . ." In re Youk-See, 450 B.R. 312, 320 (Bankr. D. Mass. 2011) (internal quotation marks and citation omitted). And, "[g]enerally, good

cause is shown if the [Rule 2004] examination is necessary to establish the claim of the party seeking the examination, or if denial of such request would cause the examiner undue hardship or injustice." In re Metiom, Inc., 318 B.R. 263, 268 (S.D.N.Y. 2004); see also In re DeWitt, 608 B.R. at 798-99 (same). If the party seeking discovery under Rule 2004 establishes that the requested discovery "is reasonably necessary for the protection of its legitimate interests," then good cause is established. See In re Moore Trucking, Inc., 2020 WL 6948987, at *7 (Bankr. S.D.W.Va. July 14, 2020) (quoting Hammond, 140 B.R. at 201); In re Youk-See, 450 B.R. at 320 (same).

10. In their analysis, courts balance "the competing interests of the parties, weighing the relevance of and necessity of the information sought by examination." In re DeWitt, 608 B.R. at 798 (citation omitted).[13] "The modern trend for courts has been to apply a 'totality of the circumstances' test to determine whether 'good cause' exists." 9 COLLIER ON BANKRUPTCY P 2004.01[6] (16th ed. 2022); see, e.g., In re Countrywide Home Loans, 384 B.R. 373, 393 (Bankr. W.D. Pa. 2008) (emphasis in original):

> The question of whether the UST has shown sufficient good cause to pursue a *Rule 2004* examination and the type of discovery implicitly allowed by the Rule in a given matter is not suited to application of a mechanical test. Rather, a totality of circumstances approach is required, taking into account all relevant factors. Consistent with this approach it is appropriate to apply the "good cause" standard in what may be termed a "sliding scale" manner or balancing test.

[13] See, e.g., In re DeWitt, 608 B.R. at 800 (citation omitted) ("In granting a Rule 2004 examination request, the Court is required to make a finding of good cause for the examination . . . In addition, the court must weigh the relevance of the discovery against the burden it will impose on the producing party."); Hammond, 140 B.R. at 201 (citation omitted) ("After determining that Rule 2004 examination is necessary for the protection of the examiner's legitimate interests, the bankruptcy court must balance the examiner's interests against the debtor's interest in avoiding the cost and burden of disclosure."); In re Pub. Serv. Co. of New Hampshire, 91 B.R. at 199 (citation omitted) ("Exercise of discretion under Rule 2004 requires a balancing of the interest of the debtor in obtaining sufficient information necessary for the formulation of its plan of reorganization, as opposed to the interest of a creditor in avoiding an overbearing and intrusive inquiry into its affairs unrelated to legitimate plan formulation inquiries.").

Ultimately, the decision whether to authorize discovery rests within the sound discretion of the bankruptcy court. See Moore Trucking, Inc., 2020 WL 6948987, at *7; In re DeWitt, 608 B.R. at 798.

11. The ACC's arguments that the Motion should not be granted under Rule 2004 are meritless, especially since similar relief in this jurisdiction for the same type of discovery already has been approved under Rule 2004.[14]

12. First, the ACC argues that Rule 2004 cannot apply under the so-called "pending proceeding rule," because estimation has already been ordered, even though that occurred in DBMP and Bestwall as well. See ACC Obj. ¶¶ 7-9; *supra* ¶ 1 n.6. The Court in its discretion can decide not to apply the pending proceeding rule, "and courts have for various reasons done so despite the existence of other pending litigation." In re Int'l Fibercom, Inc., 283 B.R. 290, 292 (Bankr. D. Ariz. 2002); In re Camferdam, 597 B.R. 170, 174 (Bankr. N.D. Fla. 2018) ("Applying the pending proceeding rule is discretionary and not mandatory."). In particular, as one court has explained:

> The nature of the 'pending proceeding' rule changes, however, when the pending proceeding takes the form of a contested matter. Rather than mandatorily engaging the Federal Rules of Civil Procedure, as its counterpart in the case of adversary proceedings does, Federal Rule of Bankruptcy Procedure 9014 states that those rules shall apply *'unless the court otherwise directs*.' Fed. R. Bankr. P. 9014. Thus, in the case of contested matters . . . the Federal Rules of Civil Procedure offer the preferable default, from which the Court may deviate at its discretion.

In re M4 Enters., Inc., 190 B.R. 471, 475 (Bankr. N.D. Ga. 1995) (emphasis in original).

---

[14] See *Order Granting Debtor's Motion for Bankruptcy Rule 2004 Examination of Asbestos Trusts and Governing Confidentiality of Information Provided in Response*, In re DBMP LLC, No. 20-30080 (Bankr. W.D.N.C. Feb. 17, 2022) [Dkt. 1340]; *Order Granting Debtor's Motion for Bankruptcy Rule 2004 Examination of Asbestos Trusts and Governing Confidentiality of Information Provided in Response*, In re Bestwall LLC, No. 17-31795 (Bankr. W.D.N.C. Mar. 24, 2021) [Dkt. 1672].

13. Both this Court and Judge Beyer have likewise recognized the discretionary nature of Bankruptcy Rule 2004. In addition to this Court's recognition of such in connection with the trust discovery motion in DBMP, in these cases this Court noted that "[t]he idea [of the pending proceeding rule] is to avoid using 2004 to undercut the discovery rules in an adversary." See Ex. B at 30-31. The Court concluded with respect to the Debtors' request for a personal injury questionnaire: "I don't think the debtor's [sic] using this to avoid the more restrictive discovery rules that apply to adversaries." Id. at 32. Likewise, for the same reason, in approving the personal injury questionnaire in Bestwall, Judge Beyer "conclude[d] that precluding the discovery sought by the debtor would not serve the purpose of the pending proceeding rule," which is "to avoid Rule 2004 usurping the narrower rules for discovery in a pending adversary proceeding." Transcript of Mar. 4, 2021 Hearing, In re Bestwall LLC, No. 17-31795 at 10:9-13.[15] The same principles apply here. The relief requested in the Motion does not seek to avoid, undercut, or usurp the Federal Rules. Indeed, as discussed below, the requested discovery is equally permissible under the Federal Rules as it is under Rule 2004.[16]

14. Second, the Motion demonstrates the "good cause" underlying the Debtors' request. Among other things, in the upcoming estimation proceeding, the Debtors will seek to oppose the position espoused by the ACC that the Debtors' prepetition settlement history is the basis upon which the Debtors' present and future asbestos liabilities should be estimated. See Mot. ¶ 20. Judge Hodges rejected the ACC's identical position in Garlock, finding that "[t]he withholding of exposure evidence by plaintiffs and their lawyers was significant and had the

---

[15] Excerpts of the March 4 Hearing Transcript in In re Bestwall LLC, are attached hereto as Exhibit C.

[16] This is particularly true here, as the information sought is relevant to issues beyond estimation. That is, the requested data is not only relevant to an estimation of the Debtors' asbestos liability, but also to the development and evaluation of administrative procedures that will be necessary to effectuate a plan of reorganization. See Mot. ¶¶ 23-25.

effect of unfairly inflating the recoveries against Garlock . . . ." In re Garlock Sealing Techs. LLC, 504 B.R. 71, 86 (Bankr. W.D.N.C. 2014); see Mot. ¶¶ 20-22. Given Judge Hodges' reliance on trust information in his estimation decision, the overlap between the claims at issue in these cases and in Garlock, and the cases these Debtors already have identified where claimants failed to disclose alternative exposures during their tort cases against the Debtors, the Debtors plainly have a "reasonable basis" to pursue the information they are seeking. See Mot. at 2, ¶¶ 20-22, 24, 26. And, the requested data will form a key part of the Debtors' own estimation analysis. Finally, as further described below, in addition to being highly relevant, the requested discovery will not pose an undue burden and is otherwise proportional to the needs of these cases. See *infra* ¶¶ 21-34.[17]

D. The Requested Discovery Is Likewise Permitted Under the Federal Rules.

15. As the ACC recognizes, trust discovery also was granted in Garlock pursuant to the Federal Rules, like here, after estimation was approved. See ACC Obj. at 1-2, ¶¶ 2, 9.

16. Federal Rule 26, made applicable in bankruptcy proceedings pursuant to Bankruptcy Rule 7026, permits a party to obtain discovery "regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." Fed. R. Civ. P. 26(b)(1).

[17] Similarly, the ACC's suggestion that the Debtors are seeking discovery "to abuse, annoy, embarrass, harass, and oppress" is nothing more than unnecessary, inflammatory rhetoric, unsupported by the facts of these cases. See ACC Obj. ¶ 13. Rather than "seeking discovery for the express purpose for which the courts have determined discovery should not be granted," (id.), as the ACC asserts, the Debtors seek this discovery for the express purposes found to be appropriate in Bestwall and DBMP.

17. Rule 26 is to be applied "as broadly and liberally as possible… ." Hickman v. Taylor, 329 U.S. 495, 506 (1947); Cason v. Builders FirstSource-S.E. Grp., Inc., 159 F. Supp. 2d 242, 246 (W.D.N.C. 2001) ("The rules of discovery are to be accorded broad and liberal construction."). Information sought under Federal Rule 26 "need not be admissible in evidence" but only "relevant to any party's claim or defense." Fed. R. Civ. P. 26(b)(1). As further described below, the discovery sought in the Motion easily satisfies these requirements.

II. The Objectors' Substantive Attacks on the Requested Discovery Are Unpersuasive.

A. Contrary to the ACC's Position, the Debtors Are Not Required to Support Their Request for Discovery With Evidence.

18. The ACC first argues that the Debtors must offer some unspecified "evidence" to obtain the requested discovery. See ACC Obj. at 2; ¶¶ 1, 3, 6, 12. The ACC is wrong and its position is contrary to established law. Neither Federal Rule 26 nor Bankruptcy Rule 2004 impose an obligation on the Debtors to offer "evidence" (much less "admissible evidence" as the ACC appears to suggest (see id. ¶ 3)) to obtain discovery.

19. Evidence to establish "good cause" is *not* required under Rule 2004. See, e.g., In re Metiom, Inc., 318 B.R. at 269 (The opposing party "does not cite, nor is the Court aware of, any authority to support the claim that a showing of good cause in support of a Rule 2004 examination requires testimony or written statements under oath. On the contrary, at least one court has rejected the argument that an attorney's representations alone are not sufficient to support a finding of good cause."); see also In re Hammond, 140 B.R. at 203-04 (finding that bankruptcy court erred in requiring party moving for Rule 2004 discovery of debtor to produce "some strong suggestion or evidence of fraud" by the debtor).

20. The same principle applies to discovery sought under the Federal Rules. See, e.g., UN4 Prods., Inc. v. Does 1-10, 2017 WL 5195884, at *3 (W.D.N.C. Nov. 9, 2017) (finding

plaintiff's position that defendant "mistakes the burden of proof at trial with the burden of demonstrating good cause to obtain early discovery [under Federal Rules 26 and 45]" persuasive); Fed. Election Comm'n v. Christian Coal., 178 F.R.D 61, 85-86 (E.D. Va. 1998) (finding that under Fed R. Civ. P. 26(b)(3), a court can, but is not required to, limit itself solely to the information proffered by a party in support of its motion when determining whether substantial need exists for documents at issue).

B. The Information Sought Is Relevant.

21. Evidence is relevant under Federal Rule 26 if it "encompass[es] any matter that bears on, or that reasonably could lead to other matter[s] that could bear on, any issue that is or may be in the case." Oppenheimer Fund Inc. v. Sanders, 437 U.S. 340, 351 (1978) (citing Hickman, 329 U.S. at 501).

22. As explained at length in the Motion, the discovery sought is highly relevant to these cases. See Mot. ¶¶ 19-31. In particular, the information is relevant to the upcoming estimation proceeding, both in regard to the statistical analysis that accompanies estimation as well as a determination of whether, as the ACC contends, prepetition settlements provide a reliable basis for estimating the Debtors' asbestos liability. The information also is relevant to effectuation of a plan and the necessary administrative provisions that will govern trust payments and administration under any plan.

23. The Debtors are not the first to articulate the relevance of this information, and this Court would not be the first to find this information relevant. Both this Court in DBMP and Judge Beyer in Bestwall have expressly ruled that this type of information is relevant for such purposes. See Mot. ¶¶ 23-24. Indeed, the DBMP Order provides that such information is both "relevant *and necessary*." See Mot. ¶ 24, Ex. D ¶ 3 (emphasis added). And, Judge Beyer recently found the information sought from Paddock is relevant to the Bestwall estimation

proceeding for the same reasons trust discovery previously approved in Bestwall is relevant. See Ex. A at 23:11-15.

24. The ACC also argues that the discovery is irrelevant because the Debtors' have agreed to a proposed plan and settlement with the FCR. See ACC Obj. ¶ 17. Not so. While the Debtors desire a negotiated resolution to these cases, the ACC did not agree to that plan or settlement, and instead adopts the position that it "contests every aspect of this settlement, including the appropriateness, the amount, and the ultimate intent of such settlement for the plan purpose." Id. It is that blanket opposition to the settlement (and, to-date, any other negotiated resolution to these cases) that has forced this contested estimation proceeding. The Debtors are now entitled to present their case, as supported by their estimation methodology. Tellingly, the Objectors do not—and cannot—refute that the requested discovery is relevant to both the Debtors' claims estimation approach and their opposition to the ACC's anticipated settlement-based approach. As this Court concluded in DBMP, "the fact that Judge Hodges relied on [trust information] heavily in his estimation decision"—which rejected a settlement-based approach—"accentuates both the relevance and the need for the information" sought here. See Mot. ¶¶ 20-22, 24.

C. The Information Sought Is Not Unduly Burdensome.

25. Other than conclusory flourishes, neither the ACC nor Paddock explains why or how the discovery requests are burdensome, because they cannot. Indeed, the Debtors believe all of the discovery requests, *none of which seek the production of documents*, can be completed with minimal effort by the Producing Parties.

26. From public filings, the Debtors understand that the Producing Parties generally maintain the requested information in database form.[18] Such databases have many similar characteristics to the asbestos claims database maintained by the Debtors (and produced in this case to the ACC and the FCR), which allows for information to be identified and produced efficiently through electronic searches. See Mot. ¶ 32.

27. Further, while Paddock alleges that "[p]roduction of the requested information would require a significant amount of time and resources, and impose an undue burden," it fails to explain why it would be required to "manually search" its claims data or what sort of "compilation document" would be required to produce the requested information. See Paddock Obj. ¶ 15. The burden Paddock claims is not supported by experience in other cases. As was recognized in Garlock, production of trust data can be achieved expeditiously. See Mot. ¶ 33. Likewise, the Debtors have reviewed the actions necessary to produce information in response to the Bestwall subpoena that is analogous to that requested of the Producing Parties here, and have determined that the information could be provided with minimal time and cost. This would be accomplished by the application of a code to the database that extracts the responsive information electronically, and there is no reason the Producing Parties could not adopt a similar process. Indeed, Paddock does not explain why it could not adopt such a process that would allow for an expeditious production with minimal burden.

---

[18] See, e.g., *Response and Objection of Nonparties Manville Personal Injury Settlement Trust and Delaware Claims Processing Facility to the Debtor's Motion for Bankruptcy Rule 2004 Examination of Asbestos Trusts and Governing Confidentiality of Information Provided in Response*, In re Bestwall LLC, No. 17-31795 (Bankr. W.D.N.C. Sep. 4, 2020) [Dkt. 1321] ¶ 1 ("The trusts each maintain such information in proprietary databases…"); *Debtor's (A) Memorandum of Law in Support of Confirmation of the Second Amended Plan of Reorganization for Paddock Enterprises, LLC Under Chapter 11 of the Bankruptcy Code and (B) Reply to the UST Objection to Confirmation of the Plan*, In re Paddock Enterprises, LLC, No. 20-10028 (Bankr. D. Del. May 11, 2022) [Dkt. 1355] ¶ 90 n. 139 (noting existence of "Debtor's claims database").

28. To the extent Paddock objects on the basis of the cost of compliance, the Proposed Order eliminates that burden by requiring that the Debtors reimburse the costs associated with compliance. See Proposed Order ¶ 19. And, while the Proposed Order sets forth a notice process for Matching Claimants consistent with the DBMP Order, to the extent that Paddock believes that notice to claimants in its database is not required (a conclusion supported by Judge Beyer's recent ruling in Bestwall, (see Ex. A at 22:8-9)), the Debtors are willing to remove the notice requirement as it relates to Paddock Matching Claimants.

29. Finally, Paddock alleges that the "undue burden" imposed by the requested discovery "is heightened given the critical juncture of the Paddock Chapter 11 Case." See Paddock Obj. ¶ 15; see also id. ¶¶ 2, 7, 12, 13. The observable facts of Paddock and the actual relief requested by the Motion demonstrate otherwise. Indeed, Judge Silverstein confirmed Paddock's plan from the bench on May 16th. In addition, assuming the Court approves the Motion, the Proposed Order provides substantial time for Paddock to produce the requested information (as was approved in DBMP).[19] Finally, the Debtors are willing to meet and confer with Paddock to discuss providing Paddock with additional time to comply with the subpoena, if necessary, to accommodate Paddock's concern regarding the timing of compliance.

D. The Information Sought Is Proportional to the Needs of These Cases.

30. The ACC's argument that the requested discovery represents a "massive expansion" beyond discovery sought in other cases is, ironically, a massive overstatement. See ACC Obj. at 3, ¶ 21. The Debtors seek discovery of the same type of data sought and approved in DBMP. The Debtors are only seeking discovery from one additional claims processing

[19] For the same reasons and, given that the Paddock Objection sets forth substantive objections to the requested relief, no adjournment of the Motion is necessary.

facility (Verus) and from only a subset of the trusts for which Verus processes claims. See Mot. ¶¶ 27, 29. This handful of individual trusts was selected by the Debtors for the relevance of the data to these cases. Id. ¶¶ 27-30. In particular, information from the GST Settlement Facility (i.e., Garlock) has clear relevance here given the similarities between the claims brought against Aldrich, Murray, and Garlock. Id. ¶¶ 26, 28. The seven additional Verus Trusts have substantial assets and represent companies whose products, like the Debtors', were used primarily in industrial settings. Id. ¶ 29. As a result, the Debtors anticipate that data from those trusts will demonstrate claiming histories that likely overlap with the Debtors'. Id. And, ultimately, in the aggregate, the trusts from which the Debtors' seek data still represent only a small fraction of the over 70 active asbestos personal injury trusts in operation. Id. ¶ 30. In sum, the Debtors purposefully tailored their request to maximize the benefit to their estimation analysis while maintaining a reasonable limit on the scope of discovery sought.

31. Likewise, the discovery directed at Paddock is far from an "unusual expansion of the scope of discovery" as the ACC claims. ACC Obj. ¶ 24. As noted, in Bestwall, the debtor also sought discovery from Paddock (after first seeking trust discovery) which then precipitated a motion to strike the subpoenas to Paddock and others by the Bestwall ACC, which Judge Beyer largely overruled. See *supra* at 2 n.4, ¶ 3. By the Motion, the Debtors seek to avoid a similar result and the unnecessary re-litigation of discovery disputes that could delay both the discovery and estimation processes.

32. Contrary to Paddock's assertions, data obtained from trusts does not obviate the benefits to be derived from Paddock's data. See Paddock Obj. ¶ 16. That would be akin to saying that obtaining data from one asbestos personal injury trust obviates the need to obtain data from the rest of the trusts. To the contrary, the extent to which claimants recover from multiple

parties is critical to a statistical analysis of the Debtors' liability (as was cited extensively in Garlock) and is particularly relevant where that party (like Paddock) was one of the primary manufacturers of asbestos-containing thermal insulation for a period of time. Given Paddock's past practice of resolving claims outside of the tort system much like a trust, the Debtors have minimal visibility as to the extent to which claiming overlap occurred between the Debtors and Paddock. See Mot. ¶ 31.

33. The fact that no estimation schedule has been set does not weigh against granting the Motion. See Paddock Obj. ¶ 15. Quite to the contrary, pursuing this discovery now will help move estimation forward and make the schedule that is put in place more achievable. The Debtors do not want to replicate the process in Bestwall, where discovery delays and protracted litigation have forced estimation to be pushed back multiple times.

34. Also of note with respect to proportionality, the Debtors anticipate that the ACC will seek extensive discovery in these cases. The experience in the Bestwall case proves the point.[20] While the Debtors reserve all rights to contest similar efforts, the ACC's claim that the Debtors' tailored information requests to the Producing Parties represents some "massive expansion" of the scope of discovery in these cases is contradicted by the scope of discovery the Bestwall ACC has sought in connection with the Bestwall estimation proceeding.

[20] Judge Beyer noted the breadth of the Bestwall ACC's discovery in her May 18, 2022 ruling on the ACC's motion to strike. See Ex. A at 22:10-23:10; id. at 22:23-23:1 ("I can't in good conscience grant the motion to strike, given the magnitude of this recently served discovery, particularly having concluded that there isn't anything otherwise problematic about the discovery sought by the debtor.").

III. The Balance of the Objectors' Arguments Lack Merit.

A. The Objectors' Confidentiality Arguments Do Not Preclude the Requested Relief.

35. The confidentiality concerns raised by the Objectors are overstated and speculative. Even if they were not, they do not provide a basis to deny the requested relief.

36. First, arguments that the potential risk of a security breach of consolidated information should preclude the discovery, (see ACC Obj. 3, ¶ 22), ignore that this information already is currently consolidated in various databases held by defendants, plaintiff law firms, and trusts, among others. The ACC has failed to explain how those entities' security measures are more robust than Bates White's, or how Bates White's security measures are otherwise deficient, and Judge Beyer just found similar requests by Bestwall to Paddock do not raise identity theft concerns. See Ex. A at 22:5-8. Moreover, the ACC fails to provide any authority that would support denying the requested discovery on the basis of hypothetical hacking. Indeed, if this were the standard, no discovery of information would ever be permissible. This cannot be the case.

37. The assertion that the "Debtors seek to aggregate personal and private information they would not be otherwise entitled to," (ACC Obj. ¶ 22), is inflammatory and completely ignores that the Debtors are not seeking any personally identifiable information. See Mot. ¶ 34. Indeed, the Debtors *already possess that information* for the relevant claimants within their own database. And, as described in the Motion, the production of the data that is requested will be subject to the anonymization, notice, and confidentiality requirements, and strict access and use restrictions approved by the Court in DBMP to address concerns surrounding confidentiality. Id. Similarly, it is unclear what the ACC means by "pre-anonymized data," (ACC Obj. ¶ 23), given the preproduction anonymization protocol in the Proposed Order. To the extent that the ACC contemplates an anonymization process that would make the data unmatchable against the

Debtors' claims database (and, therefore, unusable), this Court already has rejected that approach in DBMP. See Mot. Ex. G at 134:17-18 ("the bottom line is the debtor needs to be able to match or otherwise, this is unusable to it for its purposes").

38. Likewise, Paddock fails to explain why its purported "confidentiality obligations" with respect to "settlement-related information," (Paddock Obj. ¶ 17), prohibit the requested discovery. The Motion does not seek production of any settlement agreements or any amounts paid by any Producing Party to any claimant, but merely seeks information indicating whether a given claim has been settled and paid. See Proposed Order ¶¶ 10-11. Furthermore, settlement information and agreements are readily discoverable,[21] including those with confidentiality provisions. See Covil Corp. by and through Protopapas v. U.S. Fid. And Guaranty Co., 544 F. Supp. 3d 588, 603 (M.D.N.C. 2021) ("For that reason, confidentiality provisions inserted by parties into private settlement agreements do not immunize those agreements from discovery"). By extension, the far more limited *fact* of settlement cannot be immune from discovery, and Paddock has not cited any case demonstrating otherwise.

B. The Paddock Subpoena Does Not Violate the Automatic Stay.

39. Paddock's argument that the subpoena violates the automatic stay is not supported by the law. See Paddock Obj. ¶¶ 11-12. As a threshold matter, instead of specifying which provision of 11 U.S.C. § 362 the subpoena would supposedly violate, Paddock's argument appears to be built around the idea that the subpoena violates the general purpose of the stay–"to

---

21 See, e.g., White v. Kenneth Warren & Son, Ltd., 203 F.R.D. 364, 367 (N.D. Ill. 2001) (ordering disclosure of plaintiffs' settlement agreement and accompanying agreements with defendant to another co-defendant); Bennett v. La Pere, 112 F.R.D. 136, 138 (D.R.I. 1986) (ordering disclosure to defendant hospital of confidential settlement agreement between medical malpractice plaintiffs and defendant physicians); Tanner v. Johnston, 2013 WL 121158, at *1 (D. Utah Jan. 8, 2013) (ordering disclosure to defendant of plaintiffs' confidential settlement agreement with co-defendants).

provide the debtor and its executives with a reasonable respite from protracted litigation . . . ." See id.[22] The weight of authority clearly demonstrates that subpoenas served on non-party debtors, like Paddock, do not violate the automatic stay.

40. For instance, in Miller, subpoenas were issued to the debtor "in an effort to continue . . . prosecution of . . . claims against . . . a non-debtor." See 262 B.R. 499, 505 (B.A.P. 9th Cir. 2001). The court held "to the extent that [the subpoena] was eliciting Debtor's testimony for purposes other than . . . claims against Debtor, the proposed discovery did not violate the automatic stay." Id. The court noted that if the issuance of a subpoena alone violated the stay, "a debtor could never be called as a witness (even in actions where the debtor is not a party) without relief from the stay" and that "[s]uch an interpretation of section 362(a) defies common sense and the spirit of the Code." Id. "Information is information, and . . . the discovery of it as part of the development of a case against non-debtor parties is permissible . . ." Id.

41. Courts consistently follow this principle. See, e.g., Le Metier Beauty Inv. Partners LLC v. Metier Tribeca, LLC, 2014 WL 4783008, at *5 (S.D.N.Y. Sept. 25, 2014) (permitting discovery from debtor and recognizing that "[s]ection 362(a) does not prevent litigants from obtaining discovery from a debtor as a third-party witness where the requests pertain to claims against the nondebtor parties"); In re 3901 Foods, LLC, 2009 WL 2982774, at *1 (Bankr. E.D.N.C. Sept. 10, 2009) (permitting discovery from debtor and noting that "[i]t is generally accepted that the automatic stay does not prohibit discovery pertaining to claims against a debtor's co-defendants, even if the discovery requires a response from the debtor, and even if the

[22] Though Paddock argues that production of the information sought could lead to a "blatant violation of section 362(a)," (citing section 362(a)(1)), Paddock neglects to explain how the information "could be used in connection with the prosecution of claims against Paddock's estate"—particularly given the use restrictions in the Proposed Order—or to justify why that hypothetical situation prohibits the discovery, itself. Id. ¶ 12.

information discovered could later be used against the debtor.") (citation and internal quotation marks omitted); Peter Rosenbaum Photography Corp., 2004 WL 2973822, at *2 (N.D. Ill. Nov. 30, 2004) (granting motion to compel discovery from debtor and recognizing that "discovery served against a debtor is not stayed as long as the discovery pertains to or is directed toward claims and/or defenses of a party other than the debtor"); Davies v. Cont'l Bank, 1987 WL 17992, at *1 (E.D. Pa. Sept. 30, 1987) ("The plaintiffs in the instant action have not commenced an action against [the debtor], nor do they seek any action against [the debtor's] property. Consequently, the discovery request does not constitute a violation of Bankruptcy Code section 362.").

42. The Debtors seek information from Paddock that is pertinent to the Debtors' estimation proceeding and plan confirmation. Paddock is not a party to either process. The automatic stay is inapplicable.

C. The Paddock Subpoena Does Not Violate the Barton Doctrine.

43. In a footnote, Paddock suggests that the Barton doctrine precludes the Debtors from obtaining the requested information without first seeking relief from the Delaware bankruptcy court. See Paddock Obj. ¶ 12 n. 13. Paddock is wrong. "The Supreme Court established in Barton that before another court may obtain subject-matter jurisdiction *over a suit filed against a receiver for acts committed in his official capacity*, the plaintiff must obtain leave of the court that appointed the receiver." McDaniel v. Blust, 668 F.3d 153, 156 (4th Cir. 2012) (emphasis added); see also 1 COLLIER ON BANKRUPTCY ¶ 10.01 (16th ed. 2022) ("[I]n Barton, the U.S. Supreme Court held that '[i]t is a general rule that before suit is brought against a receiver[,] leave of the court by which he was appointed must be obtained.'"). The Barton doctrine is inapplicable because the Motion does not seek to file suit against Paddock at all, and much less for acts committed during the bankruptcy. See In re Media Grp., Inc., 2006 WL 6810963, at *6

(B.A.P. 9th Cir. Nov. 14, 2006) ("[E]xpansion of the [Barton] doctrine [to subpoenas] is not supported by a plain reading of . . . Barton" because the doctrine is "limited to the commencement of legal action against a court appointee.").

Conclusion

44. It is unfortunate that, in the face of the precedent and practice in this District from Garlock, Bestwall, and DBMP, the same issues concerning trust discovery are being relitigated once again. Regardless, the Court's ruling should be the same as in those cases. The Motion is not only fully consistent with prior precedent and practice, but the requested relief is substantially the same as that approved by this Court just three months ago in DBMP, and endorsed again just two days ago by Judge Beyer in Bestwall. As a result, the Motion should be uncontroversial and approved. The ACC's (as well as Paddock's) highly technical and unsupported arguments should not change the outcome here, and all fail for the numerous reasons set forth herein.

45. As a result, for all of these reasons and others set forth in the Motion, the Debtors respectfully request that the Court grant the requested relief.

Dated: May 20, 2022
Charlotte, North Carolina

Respectfully submitted,

/s/ John R. Miller, Jr.

C. Richard Rayburn, Jr. (NC 6357)
John R. Miller, Jr. (NC 28689)
RAYBURN COOPER & DURHAM, P.A.
227 West Trade Street, Suite 1200
Charlotte, North Carolina 28202
Telephone: (704) 334-0891
Facsimile: (704) 377-1897
E-mail: rrayburn@rcdlaw.net
jmiller@rcdlaw.net

-and-

Brad B. Erens (IL Bar No. 06206864)
Mark A. Cody (IL Bar No. 6236871)
Morgan R. Hirst (IL Bar No. 6275128)
Caitlin K. Cahow (IL Bar No. 6317676)
JONES DAY
110 North Wacker Drive, Suite 4800
Chicago, IL 60606
Telephone: (312) 782-3939
Facsimile: (312) 782-8585
E-mail: bberens@jonesday.com
macody@jonesday.com
mhirst@jonesday.com
ccahow@jonesday.com
(Admitted *pro hac vice*)

-and-

Gregory M. Gordon (TX Bar No. 08435300)
JONES DAY
2727 N. Harwood Street
Dallas, Texas 75201
Telephone: (214) 220-3939
Facsimile: (214) 969-5100
E-mail: gmgordon@jonesday.com
(Admitted *pro hac vice*)

ATTORNEYS FOR DEBTORS AND DEBTORS IN POSSESSION

C. Michael Evert, Jr.
EVERT WEATHERSBY HOUFF
3455 Peachtree Road NE, Suite 1550
Atlanta, Georgia 30326
Telephone: (678) 651-1200
Facsimile: (678) 651-1201
E-mail: cmevert@ewhlaw.com
(Admitted *pro hac vice*)

SPECIAL ASBESTOS LITIGATION COUNSEL FOR DEBTORS AND DEBTORS IN POSSESSION

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

IN RE:	:	Case No. 17-31795-LTB
BESTWALL LLC,	:	Chapter 11
Debtor.	:	Charlotte, North Carolina Wednesday, May 18, 2022
	:	9:33 a.m.

: :

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE LAURA TURNER BEYER,
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES (via Teams):

For the Debtor:	Robinson, Bradshaw & Hinson, P.A. BY: RICHARD C. WORF, ESQ. KEVIN CRANDALL, ESQ. GARLAND CASSADA, ESQ. HANA M. CRANDALL, ESQ. 101 N. Tryon Street, Suite 1900 Charlotte, NC 28246
	Robinson, Bradshaw & Hinson, P.A. BY: PREETHA S. RINI, ESQ. 1450 Raleigh Road, Suite 100 Chapel Hill, NC 27517
Audio Operator:	COURT PERSONNEL
Transcript prepared by:	JANICE RUSSELL TRANSCRIPTS 1418 Red Fox Circle Severance, CO 80550 (757) 422-9089 trussell31@tdsmail.com

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

APPEARANCES (via Teams continued):

For the Debtor:	Jones Day BY: GREGORY M. GORDON, ESQ. 2727 North Harwood St., Suite 500 Dallas, TX 75201-1515
	Jones Day BY: JEFFREY B. ELLMAN, ESQ. 1221 Peachtree St., N.E., #400 Atlanta, GA 30361
	Jones Day BY: JAMES M. JONES, ESQ. 250 Vesey Street New York, NY 10281-1047
For Future Claimants' Representative, Sander L. Esserman:	Young Conaway BY: EDWIN HARRON, ESQ. SHARON ZIEG, ESQ. ELISABETH S. BRADLEY, ESQ. ERIN EDWARDS, ESQ. 1000 North King Street Wilmington, DE 19801
	Alexander Ricks PLLC BY: FELTON PARRISH, ESQ. 1420 E. 7th Street, Suite Charlotte, NC 28204
For Various Law Firms:	Waldrep Wall BY: THOMAS W. WALDREP, JR., ESQ. 370 Knollwood Street, Suite 600 Winston-Salem, NC 27103
For Official Committee of Asbestos Claimants:	Robinson & Cole LLP BY: NATALIE RAMSEY, ESQ. DAVIS LEE WRIGHT, ESQ. 1201 N. Market Street, Suite 1406 Wilmington, DE 19801

ALSO PRESENT (via telephone):

	SANDER L. ESSERMAN Future Claimants' Representative 2323 Bryan Street, Suite 2200 Dallas, TX 75201-2689

P R O C E E D I N G S

(Call to Order of the Court)

THE COURT: All right. Good morning.

We are here in the Bestwall case, Case No. 17-31795. We've got a few matters on the calendar and admittedly, I'm having to remember how to do this by Teams. But I think, probably, rather than having everybody who is on the camera announce their appearance, what I'm going to ask you to do is to turn on your camera if you anticipate having a speaking role at today's hearing. Otherwise, if everybody would turn your camera off -- and I don't see too -- so that we can announce appearances.

So go ahead and turn your camera on if you anticipate having a speaking role and then I'm going to, I'll call your name and ask you to announce your appearance. I think that might be the best way to go about doing this. All right.

Mr. Waldrep, you were the first one in my screen. So I'll ask you to announce your appearance, please.

MR. WALDREP: Good morning, your Honor. Tom Waldrep on behalf of several claimants.

THE COURT: All right.

Mr. Wolf? It says Richard Wolf, but you are not Richard Wolf. Mr. Worf. Sorry. I just --

MR. WORF: That makes me sound a --

THE COURT: I looked --

MR. WORF: -- a lot more fierce than I am.

Richard Worf, your Honor, Robinson Bradshaw, for the debtor. I'm in the room with Hana Crandall and I believe Mr. Cassada, Preetha Rini, and Kevin Crandall are also on the phone.

THE COURT: Okay, very good.

MR. WORF: Thank you.

THE COURT: My apologies, Mr. Worf. I just read the name. I didn't even look at your face.

Ms. Zieg.

MS. ZIEG: Good morning, your Honor. Sharon Zieg of Young Conaway Stargatt & Taylor on behalf of the Future Claimants' Representative. It's interesting, your Honor. My team asked me how this was going to work this morning and I said, "It's been so long I can't even remember. You introduce yourself or I introduce you."

With that said, the members of Young Conaway that are on the phone today or participating via Teams are Ms. Edwards, Ms. Bradley, and Mr. Harron. North Carolina counsel, Felton Parrish, is on the line and Mr. Esserman is also on the line.

THE COURT: Okay, very good. Thank you.

MS. ZIEG: Thank you.

THE COURT: I think they're laughing at our expense, Mr. Worf.

Ms. Ramsey.

MS. RAMSEY: Good morning, your Honor. Natalie Ramsey on behalf of the Asbestos Claimants' Committee and also on the line is Mr. Wright from my office.

THE COURT: Okay, very good. Thank you.

And Mr. Gordon.

MS. RAMSEY: Thank you.

MR. GORDON: Good morning, your Honor. Greg Gordon, Jones Day, on behalf of the debtor. Also with me are Jeff Ellman and Jim Jones.

THE COURT: Okay, very good.

So in looking, folks, we've got a couple matters on the calendar and I'll start by noting that the hearing on the motion to reconsider the order and debtor's response -- that's the way it's listed on the calendar -- that that has been continued to June 23, 2022.

And so that leaves us with the continued hearing on the motion to strike for which the Court will give its ruling, but in looking at the Notice of Agenda, of course, we also have the status conference regarding the debtor's supplemental motion to enforce the PIQ order and as we tend to do, we, we typically start with that.

And so, Mr. Worf and Mr. Waldrep, is that what you all were anticipating?

MR. WALDREP: Yes, ma'am, I was.

MR. WORF: That is just fine with us, your Honor.

THE COURT: All right. So, Mr. Worf -- and we do have -- and if I call you Mr. Wolf, that is the name on the screen. So bear with me if I do that -- we will start with the status conference regarding the debtor's supplemental motion to enforce PIQ order with respect to non-compliant claimants.

MR. WORF: Thank you, your Honor. Richard Worf for the debtor, Robinson Bradshaw.

So your Honor entered the sanctions order on April 25th which set forth sanctions that were imposed on certain claimants who had failed to comply with one or more of Parts 8, 8A, 10 or Tables A, B, and C in the PIQ and had been found in contempt. The order provided that claimants would incur a daily fine beginning on the 14th day after entry of the order if they had not purged their contempt and that day was May 9th.

Since the sanctions order was entered, there has been additional compliance with your Honor's orders and I'll put up on the screen a, some slides that summarize the current state of compliance.

So as your Honor will recall, as of the April 6th hearing 493 claimants remained noncompliant with one or more of those parts and then there was no additional compliance between the April 6th hearing and the entry of the sanctions order on April 25th, but since the entry of the order on April 25th there has been additional compliance and, in the debtor's view, 111 of the 493 claimants, or about a quarter, have now fully

complied with those PIQ parts and, in the debtor's view, have purged their contempt. Eighty-four of those 111 claimants, in the debtor's view, fully complied before any fine was incurred beginning on May 9th, while 27 of those claimants fully complied after some amount of fine was incurred. And I'll get into the, the details of that in, in a moment. 382 claimants remain noncompliant with one or more of those PIQ parts, but even among those claimants 357 of those claimants have provided partial additional compliance since the Court entered the sanctions order on April 25th. And I'll get into more detail on that as well.

We have provided to the Court and the parties an exhibit that is modeled on the Exhibit A that your Honor has seen on previous occasions and this exhibit lists the 493 claimants who are subject to the sanctions order and lists their law firms and their names. We shared a version of this with counsel for the claimants last Friday and then shared a version of it yesterday when we shared it with the Court with claimants as well as the ACC and the FCR. The exhibit like previous versions of this exhibit indicates the parts that claimants still have not complied with in the columns listed Part 8, 8A, Table A, B, and C, and Part 10. Additional columns that we've now added are the Date Complied column and the Sanctions Owed column. The Date Complied column lists if a claimant is still noncompliant with one or more of those parts

or, alternatively, lists the date the claimant fully complied with those parts. And finally, the Sanctions Owed column calculates the, the sanctions that each claimant owes based on when the claimant complied with the Court's order.

One note about how we calculated the sanctions that are in the Sanctions Owed column. The order said that sanctions would start accruing on May 9th. The debtor adopted a claimant-friendly interpretation of that under which the sanction on a particular day is not accrued until the end of the day so that claimants whose materials were received and, and who became fully compliant on May 9th did not incur any fine, in the debtor's view, and claimants who complied on May 10th incurred a fine of a hundred dollars and so on and so forth.

We provided a slightly updated exhibit, version of this exhibit to the Court this morning. We heard yesterday afternoon that 49 of The Gori Law Firm claimants who are now fully compliant believed their responses had been received by the claims agent on May 9th rather than May 10th. Donlin had told us they were received on May 10th, but we went and checked on that and it turns out that Donlin's mailroom had received those responses on May 9th. They didn't make their way to the relevant personnel at Donlin until May 10th, but, long story short, we did agree with The Gori Law Firm on that and changed the date of compliance for them to May 9th which meant that

those 49 claimants did not incur any fine. And that change has, has been made in the exhibit.

The other change from the version we shared with the Court yesterday is that we learned later yesterday that five of the SWMW law firm claimants are no longer asserting pending claims. And so we've also provided that those claimants are compliant as of yesterday.

So where does this leave us? This is a version of a slide that the Court has seen before which summarizes where compliance stands by part and one of the interesting things is that because of the partial compliance that we've had over the last almost a month there are now relatively few claimants who are not compliant with Part 8 on aggregate settlement amounts and aggregate recoveries from trusts as well as Part 8A on lawsuit information. Notably, the Shrader law firm, which represents 330 of the 382 remaining non-compliant claimants, has now responded to Part 8 for almost all of the claimants they represent and that, that's a striking result because Part 8 has been the most hotly contested PIQ part since the original litigation over the PIQ.

So there are now, of the claimants who submitted PIQs indicating that they assert pending claims, there are now only 56 claimants out of the 1,955 who, who have not answered Part 8, which is 3 percent. The 1,955 has gone down some because additional claimants informed us that they do not have pending

mesothelioma claims.

But the problem is now with sections that historically have been much less controversial, including Tables A, B, and C on tort claims, trust claims, and claims against other entities as well as Part 10 requiring submission of trust claim forms. We do believe we're moving in the right direction and the Court's order is accomplishing what it is intended to do.

On this slide, I've broken it out by law firm and the Court can see the approaches to this still do vary by law firm. Some law firms' claimants have now fully complied or, or almost fully complied, including the Dean Omar firm, the Robins Cloud firm, and, with, with just a few exceptions, The Gori Law Firm. Other law firms have, have claimants who, who have partially complied in, in a uniform way, including the Shrader firm and the Provost Umphrey firm, and we understand that the Provost firm is in the process of fully complying and we, and we hope they will finish that as soon as they possibly can. Other firms' claimants have not provided any additional compliance and your Honor can see those on this list.

But the debtor thinks it, it make sense to continue to play this process out and we hope that by the time of the next omnibus hearing that all or most of these claimants will have fully complied. Only nine claimants appealed the Court's sanctions order to the district court and all but the same nine claimants have now dismissed their appeal of the contempt order

that led to the sanctions order.

So we hope that is a sign that there will be additional compliance and the debtor will, as we have been doing, will continue to diligently monitor additional submissions and determine whether claimants have fully complied with the Court's orders.

In the meantime, the debtor believes that it also makes sense before the next omnibus hearing for the parties to brief the question the Court left open in the sanctions order which is when, to whom, and at what intervals the daily fine will be paid. At the time your Honor entered the order the debtor urged the Court and the Court agreed that those matters should be deferred as the debtor observed at that time claimants had not incurred any sanctions and we hoped that no claimants would. But claimants now have incurred sanctions and the questions the Court deferred do need to be decided and we think it makes sense for the parties to submit simultaneous briefs on that before the next hearing. Also, perhaps the prospect that fines are going to have to start being paid on some regular basis would inspire further compliance and get us to the point where we have all or the vast majority of these claimants fully complying with the Court's orders.

So the debtor would request that the Court entertain that briefing and we think it makes sense to submit simultaneous briefs by June 16th, if your Honor is amenable to

that.

As part of those briefs, the parties could also brief another dispute that has arisen which is how to treat claimants who first told us that they do not have pending mesothelioma claims only after the fine under the Court's sanctions order started accruing? I believe so far this affects seven claimants, including the five claimants that we first heard this for yesterday. The debtor does believe those claimants incurred a fine. All of those claimants had previously told us they did have pending claims and they had checked the, the box so indicating in Part 1 of the PIQ. They could have told us at any time in the many months of litigation before sanctions were ordered that they did not have pending claims and why, but chose not to do so and apparently would not have done so without a fine and the debtor does not think that claimants should have the opportunity to essentially wait and see what the fines are and then unilaterally escape a fine by asserting they are no longer asserting a pending claim and we urge any claimants who are not asserting pending claims to let us know at the earliest opportunity so we can mark them as compliant with the PIQ order.

So unless your Honor has questions, that is the debtor's status update.

THE COURT: I don't. Thank you, Mr. Worf.

MR. WORF: Thank you, your Honor.

THE COURT: Thank you.

We'll hear from Mr. Waldrep.

MR. WALDREP: Thank you, your Honor.

So I'll start with the, the numbers. I don't think that the claimants are in any substantial disagreement about the numbers. There is some disagreement. We have, as before, your Honor, been going back and forth with looking at versions of Exhibit A and, and, and us questioning certain ones. They making changes.

So that process has gone on many times. I won't say it goes on daily, but almost daily quite a bit. There are even some that we challenged as to whether they really are in compliance or not and Bestwall's still looking at that.

So that's an ongoing process, but our numbers are not that different from the numbers. We would have said there are 362 non-compliant claimants which would mean that overall compliance is at 81.5 percent. Now Bestwall's number is a little higher than that, 382, which would be 80.5 percent, but that's not, you know, a 1 percent difference, that's not enough to, to really matter.

Now on the idea of the briefing, your Honor remembers at April, at the April 21st status hearing -- and there the terms of the status order were discussed -- I urged the Court on behalf of the claimants to provide in the sanctions order for further terms, such as to whom the fines were to be paid,

when they were to be paid, and we advocated for a position, a provision, rather, that any fine be set off against any claim against the future trust, that that was -- and so we, we took those positions on that day and Bestwall argued there was no need for any of that.

April 25th, the sanctions order was entered and then on May 3rd we appealed the sanctions order. We stated the issues on appeal and one of them was that the sanctions order was fatally flawed because it failed to provide the terms that we urged the Court to include. Now today, May 18th, Bestwall now realizes their error and advocates what we urged the Court to do and exactly the opposite of what they urged the Court to do on April 21st. Since then the -- since the appeal -- the appeal of the contempt order and the appeal of the sanctions order have been consolidated by the district court, as they should be, with no opposition by Bestwall and we -- and -- and we all understand it's all part of the same process.

So with regard to the position of Bestwall that we should now brief these issues, I want to raise what I think is a threshold issue and that is does the appeal divest the Court of jurisdiction to amend or add to the sanctions order? I think, I think that is a threshold issue that if the Court is inclined now to consider these additional terms, I think that threshold issue also needs to be briefed. Again, it was what we advocated on April 21st.

And the additional issue of, you know, claimants who said they were nonpending only after the fine, yeah, we can brief that as well if the Court wants to, to hear that.

So that's our response, your Honor.

THE COURT: All right. Thank you.

And let me ask you to respond to that last issue that was raised by Mr. Waldrep, Mr. Worf, with respect to did the, does the appeal divest the Court of jurisdiction to basically alter or amend the sanctions order at this point?

MR. WORF: Yes, your Honor.

As to the jurisdictional question, we do not believe it divests the Court of jurisdiction, although we're happy to brief that as part of the, the brief we contemplated. The debtor is, is going to be filing a motion to dismiss the appeals. Your Honor may recall we filed a motion to dismiss the previous contempt appeals with respect to the Illinois lawsuit matter and for many of the same reasons we believe that the sanctions and contempt order, the latest contempt and sanctions orders, are not final, including for the additional reason that the Court did not decide the issue of to whom the fine is paid and when and, and under what terms.

So we think that's another reason why there's not a final order and, and it's not appealable.

But putting that to the side, these issues because they were not addressed by the Court's prior orders, they are

not encompassed by the matters that the nine claimants have appealed. And, and I would emphasize that only nine claimants have appealed. So there are a great many, hundreds of claimants who, who have not appealed and, therefore, do not have a pending appeal before the district court which also affects the jurisdictional analysis.

But these are matters that, that were not encompassed by the Court's previous order and, you know, if this jurisdictional point were taken to, to, to its logical conclusion, it would prevent the Court from deciding when the fines stop, which the Court has the authority to do and, and would have the authority to do, and I'm sure the claimants would, would, would not want the Court to lack that authority while their appeal is pending because appeals can take quite a long time to be resolved.

So we don't think there is a jurisdictional issue. We're, we're happy to brief this as part of the briefs we contemplate.

And I also don't believe that Bestwall is admitting any error because our, our position is entirely consistent. We thought it made sense for the Court to defer this issue when no fines had been incurred and it was still two weeks before any fines would be incurred. We hoped that no fines would have to be incurred and, and these issues would not have to be decided. Unfortunately, they have been and so the issue now is ripe and

it does have to be decided. We think it is ripe and it should be decided and should be decided, hopefully, at the next omnibus hearing so the, the claimants and all the parties have clarity on, on this issue as, as they move forward.

Thank you, your Honor.

THE COURT: Uh-huh. Thank you.

Anything further, Mr. Waldrep?

MR. WALDREP: Your Honor, I don't think today is the, is the time or, or the, the procedure for, for deciding that particular issue. I just raised it as a threshold issue.

THE COURT: Okay.

MR. WALDREP: I'm not advocating one way or another at this time. I just think that it needs to be addressed.

And yes, there are -- there -- there will be arguments made as to the logical extension of various positions if, for instance, a court leaves out provisions and, therefore, makes the order not final, then it cannot be appealed. And so there are implications here.

So we need to, we need to think about that --

THE COURT: Okay.

MR. WALDREP: -- Judge. That's all I'm saying.

THE COURT: All right.

Let me take just a brief recess and then I'll come back, okay?

Oh, Ms. Ramsey.

MR. WALDREP: Yes, ma'am.

THE COURT: I'll hear from you before I take that brief recess. I'm sorry.

MS. RAMSEY: Thank you. I would appreciate it. Thank you, your Honor.

I really only have two brief points to make. The first is that based on even the statistic of the largest number of claimants that remain noncompliant to a degree -- I think Mr. Waldrep's calculation and mine is the same, which is 80.5 percent compliance, fully compliant -- again, we advocate that we've now reached the place of substantial compliance for purposes of estimation and that additional proceedings regarding sanctions and further compliance, we do not believe materially affect the estimation proceeding.

And the second is that to the extent that some of the alleged non-compliant folks are people who are now saying they don't have claims, understanding that, that it would have been preferable to know that earlier, those individuals don't have claims. And so it, it really is not affecting the estimation process at all. We don't represent them. They're not going to be considered as part of this case.

And so, again, we would propose that those individuals be eliminated from sort of this consideration, altogether, and that, that sanctions are not benefiting, are not achieving the, the dual goals that the Court had in mind. They're certainly,

it's certainly not motivating (garbled).

Thank you your Honor. That's all I had.

THE COURT: Thank you.

And let me ask before I take that brief recess. Does anybody else have anything to add?

(No response)

THE COURT: All right.

I'll be right back. Thank you.

(Recess from 10:00 a.m., to 10:05 a.m.)

AFTER RECESS

(Call to Order of the Court)

THE COURT: All right. Having considered the update that Mr. Worf and Mr. Waldrep offered and considering the comments of Ms. Ramsey, we will continue this, obviously, for a further status on the -- at the hearing -- at the omnibus hearing on June 23rd.

And I agree with the suggestion of Mr. Worf that we brief the issue of when, to whom, the daily fine should be paid as well as how to treat those claimants who did not identify themselves as not having a pending claim until after the sanctions order was entered.

And I do think that it makes sense -- and both of you agree -- that we should also address the issue of whether or not the pending appeal divests the Court of jurisdiction to amend the order. And I would also like for you all to go ahead

and address the issue of substantial compliance and, you know, apprise the Court of, of where, where you all think we stand with respect to substantial compliance.

As Mr. Worf suggested, I think that it would make sense for you all to submit simultaneous briefs by the end of the business day on June 16th, which I believe is the week before that June 23rd hearing.

So unless there are further questions, we will just further continue the compliance hearing until June 23rd.

MR. WORF: Thank you, your Honor.

THE COURT: All right. And so I think with that -- and I'm trying to get my hands on the Notice of Agenda -- I believe where that leaves us is with the Court's ruling on the motion to strike and I suspect if I'm wrong about that, somebody will turn their camera on and tell me otherwise. It's easier to have you all in the courtroom than it is to do this by Teams.

So I look forward to having you back here in June.

So with respect to the objection to and motion to strike *subpoena* that was issued by the debtor to Aldrich Pump, DBMP, Murray Boilers, and Paddock Enterprises or, in the alternative, to determine that the debtor has waived privilege to the case files of any matched claimant, having considered the pleadings and the arguments of counsel at the April 21st hearing I conclude that I should grant the motion in part and

deny the motion in part.

As you all know all too well, the motion to strike relates to the *subpoena* that was issued by the debtor to Aldrich Pump, DBMP, Murray Boilers, and Paddock Enterprises seeking data on claims and exposure for approximately 30,000 resolved and pending mesothelioma claims against Bestwall. The fields of data that were sought in the *subpoena* included the law firm which represented the party against the debtor defendant, jurisdiction, status of the claim against the debtor from whom discovery is being sought, the date of resolution of the claim, the date of payment, when exposure began and ended, the manner of exposure, occupation and industry of the claimant when exposed, and the products to which the claimant was exposed.

Based on a review of the motion to strike itself, while I had some pause about Bestwall seeking aggregate discovery from another debtor, I was not inclined to grant the motion primarily for the reasons articulated by the debtor in its response. In short, the ACC did not identify valid reasons under either the discovery rules or pursuant to case law regarding why the discovery sought by the debtor should not proceed.

And to address just a few of those points, the *subpoenas* don't seek highly personal, sensitive, confidential, or privileged data. Most of the information sought pursuant to

the *subpoenas* could be found in complaints and other public court filings. Section 107 of the Code is not applicable because it relates to the kind of information that can be placed on the Court's public docket rather than the discoverability of information. The *subpoenas* don't raise a concern about identity theft because Bestwall already has the personal identifying information about the claimants and they don't seek any medical information. And finally, notice was sufficient and was not required to be served on the claimants.

However, the ACC largely switched gears in its argument at the hearing on the motion and I was initially compelled by Ms. Ramsey's argument regarding proportionality and the need to rein in rather than broaden the scope of discovery at this point in order to stick with our estimation hearing date of October 2023. That was until I learned about the discovery the ACC served on four of the defense law firms a few weeks ago, but more importantly, the discovery the ACC served on the debtor the Friday before the hearing on the motion to strike which consisted of 31 discovery requests relating to 24,000 resolved mesothelioma claims, which is in addition to the discovery already served pertaining to the 2700 claim sample.

I can't in good conscience grant the motion to strike, given the magnitude of this recently served discovery, particularly having concluded that there isn't anything

otherwise problematic about the discovery sought by the debtor. I don't share the ACC's concerns about this discovery unleashing the floodgates for aggregate discovery on debtors in bankruptcy cases and that issue can be addressed on a case-by-by case basis.

I'm also hard-pressed to feel sympathetic towards the ACC in the face of the discovery that they just served on the debtor. Their major complaint was that it would precipitate discovery by them on those same debtors, but they didn't clearly articulate exactly what that discovery will need to be.

And in addition, the discovery the debtor seeks is consistent with the discovery the Court previously found was relevant and ordered from the trusts and through the personal injury questionnaires for purposes both of the debtor's estimation case and rebuttal of the ACC and FCR's case. Three of the four debtors upon whom the discovery was served did not object to the discovery. DBMP did indicate at the hearing that it was willing to condition production on Bestwall's agreement to protect the responsive data pursuant to a protective order and I will direct that the data be produced subject to such a protective order.

And it appears that the discovery was largely precipitated by the fact that the debtor has been entirely unsuccessful in getting discovery from the trusts and stonewalled in its efforts to get the PIQ discovery from the

non-compliant claimants.

And we don't hold a crystal ball regarding what the Third Circuit may do on appeal, but my hope is that by getting this information it may accelerate the debtor's discovery, particularly in the event that the debtor does not succeed on appeal in the Third Circuit.

Nevertheless, Ms. Ramsey was right when she said it was time to start contracting the university of, the universe of discovery rather than expanding it and in that regard the debtor conceded at the hearing on the motion to strike that it was really focused on the 2700 claim sample, plus the 6,000 pending mesothelioma claims, and offered that that was the information the debtor really needs.

So in an effort to begin reining in discovery, that's what I will allow and I'll grant the motion to strike as to the balance of the approximately 21,300 claimants.

With respect to at-issue waiver, I'll deny that part of the motion. I can't conclude there's been at-issue waiver pursuant to the Rhône-Poulenc standard where the debtor is seeking discovery from third, from a third party that is not, that is non=privileged information. By seeking this discovery, the debtor has not asserted a claim or a defense and attempted to prove that claim or defense by disclosing an attorney-client communication.

So that is the Court's ruling with respect to the

motion to strike.

And, Mr. Worf, I would ask you to draw the order granting in part and denying in part the ACC's motion to strike.

MR. WORF: Thank you, your Honor. I'll do that.

THE COURT: All right. Thank you.

And in reviewing the transcript from the hearing on April 21st, there was a lot of talk about the, the mini 502(d) order and the large 502(d) order.

So, Mr. Gordon, I didn't know if you all were planning to provide the Court a status of those proposed 502(d) orders.

MR. GORDON: Your Honor, Greg Gordon on behalf of the, the debtor.

We continue to have conversations with the other side about those two orders. We've provided drafts, revised drafts of those orders to the other side. The other side has agreed to continue discussions with us on those issues and other issues related to the estimation and I'm hoping in the next week or two we're going to know exactly where we stand on those orders and some other issues and then we can provide a more definitive report to your Honor about where we are.

THE COURT: Okay. Thank you.

Anything to add to that, Ms. Ramsey, or anybody else?

MS. RAMSEY: No, your Honor. I think that's a, a fair summary of where we are.

THE COURT: Okay.

Ms. Zieg?

MS. RAMSEY: Thank you.

THE COURT: I saw you pop into my screen for about a minute there.

MS. ZIEG: I, I agree. I was going to say the same thing as Ms. Ramsey. That's a fair summary of where we are.

THE COURT: All right.

I think with that, then, folks, we've got some things to tackle on June 23rd or -- I didn't bring my calendar, but -- yeah, June 23rd.

Is there anything else that the Court needs to address today before we recess?

(No response)

THE COURT: All right. Well --

Mr. Gordon?

MR. GORDON: I was just going to say, your Honor -- I'm sorry -- not from the debtor's perspective, your Honor.

And we very much appreciate you allowing us to appear via Teams. We recognize that's not the best for you, but it worked out well for us and we appreciate it.

THE COURT: Sure. And I -- and the Court will be willing to entertain that, particularly if we're going to have, you know, a short hearing like this where I may be offering a ruling and, you know, we're otherwise just conducting a status

hearing. I'm not keen on arguments being offered by Teams, but I, I think for these kinds of issues it's appropriate for us to try to do it by Teams 'cause it saves you time and expense.

So we will consider that request going forward as well, all right?

MR. GORDON: Thank you, your Honor.

THE COURT: Thank you.

And with that, we will recess and let y'all enjoy the rest of your day.

Thank you.

MR. GORDON: Thank you.

MS. RAMSEY: Thank you, your Honor.

(Proceedings concluded at 10:17 a.m.)

CERTIFICATE

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

/s/ *Janice Russell* May 18, 2022

Janice Russell, Transcriber Date

EXHIBIT B

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

IN RE:	:	Case No. 20-30608-JCW (Jointly Administered)
ALDRICH PUMP LLC, ET AL.,	:	Chapter 11
Debtors.	:	Charlotte, North Carolina
	:	Thursday, January 27, 2022 9:30 a.m.
	:	

: :

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE J. CRAIG WHITLEY,
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES (via Teams):

For the Debtors:

Rayburn Cooper & Durham, P.A.
BY: JOHN R. MILLER, JR., ESQ.
C. RICHARD RAYBURN, JR., ESQ.
MATTHEW TOMSIC, ESQ.
227 West Trade St., Suite 1200
Charlotte, NC 28202

Jones Day
BY: BRAD B. ERENS, ESQ.
MORGAN R. HIRST, ESQ.
CAITLIN K. CAHOW, ESQ.
MARK A. CODY, ESQ.
77 West Wacker, Suite 3500
Chicago, IL 60601

Audio Operator: COURT PERSONNEL

Transcript prepared by:

JANICE RUSSELL TRANSCRIPTS
1418 Red Fox Circle
Severance, CO 80550
(757) 422-9089
trussell31@tdsmail.com

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

APPEARANCES (via Teams continued):

For the Debtors:	Evert Weathersby Houff BY: C. MICHAEL EVERT, JR., ESQ. 3455 Peachtree Road NE, Ste. 1550 Atlanta, GA 30326
	Jones Day BY GREGORY M. GORDON, ESQ. 2727 N. Harwood Street Dallas, TX 75201
For the ACC:	Winston & Strawn LLP BY: CARRIE V. HARDMAN, ESQ. DAVID NEIER, ESQ. 200 Park Avenue New York, NY 10166-4193
	Caplin & Drysdale BY: KEVIN MACLAY, ESQ. TODD E. PHILLIPS, ESQ. One Thomas Circle, NW, Suite 1100 Washington, DC 20005
	Robinson & Cole LLP BY: NATALIE D. RAMSEY, ESQ. DAVIS LEE WRIGHT, ESQ. 1201 N. Market Street, Suite 1406 Wilmington, DE 19801
	Hamilton Stephens BY: GLENN C. THOMPSON, ESQ. ROBERT A. COX, JR., ESQ. 525 North Tryon Street, Ste. 1400 Charlotte, NC 28202
For the FCR:	Orrick Herrington BY: JONATHAN P. GUY, ESQ. DEBRA FELDER, ESQ. 1152 15th Street, NW Washington, D.C. 20005-1706
	Anderson Kill P.C. BY: ROBERT M. HORKOVICH, ESQ. 1251 Avenue of the Americas New York, NY 10020

APPEARANCES (via Teams continued):

For Trane Technologies Company LLC and Trane U.S. Inc.:	McCarter & English, LLP BY: GREGORY J. MASCITTI, ESQ. 825 Eighth Avenue, 31st Floor New York, NY 10019
	McCarter & English, LLP BY: PHILLIP S. PAVLICK, ESQ. Four Gateway Center 100 Mulberry Street Newark, NJ 07102
	Burt & Cordes, PLLC BY: STACY C. CORDES, ESQ. 122 Cherokee Road, Suite 1 Charlotte, NC 28207
For London Market Insurers:	Duane Morris LLP BY: RUSSELL W. ROTEN, ESQ. 865 S. Figueroa St., Suite 3100 Los Angeles, CA 90017-5440
For Allstate Insurance Company:	Windels Marx BY: ANDREW CRAIG, ESQ. One Giralda Farms Madison, NJ 07940
For First State, Hartford Accident, New England Insurance Company, and Twin Cities:	WilmerHale BY: ISLEY M. GOSTIN, ESQ. 1875 K Street, N.W., Suite 600 Washington, DC 20006
For Travelers Insurance Companies:	Steptoe & Johnson LLP BY: JOSHUA R. TAYLOR, ESQ. 1330 Connecticut Avenue, N.W. Washington, D.C. 20036
For TIG Insurance Company:	Ifrah Law BY: GEORGE R. CALHOUN, ESQ. 1717 Pennsylvania Ave., N.W. #650 Washington, DC 20006
For Employers Mutual Insurance Company:	JANET A. SHAPIRO, ESQ. 325 N. Maple Drive, #15186 Beverly Hills, CA 90210

ALSO PRESENT (via Teams):

SHELLEY K. ABEL
Bankruptcy Administrator
402 W. Trade Street, Suite 200
Charlotte, NC 28202-1669

JOSEPH GRIER, FCR
521 E. Morehead St, Suite 440
Charlotte, NC 28202

those proof of claims not only as the claim forms, but plan ballots and we were at the point of where we needed to know who was where. We're not in that factual circumstance, procedural circumstance at the present time and as I'm allowing this as a, a proof of claim, I think we need to stick more closely to the official form and its level of attestation. I, I don't think we ought to be making up additional standards.

So to that extent, I agree with the ACC that the, the penalty of perjury and admissible evidence things, those, those shouldn't be imposed. I'll let y'all do the sharp-pencil work on trying to rewrite those provisions. And again, if you get into trouble, can't agree on that, I'll get involved at that point in time.

The third argument, of course, I've kind of spilled the beans on my ruling here on this, but the, the Rules prohibit the modified claim form, is what the pitch is, and that Rule 9009 says the official form shall be used without alteration other than minor changes, etc. The additional information, personal identifying information, the alleged asbestos type, those things, I think, are okay. The third, as I said, the certification that the claim is supported by admissible evidence, I think that's taking things too far.

I was around at the bankruptcy court when the proposal for the new 9009(a) was, was implemented. I know where it came from. It was essentially an effort by the consumer creditor

body across the country, the, to avoid having courts make up their own proof of claim forms and a lot of local requirements as to plans and treatment under plans. I don't think it was intended for a circumstance like this and I think that if we, effectively, change, as I'm going to tell you in a moment, one other thing, I believe we're going to be okay using it as a proof of claim form.

As to some of the other stuff, what I think we ought to do is move a couple of those matters, the -- the -- the -- the specification of disease types and the, the background information, from the claim into the questionnaire.

I don't agree with the fourth argument that the ACC made that this Rule 9009 makes the questionnaire inappropriate. The questionnaire is, is separate. I don't think the Rule applies to it. Certainly, it's been approved in our Circuit in the Robins case. Diocese of Buffalo isn't controlling authority and I was inclined to say that I agree that the -- and at the end of the day that court appears to have approved a claim supplement, notwithstanding 9009.

I don't agree with the argument that 2004 prohibits a questionnaire. I don't think it's a pending proceeding matter for a couple reasons. I don't think that it requires information not permitted by Rule 2004. I'm not going to recite to you all the history about pending proceeding rules. You know that those are judge-created doctrines. The idea is

to avoid using 2004 to undercut the discovery rules in an adversary. You also know that the Court has discretion about the use of 2004 in a given circumstance.

The, the fact that there are litigation claims pending in state court would not appear to me to be of any moment. Those claims are stayed and will likely be stayed during the duration of this case. That is the case in almost every bankruptcy. I've never seen a bankruptcy case that invoked the pending proceeding rule based on stayed pre-petition litigation where it prevented a 2004 investigation about the claim in the bankruptcy case for purposes of the bankruptcy case. I've never heard of a bankruptcy case where a debtor was required to seek relief from stay and pursue litigation in the state court to obtain the information necessary to the bankruptcy case. I don't think you have to object to the claim to obtain basic information, as the debtor argues. We're not contesting the merits of these claims at, at this time. We probably never will. The trust will do that, if there is one. The purpose here is to get basic information about the claims that would be, needed to be funneled to a trust and how to get through a plan and I think that all is fair game under 2004.

As to whether or not this is discovery where there's no litigation and whether that's inappropriate, I don't think there's any impropriety here. There are numerous cases that have used similar questionnaires. Robins was one, of course.

As to the source of authority, while many courts cite Rule 2004, I don't think either it or Rule 26 are our only options. The power to require those questionnaires likely exists separate and apart from Rule 2004 under the Court's inherent powers. Wall v. Siegel makes mention of that. And 105 would be another, the Fourth Circuit's Robins decisions, maybe there are even other authorities. I think the Court has some discretion to try to help the parties obtain the information they need in the case.

So I don't think the debtor's using this to avoid the more restrictive discovery rules that apply to adversaries. I think there's a proper purpose and I think there's cause shown here.

As to the argument of whether the PIQ would be burdensome and harassing, I agree that there's going to be some significant work required here, but I also believe it's necessary, I believe it's customary, and I don't believe it's unduly burdensome. As argued, most of the information is routine to asbestos litigation. The trust claims, you can give authorization so the debtor can obtain the claims information from the trust directly. I think it's certainly relevant. Judge Hodges held in Garlock that these non-debtor exposures and recoveries were relevant. I agree with that argument. I think this is the only place -- oh. Back on that.

Even if in the tort system you only get this post

judgment, the short answer is we're not in the tort system. We're in a bankruptcy case. We're trying to use a collective proceeding and the debtor's effort is to try to treat the claims under a trust.

So I think it's just a difference and the information is needed. This is the only way and only practicable way to obtain the information. I don't think the proposal that the debtors use the information in their own files and then try to seek individual bits of information that they don't have, I don't think that's practicable. It would certainly be inefficient. I don't think it would give us a clear picture at the end of the day of the estimated liabilities.

I think the confidentiality concerns have been dealt with in that only aggregate settlement information is being sought. The contention that the effort is to broadly disclose personal and private information, I think that's hyperbolic. The parties have to have court approval to get access to this. That requires a motion on notice, a hearing, a demonstration of cause,.etc. And there are confidentiality and use restrictions as well.

So this is the same type of information that courts have approved in prior asbestos cases, including Garlock. So I think it's appropriate. I would put some of the stuff that is factual in nature in the proof of claim form as proposed. I would tell you to stick as closely as possible as you can to

EXHIBIT C

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

IN RE:	:	Case No. 17-31795-LTB
BESTWALL LLC,	:	Chapter 11
Debtor,	:	Charlotte, North Carolina Thursday, March 4, 2021
	:	9:34 a.m.

: :

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE LAURA TURNER BEYER,
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES (via ZoomGov):

For the Debtor:	Robinson, Bradshaw & Hinson, P.A. BY: GARLAND S. CASSADA, ESQ. RICHARD C. WORF, ESQ. STUART L. PRATT, ESQ. 101 N. Tryon Street, Suite 1900 Charlotte, NC 28246
	Jones Day BY: GREGORY M. GORDON, ESQ. 2727 North Harwood St., Suite 500 Dallas, TX 75201-1515
	Jones Day BY: JEFFREY B. ELLMAN, ESQ. 1420 Peachtree Str., N.E., #800 Atlanta, GA 30309
Audio Operator:	COURT PERSONNEL
Transcript prepared by:	JANICE RUSSELL TRANSCRIPTS 1418 Red Fox Circle Severance, CO 80550 (757) 422-9089 trussell31@tdsmail.com

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

APPEARANCES (via ZoomGov continued):

For the Debtor:	J. JOEL MERCER, ESQ. 133 Peachtree Street, 39th Floor Atlanta, GA 30303
	King & Spalding LLP BY: RICHARD A. SCHNEIDER, ESQ. 1180 Peachtree Street, NE, #1600 Atlanta, GA 30309
For Official Committee of Asbestos Claimants:	Robinson & Cole LLP BY: NATALIE D. RAMSEY, ESQ. DAVIS LEE WRIGHT, ESQ. 1201 N. Market Street, Suite 1406 Wilmington, DE 19801
For Rick Bankston, Member of ACC:	Shepard Law, P.C. BY: MICHAEL SHEPARD, ESQ. 160 Federal Street Boston, MA 02110
For Georgia-Pacific LLC:	Debevoise & Plimpton LLP BY: MARK P. GOODMAN, ESQ. M. NATASHA LABOVITZ, ESQ. 919 Third Avenue New York, NY 10022
	Rayburn Cooper & Durham, P.A. BY: JOHN R. MILLER, JR., ESQ. 227 West Trade St., Suite 1200 Charlotte, NC 28202
For Georgia-Pacific Holdings:	Reed Smith LLP BY: DEREK J. BAKER, ESQ. 1717 Arch Street, Suite 3100 Philadelphia, PA 19103
For Asbestos Claimants:	Buck Law Firm BY: ROBERT C. BUCK, ESQ. 3930 East Jones Bridge Road, #360 Peachtree Corners, GA 30092
For the United States:	U. S. Department of Justice BY: SETH B. SHAPIRO, ESQ. 1100 L Street, NW, Room 7114 Washington DC 20005

APPEARANCES (via ZoomGov continued):

For Future Claimants' Representative, Sander L. Esserman:	Alexander Ricks, PLLC BY: FELTON PARRISH, ESQ. 1420 E. 7th Street, Suite 100 Charlotte, NC 28204 Young Conaway BY: EDWIN J. HARRON, JR., ESQ. SHARON ZIEG, ESQ. 1000 North King Street Wilmington, DE 19801
For Manville Personal Injury Settlement Trust and Delaware Claims Processing Facility:	Friedman Kaplan BY: JASON C. RUBINSTEIN, ESQ. 7 Times Square New York, NY 10036-6516
ALSO PRESENT (via ZoomGov):	SANDER L. ESSERMAN Future Claimants' Representative 2323 Bryan Street, Suite 2200 Dallas, TX 75201-2689 SHELLEY K. ABEL Bankruptcy Administrator 402 West Trade Street, Suite 200 Charlotte, NC 28202 JON INT-HOUT Technology Consultant

of many years and I think that's because courts and parties in those cases have acknowledged that the questionnaires will be helpful to all parties and efficient for purposes of an estimation proceeding. Even in the Garlock case, the order authorizing the debtors to use and issue the questionnaire was issued pursuant to Rule 2004, but recognized that the questionnaire constituted a hybrid form of discovery.

The debtor seeks to serve the questionnaire on counsel of record for the claimants by U. S. Mail, unless the claimants were unrepresented, then on the claimants, themselves. The ACC and the FCR argued that the debtor should be required to issue subpoenas to each of the affected mesothelioma claimants to obtain the information sought in the questionnaire. In reviewing the orders attached to the debtor's motion in which prior courts ordered the use of a questionnaire, none of them required the issuance of a subpoena. That's likely because to do so is neither practical nor feasible.

In addition, what the debtor has proposed is consistent with this Court's order entered on November 8, 2017 at the inception of the case which authorizes the debtor to serve all notices, mailings, filed documents, and other communications relating to this case on the claimants in care of their counsel. I suspect the parties agreed on this provision in the Court's November 8, 2017 order because they recognized the efficiency and necessity of serving the

documents in this case to claimants' counsel, rather than the claimants in order to avoid confusion and delay. And I question whether the claimants' counsel really want the questionnaires to be served directly on the claimants in that, ultimately, they will be the ones who have to complete the form because they have the necessary information to do so. Again, serving the questionnaire on the claimants by subpoena would likely just create confusion and delay.

With respect to the pending proceeding rule, the Court concludes that precluding the discovery sought by the debtor would not serve the purpose of the pending proceeding rule. The reason for the rule is to avoid Rule 2004 usurping the narrower rules for discovery in a pending adversary proceeding. However, the Court holds the ultimate discretion whether to permit the use of Rule 2004 and courts have for various reasons done so despite the existence of pending litigation.

With respect to the litigation pending in state court, that litigation is subject to the automatic stay. And with regards to the contested estimation proceeding, as a practical matter the debtor's motion for personal injury questionnaires was filed and pending prior to the entry of the order requiring estimation which initiated the contested matter. More importantly, I can't conclude that the debtor is seeking to use the questionnaires pursuant to Rule 2004 in order to avoid the more restrictive discovery rules applicable in adversary

proceedings and have determined that the debtor is using Rule 2004 for a proper purpose, given the facts and circumstances of this case.

The ACC argues that the questionnaire imposes an undue burden on the claimants who are being asked to complete the questionnaire, but the objection was more global, rather than being focused on specific questions that it found objectionable. One exception to that was the request for settlement amounts, but I don't see the harm in providing that information since it's being asked for on an aggregate basis for tort defendants and trusts. And I understand that information was required in all of the questionnaires attached to the debtor's motion with the exception of the Specialty Products case.

The ACC insists that the debtor has an extensive database and information which it should be required to first examine and only then should it be allowed to seek the missing parts from the claimants. As is evidenced by Dr. Bates' testimony, I'm not convinced that that proposal is a practical, feasible, or efficient alternative because the debtor's database does not possess complete and up-to-date information for pending asbestos claims. And Mr., and as Mr. Worf said, that proposal would likely be an administrative nightmare.

The Court does not take lightly the work completing this questionnaire will create for the claimants and their