

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

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

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1 P R O C E E D I N G S

2 THE COURT: -- Adversary or Miscellaneous Proceedings,
3 of course.

4 Let's start by getting appearances. And then I would
5 just say announcing, if you've got a limited appearance, just
6 tell me which matter you're in. I think most of you cross over
7 and the hearings today will cross over from base case to, to
8 proceeding. So that won't be that often.

9 But let's start with the debtors' side and see who's
10 here.

11 MR. HIRST: Good morning, your Honor. Morgan Hirst
12 for the debtors. I'll try and go through the whole squad
13 today.

14 From Jones Day --

15 THE COURT: It's a memory test.

16 MR. HIRST: -- you have Brad Erens and Rob Hart
17 joining me. From Evert Weathersby, you have Michael Evert and
18 Claire Maisano. From Rayburn Cooper, Rick Rayburn and Jack
19 Miller. And from the debtors, Allan Tananbaum, and I think I
20 hit everybody for the debtors.

21 MR. EVERT: And Rob Sands.

22 MR. HIRST: Rob?

23 MR. EVERT: Sands.

24 MR. ERENS: Sands.

25 MR. HIRST: Oop, and Rob Sands from Trane

1 Technologies, yes.

2 THE COURT: Okay, very good.

3 Okay. This side?

4 MS. MOSKOW-SCHNOLL: Beth Moskow-Schnoll for the DCPF
5 Trusts and also Lance Martin.

6 THE COURT: Okay.

7 MR. MARTIN: Morning, your Honor.

8 MS. MOSKOW-SCHNOLL: Thank you.

9 MS. BENNETT: Good morning, your Honor. Linda Bennett
10 from Lowenstein Sandler. I've got my partner, Michael Kaplan,
11 here on behalf of the Verus Trusts.

12 THE COURT: Very good.

13 MR. GUERKE: Good morning, your Honor. Kevin Guerke
14 from Young Conaway, on behalf of Delaware Claim Processing
15 Facility. I'm here today with my local counsel, Felton
16 Parrish. And also, my client from DCPF, Richard Winner.

17 THE COURT: All right.

18 MR. GUY: Good morning, your Honor. Jonathan Guy for
19 the FCR. And here today is Mr. Grier's summer associate,
20 Rachel Piquena (phonetic).

21 THE COURT: Okay. Welcome. No, bankruptcy court's
22 not like this every day.

23 MR. WRIGHT: Good morning, your Honor. Davis Wright
24 from Robinson & Cole on behalf of the Committee. I'm joined
25 today by my colleagues, Katherine Fix from Robinson & Cole, Jim

1 Wehner from Caplin & Drysdale, and Rob Cox from Hamilton &
2 Stephens Steele & Martin.

3 THE COURT: Okay.

4 Mr. Mascitti.

5 MR. MASCITTI: Good morning, your Honor. Greg
6 Mascitti, McCarter & English, on behalf of Trane Technologies
7 Company LLC and Trane U.S. Inc. And I'm joined by Brad Kutrow
8 of McGuireWoods.

9 THE COURT: Okay.

10 Mr. Oleynik.

11 MR. OLEYNIK: Morning, your Honor. Jeff Oleynik,
12 Brooks Pierce, the officer and director defendants in the
13 adversary proceedings.

14 THE COURT: Mr. Roten.

15 MR. ROTEN: Good morning, your Honor. Russell Roten,
16 Duane Morris, representing Certain Insurers.

17 THE COURT: Mr. Waldrep.

18 MR. WALDREP: Good morning, your Honor. Tom Waldrep.
19 I'm here representing Non-Party Certain Matching Claimants.
20 And with me is Dan Hogan from the Delaware bar. I'm local
21 counsel for Mr. Hogan.

22 I'm also local counsel for Joseph Lemkin, who is on
23 the phone today, your Honor. That matter transferred from New
24 Jersey.

25 THE COURT: Okay.

1 Others in the courtroom?

2 MR. ANSELM: Good morning, your Honor. Andrew
3 Anselmi from Anselmi & Carvelli. We represent Verus Claims
4 Services. And Mark Eveland from Verus is in the courtroom as
5 well. And I'm sorry. And local counsel, Jay Bender, from the
6 Bradley firm.

7 THE COURT: Okay, Mr. Bender.

8 MR. BENDER: Morning.

9 THE COURT: Thank you.

10 Anyone else in the courtroom needing to announce?

11 Okay.

12 MR. HOUSTON: Your Honor --

13 THE COURT: Yes, Mr. Houston.

14 MR. HOUSTON: -- Andy Houston. I'm, I'm here as local
15 counsel for the Verus Trusts as well.

16 Thank you.

17 THE COURT: Thank you.

18 That got it for the courtroom?

19 (No response)

20 THE COURT: All right. With some trepidation, I'll
21 ask if there are telephonic appearances. Let's do the, if your
22 name begins with A through H of the alphabet, please tell me
23 now. Anyone?

24 MR. WELLBROCK: Good morning, your Honor. Zachary
25 Wellbrock from Anselmi & Carvelli listening in telephonically

1 on behalf of Verus.

2 THE COURT: Others?

3 (No response)

4 THE COURT: I through M? Anyone?

5 (No response)

6 THE COURT: N through Z?

7 MR. TAYLOR: Good morning, your Honor. Joshua Taylor
8 from Steptoe & Johnson on behalf of the Travelers Insurance
9 Companies.

10 THE COURT: Any others?

11 (No response)

12 THE COURT: Mr. Wright, did you want to say something?

13 MR. WRIGHT: Yes, your Honor. I'm, I'm not sure if
14 she's being able to unmute. Natalie Ramsey is also on the
15 phone on behalf of the Committee.

16 THE COURT: Okay, very good.

17 MR. WRIGHT: Thank you, your Honor.

18 THE COURT: Anyone else? Star 6 if you're having
19 trouble with the receiver.

20 (No response)

21 THE COURT: Anyone else?

22 All right. Maybe we have it. Very good.

23 We have a printed agenda and as I understand it, there
24 are three matters up, two of them are uncontested at the
25 present time.

1 Shall we get those out of the way? Care to lead off,
2 Mr. Hirst?

3 MR. HIRST: Sure, your Honor.

4 THE COURT: The first matter is, is the un, motion to
5 reconsider the ruling granting the motion to strike, the
6 debtors' motion to strike, in view of Judge Cogburn's ruling, I
7 guess, that we're talking about.

8 Who wants to be heard with regard to that?

9 Yes, Counsel.

10 MR. HOGAN: Thank you, your Honor.

11 THE COURT: And for the benefit of those on the phone
12 and me and my long list of appearances, if y'all will all
13 please reannounce your name as you're speaking, it would be
14 helpful to those who aren't in, aren't present.

15 MR. HOGAN: Certainly, your Honor.

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

18 MR. HOGAN: Good morning. Daniel Hogan --

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

21 MR. HOGAN: -- with Hogan McDaniel on behalf of the
22 Non-Party Certain Matching Claimants.

23 Your Honor, this is our motion to reconsider the
24 motion to strike. This relates to the Delaware Miscellaneous
25 Proceeding --

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

3 MR. HOGAN: -- which is denoted on your docket as 22-
4 303. I'll note for the Court's benefit, of course, that this
5 is an uncontested matter.

6 THE COURT: Right.

7 MR. HOGAN: No opposition from the debtors or the FCR
8 or the Committee or any other constituency has filed an
9 objection to the motion.

10 You will recall that at the March 30th hearing --

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

13 MR. HOGAN: -- the Court granted the debtors' motion
14 to strike finding that, "Unless you want to identify your
15 clients, I can't let you participate," was --

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

18 MR. HOGAN: And that's on Page 134 of that transcript.

19 As the Court knows, the Non-Party Certain Matching
20 Claimants appealed the order denying the motion to proceed
21 anonymously. And that's in the District Court at 23-cv-0099.

22 On March 8th, the Certain Matching Claimants filed the
23 motion to stay pending appeal in the District Court. On April
24 26, Judge Cogburn entered an order granting that stay. And so
25 from our perspective, your Honor, we respectfully request that

1 the Court reconsider your March 30, 2023 ruling granting the
2 motion to strike.

3 I'll denote for the Court's record that an actual
4 order hasn't yet been entered on that, just so you, you have
5 the same benefit of the record that I do.

6 THE COURT: Right. Okay.

7 MR. HOGAN: So your Honor, pursuant to Civil Rule 52
8 applicable to contested matters, as you're well aware, the
9 Court may amend its findings and that's exactly what we're here
10 today to ask you to do so that we can participate. We had
11 previously filed, obviously, an objection to the subpoena. We
12 also filed an objection to the debtors' motion for a rehearing
13 to address this sampling issue, which is today before the
14 Court, we attended the depositions of the various experts, and
15 we specifically request that the Court reconsider and remedy
16 the motion to strike in light of the District Court's ruling.

17 THE COURT: Okay.

18 Anyone want to be heard in opposition?

19 MR. HIRST: I don't think it's in opposition, your
20 Honor. On behalf of the debtors, Morgan Hirst.

21 You know, we believe your order was correct when it
22 was issued. We still believe your order was correct, but we
23 also can read District Court orders and we've seen Judge
24 Cogburn's order. Since literally the day of Judge Cogburn's
25 order, we told Mr. Hogan we understood it. He can participate

1 going forward. We have no objection. As Mr. Hogan pointed
2 out, they have participated in all the depositions that have
3 taken place --

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

6 MR. HIRST: -- all of which postdate April 26th,
7 anyway. So they've been a part of this upcoming motion
8 proceeding the whole time.

9 So we agreed with the substance of your order, your
10 Honor, and we have a motion to reconsider Judge Cogburn's order
11 pending at the moment in front of him. But we understand the
12 situation.

13 THE COURT: Okay. It's the same dilemma that we had
14 before where you've announced a bench ruling, but no written
15 order has been entered. Is it a reconsideration? Is it a
16 rehearing? Is it, effectively, a supplemental stay pending
17 appeal with regard to the motion to strike? I don't know how
18 you want to characterize it, but the bottom line is I know that
19 III, Roman Numeral III is bigger than Roman Numeral I and
20 consequently, we will, we will permit the Matching Claimants to
21 participate in the case.

22 Why don't we just say that we grant the motion to
23 reconsider, but without prejudice to the debtors renoticing
24 their original motion should circumstances change at the
25 District Court or at the Circuit Court level.

1 Now wait. There's no need to refile another motion.
2 If, if for some reason we end up with a -- Judge Cogburn, if he
3 were to be reversed by the Circuit Court or something like
4 that, then we don't wanna have to go through the whole exercise
5 again. Do we?

6 MR. HOGAN: Well, your Honor, I, I would -- obviously,
7 the Matching Claimants would prefer to reserve their rights. I
8 don't know what those circumstances might be that might give
9 rise to that circumstance.

10 THE COURT: Right.

11 MR. HOGAN: And so with the understanding that I would
12 ask at least to be heard in the event that some situation
13 unfolded --

14 THE COURT: Sure.

15 MR. HOGAN: -- in that nature, I have no opposition to
16 the construct that you've outlined. But I, I would wanna
17 reserve my right to at least --

18 THE COURT: Sure.

19 MR. HOGAN: -- have the opportunity to be heard.

20 THE COURT: I would assume that if, if whatever came
21 out of the appeal, let's say the debtor were to win that
22 appeal, then we would have to revisit it. But all I'm saying
23 is why don't we keep the current pleading as the vehicle and
24 then we renote it and talk about it further.

25 MR. HOGAN: And, and I'm fine with that, your Honor.

1 I think that makes sense.

2 THE COURT: Okay.

3 MR. HIRST: And just for sake of clarity -- and I
4 think your Honor's there -- this is the motion to reconsider,
5 our, the debtors', motion to strike --

6 THE COURT: Right.

7 MR. HIRST: -- their participation in pleadings in
8 this hearing. It is not --

9 THE COURT: Right.

10 MR. HIRST: There's still an appeal going on of your
11 Honor's ruling denying them the right to proceed anonymously
12 and you're not --

13 THE COURT: Right.

14 MR. HIRST: -- reconsidering that.

15 THE COURT: Right.

16 MR. HIRST: Correct.

17 THE COURT: Right.

18 MR. HIRST: Yep.

19 THE COURT: The -- I can't reconsider what's at the
20 District Court, so.

21 MR. HIRST: Already -- yep. It's already gone,
22 jurisdiction.

23 THE COURT: No. I'm recon -- effectively, what I'm
24 doing is augmenting his stay with regard to the motion to
25 strike, okay, pending appeal.

1 So bottom line is I'm granting your motion, but we'll
2 talk about it again if, if circumstances change. For now,
3 you're allowed to participate and that'll be fine.

4 MR. HOGAN: I'm back under the tent, your Honor.
5 Thank you very much. I appreciate it.

6 THE COURT: Very good.

7 MR. HOGAN: Your Honor, just so the record's entirely
8 clear, do you want me to prepare a form of order? I mean, tell
9 me how you want --

10 THE COURT: Yeah. That way, that'll keep me from
11 being harassed by the clerk's office on having an open order
12 out. So why don't we get something that simply says that in
13 view of Judge Cogburn's ruling, the motion to reconsider this
14 is, is basically granted. And then add a sentence that,
15 "Should circumstances change, either party may renote the
16 debtors' original motion to strike," and we'll talk about it at
17 another hearing, something to that effect.

18 MR. HOGAN: That's fine, your Honor.

19 THE COURT: Something simple.

20 MR. HOGAN: Understood. I will run that by debtors'
21 counsel, of course, and we'll, I'm sure, arrive at something
22 close to an agreed form of order.

23 THE COURT: Okay, very good.

24 MR. HOGAN: Thank you, your Honor.

25 THE COURT: All right. Thank you.

1 And of course, we won't wait for the order to allow
2 the participation.

3 MR. HOGAN: Thank you.

4 THE COURT: Okay. There was another matter that was
5 uncontested, No. 3, in the base case, the Agreed Motion to
6 Amend the Case Management Order for Estimation.

7 Should we talk about that next?

8 Mr. HIRST: We, we can, your Honor. Morgan Hirst
9 again on behalf of the debtors.

10 In light of what's about to follow, this motion is
11 probably not a particularly big surprise. I will say the
12 genesis of this, the ACC reached out to both us, the FCR, to
13 Trane, the participants in the estimation, did suggest the one
14 year extension and we agree. You know, we did not think, with
15 due respect, that 11 months after we issued the subpoenas we
16 wouldn't have a, any information yet. So that's part of what's
17 necessitating it. There's, and there's plenty of discovery
18 going on in the case.

19 So we did ask by agreement for, basically, the
20 schedule from essentially where we were moving forward to be
21 extended by a year. And so the dates -- it -- it -- the dates
22 in the proposed CMO kinda reflect -- they don't kinda reflect
23 that. They do reflect that. And so it would, it would end the
24 -- it, it would basically set the end of written discovery for
25 August 1, 2024 --

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

3 MR. HIRST: -- is the date we agreed on and then the
4 dates that flowed behind it will still flow behind it in the
5 same way they did before.

6 THE COURT: Okay.

7 Anyone else want to be heard on that matter?

8 Mr. Guy.

9 MR. GUY: You know I have to say it, your Honor, that
10 we agreed very reluctantly. You'll remember what we said when
11 this came up first time around, but there's nothing we can do
12 because the debtors don't have the trust information and
13 because they don't have the trust information, the Committee
14 doesn't have the claim files information.

15 So it's a chicken-and-an-egg problem, but we agreed
16 reluctantly.

17 Thank you, your Honor.

18 THE COURT: Anyone else?

19 (No response)

20 THE COURT: All right. Since all are in agreement, I,
21 I'm not going to disagree. Motion is granted.

22 Who's gonna do the proposed order there? Y'all will
23 work it out?

24 MR. HIRST: We'll take care of it, your Honor.

25 THE COURT: Mr. Hirst. Okay.

1 All right. Are there any other preliminaries before
2 we get to the main event, the debtors' motion for rehearing on
3 sampling?

4 MR. HIRST: None from the debtors, your Honor.

5 THE COURT: Anyone feels the need for case updates or
6 status reports or anything of that ilk?

7 (No response)

8 THE COURT: Okay. Then we'll call No. 2, the Debtors'
9 Motion for Rehearing Concerning the Issue of Sampling on DCPF's
10 Subpoena-Related Motions and a variety of other joinders,
11 objections, and, and limited statements. So we won't read
12 through all of those. They're on the printed docket.

13 Debtors' motion. Wanna lead off?

14 MR. HIRST: We do, your Honor. Good morning again.
15 Morgan Hirst for the debtors.

16 I think we laid out in an e-mail to Chambers kind of
17 what --

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

20 MR. HIRST: -- the parties, I think, have agreed or
21 certainly there's no objection to in terms of a, of an order
22 for this 'cause there's a lot. And so just -- I'm gonna
23 basically do a one-minute catch-up for you to remind you kinda
24 where we are and then we'll dive into -- you're gonna hear some
25 testimony today and some argument after the testimony.

1 Your Honor remembers that these subpoenas date back to
2 your Honor's order, I believe it was July 1st of last year,
3 when you authorized us to issue these subpoenas based on a
4 motion we had filed back in April. We served those right after
5 the 4th of July and obviously have met motions to quash since.
6 The DCPF case was transferred up here in September from the
7 District of Delaware. Your Honor on November 30th entered the
8 order denying their motion to quash, but limiting us to a 10
9 percent sample. The Verus cases were also then transferred up
10 here from the District of New Jersey.

11 And so we are back. After the March 30th hearing we
12 had, or before that I should say, we filed our motion for
13 rehearing. Your Honor, I believe procedurally, granted our
14 motion for rehearing in that. You said you were going to
15 rehear the DCPF --

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

18 MR. HIRST: -- motions to quash again on the issue of
19 whether or not the subpoenas will be limited to a sample or
20 whether or not you'll order full compliance with the subpoenas.

21 We understand and I believe Verus agreed and the Verus
22 Trusts agreed that they would be, they would participate, but
23 that they would be bound similarly or part of that motion
24 hearing that we're here today and that's certainly how the
25 parties have proceeded since that, since that hearing.

1 Since March 30th, your Honor, what you haven't seen,
2 other than maybe what you've read in the pleadings, the, the
3 Objectors, I'll call them generally, the Trusts and Claims
4 Facility, have retained an expert. We have an expert report
5 from Dr. Wyner. Dr. Mullin was deposed. Dr. Wyner was
6 deposed. Mr. Eveland, the CEO of Verus, was deposed.
7 Mr. Winner, the COO of DCPF, was deposed. You've seen the
8 additional briefing since then as well. The Objectors filed a
9 number of briefs in response. We filed a consolidated reply.
10 The FCR filed a reply as well.

11 And so today I believe, well, I certainly know the
12 debtors are gonna call Dr. Mullin to start off, I believe we'll
13 hear testimony as well from the Objectors, and then we'll
14 conduct oral argument at the end.

15 THE COURT: All right.

16 Others by way of opening? That -- everyone knows why
17 we're here?

18 (No response)

19 THE COURT: Okay, very good.

20 Call your witness.

21 MR. EVERT: Thank you, your Honor. Michael Evert for
22 the debtors.

23 We would call Dr. Charles Mullin to the stand.

24 And your Honor, since, since we're in evidentiary mode
25 today --

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

3 MR. EVERT: -- we'd ask, if there are any fact
4 witnesses in the room, that we invoke the Rule.

5 THE COURTROOM DEPUTY: Please place your --

6 THE COURT: Pardon?

7 MR. EVERT: If the --

8 THE COURT: I couldn't hear you over the --

9 MR. EVERT: I'm sorry, your Honor. Since we're in
10 evidentiary mode today, we would ask if there are any fact
11 witness in the room, we would invoke the Rule.

12 THE COURT: Who's here? Are we opposed?

13 (No response)

14 MR. GUERKE: Kevin Guerke on behalf of DCPF, your
15 Honor.

16 Is, is this a request for sequestration?

17 MR. EVERT: Yeah.

18 THE COURT: I think it is.

19 MR. GUERKE: I don't think we have an objection.

20 THE COURT: Okay.

21 We have a couple of conference rooms. There's some
22 benches out in the, in the way. We'll call you when we need
23 you, folks. All right.

24 (Prospective witnesses exit the courtroom)

25 THE COURTROOM DEPUTY: Place your left hand on the

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1 Bible and raise your right hand, please.

2 DR. CHARLES H. MULLIN, DEBTORS' WITNESS, SWORN

3 MR. EVERT: Your Honor, that's the first time

4 anybody's ever said they couldn't hear me.

5 THE COURT: I was hearing the people in between you

6 and me better, so.

7 Go ahead.

8 VOIR DIRE EXAMINATION

9 BY MR. EVERT:

10 Q Would you state your name for the record, please, sir?

11 A Charles Henry Mullin.

12 Q And Dr. Mullin, would you tell me your educational

13 background?

14 A I received my undergraduate degrees at the University of

15 California at Berkeley in mathematics and economics. I went

16 from there to the University of Chicago where I received a

17 Ph.D. in economics.

18 Q And have you also participated in other ways in the

19 academic world?

20 A I, upon getting my Ph.D., I accepted a position on the

21 faculty at Vanderbilt University. I was there for five years,

22 one year of which I took leave and was at UCLA.

23 Q And have you published articles in the economic literature?

24 A Yes.

25 Q And what have those articles generally been about?

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1 A My areas of research focused on econometrics and labor
2 economics. So I was -- econometrics is really statistics
3 applied to the problems that economists face and most of my
4 work focused on what is referred to as robust estimation
5 techniques.

6 Q Where are you currently employed?

7 A Bates White, LLC.

8 Q And what's your position at Bates White?

9 A I'm the Managing Partner.

10 Q And what does Bates White do?

11 A Bates White is an economic consulting firm.

12 Q Which means that, as a general rule, they provide
13 consulting in what areas?

14 A We're fairly a diversified firm now. So we were founded
15 about 25 years ago and things like this courtroom and mass
16 torts is part of my focus. We have a finance practice. We
17 have a life sciences practice. We have -- probably anti-trust
18 work is about half the firm.

19 Q Have you served as an expert witness previously?

20 A Yes.

21 Q Have courts in the past found you to be an expert in your
22 field?

23 A Yes.

24 Q And what is -- how would you describe your specialty?

25 A I usually start with the tools and techniques. So

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1 statistics, econometrics, economic modeling looking at economic
2 incentives. I've generally applied those in a mass tort
3 setting whether that's in frameworks that get into estimation,
4 on insurance coverage issues that, not all of those stem from
5 mass torts, but many of them do, but most of my work's been
6 either in a mass tort framework or in an insurance coverage
7 framework.

8 Q Let me get you to expand a little bit on your mass tort
9 experience, if you would.

10 A Okay. So when I first left academia in 2003 I initially
11 started working on what I think of as the 2000-to-2002
12 bankruptcy wave of asbestos defendants. I spent the first two
13 or three years largely working on bankruptcies like Owens
14 Corning, Armstrong World Industries, all focused on asbestos.
15 Most of my mass tort work stayed in an asbestos framework for
16 about the first ten years and over the last ten years has
17 really diversified across all sorts of products at this point.

18 Q And what other mass tort, or maybe I should say it this
19 way. What other asbestos-related bankruptcies have you served
20 as an expert witness in?

21 A So most settle before reports and testimony. Some don't.
22 So I've been retained as an expert in, probably, 20 or 30 at
23 this point of asbestos-related bankruptcies. How many of those
24 I formally served as a testifying expert, I'd have to go back
25 and look. I think Plant Insulation, Specialty Products Holding

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1 Company, I think Thorpe Insulation. I've been, I guess, in
2 this case --

3 Q Right.

4 A -- at earlier stages. That's not gonna be -- there's more
5 if I were to go back and go through the list.

6 Q And your retentions in those cases generally surrounds what
7 type topic?

8 A In the bankruptcies, it's normally forecasting the number
9 and value of future claims and the value of pending claims.

10 Q Have you designed sampling methodologies in the past?

11 A Yes.

12 Q In, in a professional setting or in an academic setting, or
13 both?

14 A Both.

15 MR. KAPLAN: Your Honor, I apologize. On behalf of
16 the Objectors, we don't have any intention of, of challenging
17 Dr. Mullin's qualifications as an expert to the extent that's
18 gonna help expedite the process. I --

19 MR. EVERT: I'm almost done.

20 MR. KAPLAN: Oh, okay. Just trying to move the day
21 along there for you.

22 THE COURT: Go ahead.

23 MR. EVERT: Thank you, your Honor.

24 BY MR. EVERT:

25 Q The question was have you designed sampling methodology in

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1 the past and you said yes. And I, and I asked in a
2 professional setting or in an academic setting, or both?

3 A Both.

4 Q Can you, as a, as a professional consultant, just can you
5 give me one example?

6 A It's common to use sampling in both insurance coverage
7 matters and mass torts, in a mass tort bankruptcy proceedings
8 when those methods are appropriate for the context.

9 Q All right. And I've asked you here today, I think, to, to
10 talk, speak to the Court about whether or not a 10 percent
11 sample in the -- of the -- of the 12,000 claimants that have
12 been sought in the subpoenas to DCPF and Verus is appropriate
13 in this setting, is that, is that right? At least is that your
14 understanding?

15 A That's correct.

16 Q And have all the opinions you've formed been to a
17 reasonable degree of scientific certainty?

18 A Yes.

19 Q So in general, is sampling useful?

20 A Absolutely.

21 Q And when is it useful?

22 A So sometimes, it's just necessary. You, you can't possibly
23 get access to all the information. Other times, it's a simple
24 cost benefit analysis. The more data you have, the less
25 valuable the next piece of information becomes, but if the cost

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1 of getting that data sometimes even gets more expensive, the
2 more you seek as opposed to less expensive and there'll be a
3 point where the value of the incremental information isn't
4 worth the cost of getting it.

5 Q And is, in this case, is the 12,000 claimants that are the
6 subject of the subpoenas to DCPF and Verus, is it, in a sense,
7 already a sample?

8 A Yes.

9 Q Explain what you mean by that.

10 A Well, the debtors' databases contain over 400,000
11 claimants. So 12,000 is already, in round numbers, 3 percent
12 of the universe of claimants the debtors have faced over the
13 years. The majority of that reduction comes from just focusing
14 on mesothelioma claimants and there was a decision made a, a
15 while ago to really focus the proceedings on the mesothelioma
16 claimants as they drive the vast majority of the money in the
17 case, but even within that group I requested that that get
18 further reduced.

19 So for example for Murray, 80 percent of the claims have
20 been dismissed historically without payment. And the subpoenas
21 only seek the claims that received payment, information on
22 those. So 80 percent of the mesothelioma claims were removed
23 from the request because they were dismissed by the debtor.

24 So it's about -- half the claims were dismissed by Aldrich.
25 So you have over half of the mesothelioma claims were removed

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1 from the request. And then the request starts in 2005 as
2 opposed to going back into the 1990s.

3 Q So I take it from that that your opinion is that sampling
4 is appropriate in some contexts and not in others, is that, is
5 that a fair statement?

6 A Correct.

7 Q I, I think we made this clear in our papers, but I wanna, I
8 wanna make it doubly clear for the Court.

9 Could you offer the expert opinions that the debtors have
10 asked you to offer in this case if the Court were ordered that
11 you were limited to a sample of the Trust Data?

12 A Yes, I can do all the work. I can -- the mathematical
13 equations remain the same. It's just that the answers will
14 have more uncertainty around them.

15 So you're really trading off precision, is what you're
16 giving up, not the ability to give an answer. You can still
17 give an answer. That answer will just have more uncertainty
18 about it.

19 Q So am I correct that your opinion is that in this
20 particular instance it's appropriate that DCPF and Verus
21 produce the entire 12,000-claimant population as opposed to a
22 sample, is that right?

23 A Correct.

24 Q And why is that your opinion?

25 A So it goes back to that same cost benefit analysis.

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1 Whenever you reduce the data available to you, you're going to
2 introduce sampling error. That sampling error is going to
3 increase the uncertainty of any of the resultant advice whether
4 that's opinions on an estimation hearing or it's about
5 designing claims resolution procedures and making sure that
6 you're protecting future claimants sufficiently. It's gonna
7 create more uncertainty as you reduce the amount of data
8 available.

9 The tradeoff, then, is is that reduction -- if I take the
10 totality of the 12,000 and I get more precision, is that
11 greater precision worth the cost of the production. And then
12 here, the cost to the facilities is actually fairly low in
13 that, as I understand it, the debtors are funding for the
14 actual monetary costs. So it's a very low cost relative to a
15 material benefit.

16 Q So let me just break that down a little bit.

17 Your, your, your cost benefit analysis on the one side has,
18 the benefit is what?

19 A Twofold. More precise estimates in an estimation-type
20 proceeding and the second side is a trust that's going to be
21 able to be designed with a greater degree of confidence and
22 provide greater protection to future claimants to ensure
23 they're treated equitably relative to the pending claimants.

24 Q Okay. And we'll talk more about that in a minute.

25 And then on the, on the cost side you're measuring what?

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1 MR. GUERKE: Objection, your Honor. Kevin Guerke for
2 DCPF.

3 Dr. Mullin hasn't been qualified as an expert in any
4 particular field. We object to the extent that he is offering
5 a so-called expert opinion on DCPF, the Trusts, and the other
6 facility's costs or burden. He has no qualifications to do
7 that.

8 THE COURT: What do you say?

9 MR. EVERT: Your Honor, we, we're not offering an
10 expert opinion on the exact costs that DC, that any of the
11 Trusts would have in terms of dollar costs. We're not trying
12 to, to quantify it. What we're simply trying to illustrate to
13 the Court is is that there's a cost benefit analysis on the one
14 hand. There's a, there's a benefit to getting more precision
15 and getting the full population, but that has some economic
16 costs associated with it.

17 So the, the term "cost" here is not direct dollars.
18 It's an economic cost.

19 THE COURT: That take care of your problem?

20 MR. GUERKE: That does not, your Honor. He, he's not
21 qualified to offer an opinion on the other side of that
22 analysis.

23 THE COURT: I think you're gonna have to lay a
24 foundation for that --

25 MR. EVERT: All right, your Honor.

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1 THE COURT: -- what he wants.

2 MR. EVERT: All right.

3 BY MR. EVERT:

4 Q So --

5 THE COURT: Sustained.

6 Mr. Guy.

7 MR. GUY: I think we've got a procedural problem here,
8 is that, unless I missed it, Mr. Evert hasn't actually had
9 Dr. Mullins [sic] admitted as an expert --

10 THE COURT: Right.

11 MR. GUY: -- and, on the clear subjects. So -- and no
12 one's contesting that he is an expert.

13 So maybe we can do that and then it will be clear what
14 his expertise covers.

15 MR. EVERT: Well, he's correct, your Honor, as, as
16 always with Mr. Guy. I, I hadn't done that because I thought
17 we had already passed that point 'cause there was no objection.

18 So your Honor, we would offer Dr. Mullin as an expert
19 in the fields of economics, econometrics, statistics, and the
20 forecasting of asbestos-related liabilities and claims.

21 THE COURT: Anyone want to contest that?

22 MR. GUERKE: No, no, your Honor.

23 THE COURT: That's not the same thing as what you're
24 objecting to, I understand, but --

25 MR. GUERKE: Subject to our objection, your Honor, to,

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1 we don't have anything else to add, no.

2 THE COURT: Does anyone else want to question
3 certification as an expert witness?

4 (No response)

5 THE COURT: Okay. I will deem him an expert in the
6 aforementioned areas.

7 Now let's talk about the, what he knows about this.
8 This could take some time, folks, and slow down what we're
9 doing today. Is there a quicker way? We know that from prior
10 experience that Dr. Mullins [sic] has been looking at, at this
11 in three different cases. Is there a way to speed up the
12 objection? I understand he doesn't know the inside costs of
13 your, your clients as to what it takes to do this, but he does
14 know a good bit about what the process is both from DBMP and
15 Bestwall and, and now here.

16 So is there a, a workaround here or do we need to go
17 through the entire exercise?

18 MR. GUERKE: Your Honor, the, I believe the workaround
19 would be to not elicit testimony on the burden/cost piece in
20 which Mr. -- I'm sorry -- Dr. Mullin is not qualified.

21 THE COURT: That sounds like a rule from me and, and
22 we'll all be happy.

23 I'm gonna allow him to testify. I understand the
24 limitations and I'll let that go into the weight of what I
25 consider here.

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1 So go ahead.

2 MR. EVERT: Thank you, your Honor.

3 DIRECT EXAMINATION

4 BY MR. EVERT:

5 Q The question I think, Dr. Mullin, was you, you described
6 what the benefits of the entire population of -- of -- I'm
7 sorry -- of getting the entire population of 12,000 claimants.

8 When you do your cost benefit analysis as a statistician,
9 what are you looking at on the cost side?

10 A I am principally focused on two items, the monetary cost,
11 monetary cost of actually producing the data, and then the
12 issue that's been raised as the potential for inadvertent
13 disclosure of PII, or personal information, of claimants or
14 really, not the 12,000 claimants, *per se*, but individuals not
15 on that list that might get inadvertently included.

16 Q Okay. So, so what are the downsides of using a sample of
17 the Trust Data in this instance?

18 A So the downside is going to be that when you move from
19 12,000 to 1200 claims, for many questions that could leave you
20 with a very small sample of claims to work with. So not every
21 question of interest applies to the whole universe of
22 claimants.

23 So some questions may apply. You could make up two select
24 claimants in only certain jurisdictions. Some may apply to
25 claimants only in certain industry or occupation groups. And

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1 so you don't actually get to work with the entire set of, if
2 you took a 10 percent sample, 1200 claimants to address every
3 question and frequently, or what's typical -- we haven't done
4 all the work here yet -- but what's typical is you end up
5 categorizing claimants into different exposure groups and you
6 forecast separately the value and the number of claims in each
7 of those groups and most debtors or most asbestos defendants
8 have some small groups of claims that get the highest values
9 and getting those small groups accurate is really important to
10 get your overall forecast to be accurate.

11 And so if that group, for example, is only 5 percent of the
12 claims and you have 12, 12,000 claims as a sample, you might
13 only have 60 claims in that group and 60 is not that many to
14 work with, right? So if you have a question that applies to
15 the entire population, 1200 may well be enough and there's
16 certain questions where that's actually what I'm intending to
17 use. There's other questions, though, where that extra 90
18 percent of information is going to round out your sample counts
19 to the point where you can address questions that otherwise you
20 may not be able to reliably address.

21 Q Don't the debtors already have this information in their
22 database?

23 A The debtors have some information in their database. So
24 these are all claimants, for example, where we know the name,
25 we know the Social Security number. There's a lot of

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1 information we have or they wouldn't be in the initial request.

2 What they don't have is a complete work history or
3 occupational exposure history of claimants and they don't have
4 that for a number of reasons. One, they don't always collect
5 it for every claim. Two, even what local counsel has may or
6 may not have been put into electric, electronic form in the
7 database. So those records aren't going to be complete and so
8 we get some information, but not all.

9 And part of what's going on here, too, is to see, where
10 that information was sought, did the debtors possess the full
11 information set of all the exposures that the Trusts ultimately
12 received or did they only receive a subset of that, is one of
13 the questions it's intended to address.

14 Q Would you expect the, well, I should say this.

15 Is, is there a possibility that the, that the data from the
16 Trusts in terms of exposure information and the like that
17 you've just described will differ from that in the debtors'
18 database?

19 A It, it's gonna absolutely differ even if there's -- if, if
20 the question of when sought if they received full information.
21 So the answer to that is yes and post the Garlock ruling,
22 debtor always received full information. They don't seek it.
23 They don't ask that question every time.

24 So if I need to forecast how many claims are in a high-
25 exposure group, I need to know how many claims from, say, one

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1 of the group settlement deals that were not a high-exposure
2 group and the debtors' database won't contain that for me, but
3 the trust information will. So it compliments and builds upon
4 the information that's already available in the debtors'
5 databases.

6 Q So the Permitted Purposes for the use of the data in the
7 subpoena talk about a number of things. One, one is estimation
8 and I think a minute ago you, you started talking about how you
9 might use this information in estimation.

10 Would you expand on that? How, how would you use this
11 information in estimation?

12 A So I'm gonna completely oversimplify estimation for a
13 moment. You could think of it as you're giving a forecast of
14 how many compensable claims there's gonna be and then you
15 multiply that by what's the average value each of those claims
16 will get. You actually wanna break that down to subgroups to
17 do it accurately but if you think about it, is you're
18 multiplying these two estimates together. When you multiply
19 two estimates together, the uncertainty compounds and if the
20 first has a three-fold range and the second has a three-fold
21 range, then the product has a nine-fold range. Well, if the
22 first only has a two-fold range, the second has a two-fold
23 range, the product has a four-fold range.

24 So the uncertainty is multiplicative in that nature when
25 you're multiplying two estimates together. The Trust Data is

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1 going to help estimate both of those parameters. It's going to
2 allow us to get a better forecast of the number of claims and
3 hence reduce the uncertainty in the number of claims. It's
4 also going to allow us to get a better estimate of the value of
5 claims.

6 So it's gonna reduce the uncertainty in both of those. And
7 so through both of those avenues it's going to give us a more
8 precise estimate of the future.

9 Q This multiplicative analysis, can -- can you -- can you put
10 that into terms? I mean, you're, you're talking about a range
11 multiplied by a range, is that what you're talking about?

12 A In essence, the uncertainty, right? You can think of each
13 one having a confidence interval around it and those two
14 confidence intervals interact with each other. And so you're
15 getting -- when, when your estimation methodology multiplies
16 two different pieces together, you get a multiplicative effect.
17 When your estimation methodology is A plus B equals C, you get
18 an additive effect.

19 So whether these are multiplicative or additive depends on
20 how you're going through an estimation but in this context, we,
21 as I said, it's a bit oversimplifying, but it's just you're
22 multiplying value by count. And so, you know, we could go
23 through all the details of it, but it's effectively
24 multiplicative.

25 Q And then among the other Permitted Purposes in the subpoena

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1 for the use of this data has to do with plan confirmation, plan
2 feasibility, and the like.

3 How would you intend to use this data in that context?

4 A In that context, the plan usually specifies the value of
5 claims. And so you're really focused on getting the count of
6 claims correct 'cause that's the place where the uncertainty
7 remains and forecasting the count of what would have been
8 claims from 2021, that is usually not too much disagreement
9 around going one year into the future from your last ten years
10 of history and we're not gonna have a lot of uncertainty there.
11 If I had a 10 percent sample, could I forecast 2021 claims?

12 Yes. 2030 claims are getting more uncertain. The claims that
13 are diagnosed in 2040, you get a lot more uncertainty 20 years
14 into the future. And what it's really doing for you is getting
15 you better forecasts for the years farther out which allows you
16 to better protect those future claimants. If you overpay the
17 pendings relative to -- if you underestimate the number of
18 futures, you'll overpay pendings relative to them, but there's
19 no way to get that money back in 2040 and then the pendings are
20 left, or the futures are the ones left suffering the
21 consequence of that.

22 So you know, in some ways that's the real risk. What are
23 you -- are you gonna be there? Does your plan properly protect
24 those future claimants?

25 Q All right. Let me try to break both of those down a little

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1 bit.

2 So one, one of the things that's been of, of great
3 discussion in this case has been this idea of nondisclosure of
4 exposure information in the tort system that may result in, in,
5 in settlements without full information, let's put it that way.

6 Is that one of the reasons for which you would use this
7 information?

8 A Yes.

9 Q And in that particular instance, would you, do you benefit
10 greatly from the entire population versus a 1200-claimant
11 sample?

12 MR. GUERKE: Objection, your Honor. This, this is
13 leading. I mean, we've let some questions go, but it's -- at
14 some point we -- yeah.

15 THE COURT: Sustained.

16 MR. GUERKE: Thank you.

17 MR. EVERT: Okay.

18 BY MR. EVERT:

19 Q Can you tell us whether or not you would, you would have
20 great advantage from a 12,000-claimant sample versus a 1200-
21 claimant sample for this issue of evidence nondisclosure?

22 A For that question in particular, it really won't make a
23 difference. The nondisclosure needs two pieces in the
24 analysis. It needs to look at the set of information that the
25 Trusts possess. It needs to compare that to what was the, what

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1 was revealed to the debtor. And as I mentioned earlier, not
2 all the information that's revealed to the debtor ultimately
3 ends up in the debtor's claims database.

4 So to do that comparison, you have to go get the underlying
5 claim file documents from the debtors, review those documents,
6 and extract information. That's an expensive process to
7 collect the files and get them into electronic form. That's,
8 typically, thousands of dollars per file of costs. So in that
9 framework, I've proposed designing a sample of historical claim
10 files. That is going to be about 1200 claim files.

11 So as long as those are the same claim files as the Trust
12 Data -- so it's the same 12 -- the two line up, then I could do
13 that comparison on all 1200. The other 90 percent really isn't
14 being used for that purpose. It's being used for other
15 purposes.

16 Q Would that use of the 1200-claim sample in that particular
17 instance, can you tell us whether or not it would have as much
18 precision as using the entire pop, the entire 12,000-claimant
19 population?

20 A If you use the entire 12,000-claimant population, it would
21 be more precise. You have ten times the sample and, you know,
22 that's more, gets back to the cost benefit analysis. It costs
23 thousands of dollars, sometimes more than \$10,000, to get an
24 individual claim file and turn it into electronic form.

25 So the cost benefit -- it's the cost side that's changing.

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1 The cost of getting the incremental record in that case is very
2 high for the claim files as opposed to the Trust Data where the
3 cost is low.

4 Q So the -- if you would, tell the Court what the result of
5 the cost benefit analysis is in that particular instance, to
6 the extent that you haven't already made it clear.

7 A You know, I have recommended a sample of the claim files
8 because the cost is so high per record and -- yeah, that's the
9 defining difference between that and the Trust Data.

10 Q So when we start talking about the use of this data in plan
11 confirmation/plan feasibility, can you tell us whether or not
12 you would gain substantially from the entire claimant
13 population versus a sample?

14 A So what the extra 90 percent's gonna give me is more
15 complete work history information for another close to 11,000
16 claimants. That's going to allow me to do the analysis by
17 industry and occupation. That's going to allow me to address
18 questions by plaintiff lawyer or jurisdiction in that when I go
19 to those subpopulations I'll still have enough data within
20 those subpopulations to give reliable opinions, while if we
21 reduce that down to 10 percent -- and so we have 1200 claims --
22 for many of those subpopulations I'll no longer have a
23 sufficient sample size to give reliable opinions for those
24 subpopulations.

25 Q And why are industry, occupation, why -- why -- why are

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1 they important?

2 MR. GUERKE: Objection, your Honor. He's leading
3 again. We don't know if they are or are not important.

4 THE COURT: Well, I think that's been pretty clear
5 from all the pleadings that have been filed so far. I'll let
6 that one go.

7 Go ahead.

8 Overruled.

9 You can answer.

10 THE WITNESS: The number of alternative exposures is
11 strongly correlated with industry and occupation. The
12 likelihood of exposure to a given defendant's products is
13 correlated with that.

14 So the typical amount received in compensation or
15 whether compensation's received at all are, vary by the
16 industry and occupation of claimants.

17 BY MR. EVERT:

18 Q In your work, can you tell us whether or not you use
19 industry and occupation and other information in terms of the
20 forecasting of the likelihood of claims in the future?

21 A Correct.

22 So if I take one step back, the kind of actuarial curve of
23 how many future claims you're gonna receive is very different
24 for these different industry and occupation groups. So if I
25 take the extremes, shipbuilding, its peak incidence for

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1 mesothelioma is about 20 years prior to the peak incidence of
2 mesothelioma for construction and those are kind of the
3 bookends. And then different industry-occupation groups fall
4 anywhere between.

5 So depending on a given debtor's concentration of which
6 industries and occupations they're paying money to depends, can
7 make as much as a 20-year difference of how far down the
8 actuarial curve you are. And so if you wanna be predicting how
9 many claims you're gonna get 10, 20 years in the future, you
10 can't just take the national average curve. You have to be
11 able to break it down into the different subgroups and then see
12 how much is on a curve that's maybe ending 20 years sooner and
13 how much of that liability sits on a curve that ends 20 years
14 later. And there's enough -- that's the uncertainty that
15 you're really able to minimize when you can really do the
16 detailed analysis at an industry and occupation level.

17 Q And you've mentioned industry and occupation. Are there
18 other, is there other data that would improve, in other areas,
19 that would improve the debtors' database that the Trusts hold?

20 A So in -- so as I understand, the plaintiffs' theory of the
21 case is, really, what would they have received in the tort
22 system. And that varies a lot by plaintiff attorney. That
23 varies a lot by jurisdiction.

24 So similarly, you'd want to, when addressing that question,
25 you'd want to be able to break down and treat claims separately

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1 depending on the jurisdictions and plaintiff law firms that
2 represent them. So again, you're gonna want to break it down
3 to subgroups and be able to do the analysis on those
4 subpopulations.

5 Q And can you expand for just a minute on this issue of
6 subgroups and subpopulations in a 1200-claimant sample setting
7 versus a 12,000-claimant sample setting?

8 A Yeah.

9 So this, this is, at least at one level, where I don't
10 think the two statisticians are in different places. If you
11 have 1200 claims in the group that you care about, going from
12 1200 to 12,000, is that gonna fundamentally change my ability
13 to give an answer to that question? Not really, you know, when
14 I wanna break down and look at a subgroup that's 2 percent or 5
15 percent of the whole population. And so I'm starting with 600
16 claims or 300 claims in the entire population and then you take
17 a 10 percent same of that. Now I have 30 or 60 claims in that
18 subgroup. That really does start to impair your ability to
19 address questions.

20 And so it's really when you're analyzing subpopulations,
21 not all the claims in totality that this comes in and binds of
22 going to 10 percent of the requested 12,000 claims.

23 Q Can you, for me, use occupation as an example of what you
24 just described?

25 A So in this framework you might want to break out insulators

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1 or pipefitters and it turns out there actually weren't that
2 many insulation workers in the country, you know. It's
3 probably ten times as many pipefitters.

4 So if I'd said, if I needed to distinguish between an
5 insulator and a pipefitter, my insulator group's gonna have
6 about a tenth the number of people in it as my pipefitters. So
7 where I may on a 10 percent sample have 50 pipefitters, I may
8 only have 5 insulators at that point. And so I'm concerned
9 about when you go down to these different subpopulations, you
10 know. Until you get the data and until you've done the work,
11 you don't know exactly which subpopulations are gonna be the
12 ones of interest.

13 So I can't tell you I need to break out pipefitters and
14 look at them separately right now 'cause I don't have the data
15 that allows me to answer that question yet. That's part of
16 what the discovery is going to give me, you know. But I do
17 know from having done this a whole bunch of times that,
18 ultimately, you're gonna break 'em down into different exposure
19 groups and want to analyze those exposure groups separately.

20 Q So could you, could you reach those forecasts with just a
21 sample?

22 A Again, you can do the math. So you'll get a forecast.
23 You'll just have a lot more uncertainty. That forecast may
24 ultimately not do it by certain subgroups or it may force you
25 to put them into, where you'd really like to break one group

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1 into two, it may force you to leave 'em combined and that's
2 gonna increase the uncertainty of the final opinions. You'll
3 still get -- the math works. It just has an uncertainty factor
4 that comes out of that math, too, and that grows as you reduce
5 the sample size.

6 Q And what is the risk that that uncertainty brings?

7 A I mean, to me, the biggest risk is to the future claimants
8 because if you aren't as confident in the number of claims
9 you're getting going into the future, you're not as confident
10 you're going to treat those future claimants equitably to the
11 pending claims.

12 It's also gonna create uncertainty, a wider range of
13 confidence in estimates in an estimation hearing. Ultimately,
14 the parties, you'll get a ruling or the parties will compromise
15 that issue, you know, but the number of future claims, the
16 parties can't compromise today. That's something that's gonna
17 play out through time. And so I think that's the place where
18 that risk is going to persist, kind of, for years to come.

19 Q And in your experience can you tell us whether or not that,
20 that risk also extends to certain claims in a, in a trust
21 setting?

22 A Correct.

23 In the trust setting, that's really the one remaining risk,
24 is how many claims are you going to get through the future that
25 fall into the different valuation categories and if you

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1 underestimate those, and particularly if you underestimate the
2 number of high-value claims in the future, you'll end up in a
3 world where you underpay the pendings relative or -- sorry --
4 underpay the future claimants relative to the pending and if
5 you think the more uncertainty you have, the greater your range
6 is for the number of future claims, which means the greater the
7 possibility is that you get it incorrect.

8 Q And in that, in the trust setting, what is typically the
9 payment structure in terms of equality? Are the -- are the --
10 is -- are the claims paid the same amount?

11 A So that varies by trust design. So many trusts have
12 scheduled values and those scheduled values is what 75, 80
13 percent of the claims will receive. If the style of trust,
14 let's say the Western Asbestos Trust or the Garlock Trust
15 differentiates claims to a large degree upfront. It doesn't
16 just have a scheduled, the same scheduled value for numerous
17 claims.

18 So it really is differentiating and the trusts historically
19 that have done that differentiation have better protected the
20 futures. You see that those are the ones that, typically, have
21 maintained or increased the money that claimants get going
22 forward. Those that have, just had one scheduled value for the
23 vast majority, most of those trusts have seen the payment
24 percentage decline through time.

25 Q And in your study of those trusts, can you tell us whether

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1 or not the highest-claim values have large or small number of
2 claims?

3 A It's typically small. And you -- the highest-value claims
4 is usually fairly specific circumstances that lead a large
5 liability share for any given one defendant.

6 So you tend to have a small number of claims in the
7 highest-value categories which means those are the hardest to
8 estimate 'cause you have the least data and that's where the
9 sample would be most binding and create the most uncertainty.

10 Q And how is that? How is it that a sample would be, would
11 create less uncertainty in the instance you just described?

12 A I think you meant more.

13 Q Oh, I'm sorry. That's right.

14 A It's -- as I said, you're looking at a very small subgroup
15 and whenever you have a small subgroup, if you now take a
16 sample of a small subgroup you're gonna be, probably, looking
17 at tens of claims and you'd really much rather be looking at
18 hundreds of claims to address these questions.

19 Q Okay. So as the subpoenas are drafted, Dr. Mullin, if the
20 Trusts were to produce this data, does it involve a production
21 of a significant amount of PII, or personal information?

22 A So in general, no. The Trusts -- the -- there's a matching
23 key. So for the 12,000 claimants, the information at this
24 point that goes back and forth doesn't contain their PII.
25 That's been removed with an, a number that's the matching key.

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1 So the potential risk is third-party PII, you know, not the
2 claimants' PII themselves.

3 Q Did -- well, let me ask. In -- in -- can you tell us
4 whether or not in the debtors' database the debtors have the
5 claimants' PII?

6 A For the 12,000 claimants, they have to. The request was
7 limited to individuals for which the name and Social Security
8 number were already known and that's how the matching was
9 performed to, so that they could get a reliable match with the
10 Trust Data.

11 Q And in your review of the debtors' database, can you tell
12 us whether or not it would also include non-claimant PII?

13 A The debtors' database has non-claimant PII in it as well.
14 Some of that may overlap with the non-claimant PII in the trust
15 database. Some of it may not.

16 Q And what is your understanding of the responsibilities of
17 the parties affected by this subpoena in terms of any potential
18 PII to --

19 MR. KAPLAN: Objection, your Honor. Dr. Mullin has
20 not been offered as an expert in data privacy, in any type of
21 privacy. Also, is not a lawyer and can't opine on what the
22 responsibility of nonparties or parties would be.

23 MR. EVERT: Your Honor, I'll rephrase.

24 BY MR. EVERT:

25 Q What are Bates White's responsibilities under the subpoena

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1 for PII?

2 A So when the production comes from a party to Bates White,
3 Bates White has an obligation to review that for any
4 inadvertent PII and if we locate any such PII, to remove that
5 permanently from the data.

6 Q And is that whether or not the party from whom the data has
7 come has already attempted to remove the PII?

8 A Correct.

9 Q To this point, the only third-party data like, similar to
10 this in this case that you've received is the Paddock data, is
11 that correct?

12 A Correct.

13 Q Can you tell us whether or not there was any PII
14 inadvertently disclosed in the Paddock data?

15 A There was none.

16 Q All right.

17 So Dr. Mullin, I'm sorry. If you could just, again,
18 quickly walk me through the process of, as you understand, the
19 way the subpoena directs the parties handle the data.

20 MR. KAPLAN: Objection, your Honor. Dr. Mullin is not
21 a lawyer and cannot opine on what the subpoenas require or
22 don't require That's --

23 THE COURT: His understanding what it says.
24 Overruled.

25 THE WITNESS: So my understanding of the process is

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1 each, start with the Delaware Facility. They went through and
2 elected to redact information themselves prior to it being
3 produced in DBMP. My understanding is they intend to do the
4 same thing here, which is to go through and redact on their own
5 first and then it'll get produced to Bates White who then will
6 go through, look to see if there's anything they missed, and do
7 another round of redaction. As that process was described in
8 the depositions, that is, effectively, a double-blind review
9 process. So they had one person go through and then it went
10 to, if they didn't find any PII, there was a second person who
11 reviewed to check if they missed something. And double-blind
12 processes, in general, capture 99 plus percent of the
13 information.

14 So as I understand that process, the testimony was
15 there were thousands of records with PII, you know. It's not
16 clear whether thousands in that is thousands or 20,000, exactly
17 what number, but even if I assume that's tens of thousands, if
18 99 percent of it gets redacted in that double-blind process
19 that the Facility's going through, tens of thousands becomes
20 hundreds and then Bates White does a similar procedure which
21 means hundreds become ones.

22 So the number of individuals with PII that would
23 remain, you'd expect to be under ten, you know, somewhere in
24 zero-to-ten range. It was zero in Paddock. It was zero,
25 actually, when it arrived to Bates White in Paddock. But you'd

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1 expect a zero-to-ten and you'd expect, based on the testimony
2 for the most part, that to be claimant names, not Social
3 Security numbers.

4 BY MR. EVERT:

5 Q So if after that scrubbing process that you just described
6 occurs -- well, after that scrubbing process you described
7 occurs, what would then have to happen for the, there to be an
8 inadvertent disclosure or publication of personal information
9 of a nonclaimant?

10 A Once that's in the possession of Bates White, presumably
11 that could also end up in the possession of Ankura and LAS, the
12 other two consulting firms that are involved, and you'd need a
13 data breach at one of those firms for that information to get
14 into the public domain.

15 Q And if such a data breach occurred, what would the, what
16 would be the expectation in terms of the amount of disclosure
17 of PII?

18 A We have a lot of data loss prevention systems in place. So
19 hopefully, to the degree it -- we've never had a data breach --
20 hopefully, that would get caught long before the totality of
21 the data was taken off of Bates White's systems. But if
22 somebody were able to get the totality of the information,
23 they'd have PII for the 400 plus thousand claims, you know,
24 claimants that are already in the debtors' databases, plus, you
25 know, maybe as many as ten more people that are the third

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1 parties that came through the trust information, to the degree
2 those parties weren't already in the debtors' data that Bates
3 White already possesses.

4 Q So what sort of security certifications does Bates White
5 hold in order to keep data of this type?

6 A We have a SOC 2 certification, which is really, comes out
7 of accounting procedures and we have a HITRUST certification,
8 which is really focused on HIPAA, principally motivated by our
9 life sciences practice which deals with a lot of health care
10 information, but we've implemented that firmwide.

11 So HITRUST is, arguably, the highest certification you can
12 have in the market at the moment and it has, I forget the exact
13 number, more than 500. I think it's 600 and some odd controls
14 you have to go through and vet. We have certified third
15 parties who also come in and stress test your systems on a
16 regular basis.

17 Q And across its various practices and its various
18 litigations that Bates White is involved in, can you tell us
19 whether or not you have routinely been subject to
20 confidentiality and protective orders issued in litigation?

21 A It's part of our daily work.

22 Q Has Bates White ever been cited for a breach of any of
23 those orders?

24 A No.

25 Q We talked a minute ago about the production of similar data

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1 in the DBMP case. Have you become familiar with that?

2 A I am familiar with that.

3 Q And in that particular instance is it your understanding
4 that the data requested in the very subpoenas was very similar?

5 A Yes.

6 Q And do you know what the cost was for DCPF to scrub that
7 data as you described just a minute ago?

8 A In round numbers, the invoice was around \$85,000.

9 Q And would your expectation be, or do you have an opinion or
10 do you know whether or not that would be a similar cost in this
11 instance?

12 MR. KAPLAN: Objection, your Honor. Same, same
13 objection as before. He's not qualified to offer an opinion.
14 It's also speculation, honestly.

15 THE COURT: I don't think you've got enough of a
16 foundation for that. Sustained.

17 MR. EVERT: All right. Thank you, your Honor.

18 BY MR. EVERT:

19 Q Are the debtors' databases or the trust -- I'm sorry. Let
20 me start again.

21 In your review of the Trust Data are, have you become
22 familiar with the trust databases?

23 A I'm familiar with the extracts that come from the Trusts.

24 Q That is to say that what I'm asking, are you familiar with
25 the way the data is organized?

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1 A As produced to Bates White, I am familiar with it.

2 Q And in your review and preparation have you reviewed the
3 depositions of the DCPF and Verus management in regard to the
4 way they went through this process and the way their databases
5 are organized?

6 A Yes.

7 Q And with your experience in database management, has that
8 put you in a position where you can render an opinion about
9 what would the approximate cost be for the scrubbing of the
10 data requested by these subpoenas for DCPF and Verus?

11 MR. GUERKE: Same objection, your Honor. One, it
12 calls for speculation. There's no foundation. He's not an
13 expert in, in future costs of my client's business operations.

14 MR. ANSELM: Same objection with respect to Verus.

15 THE COURT: Noted, but overruled.

16 You may answer.

17 THE WITNESS: In general, I'd expect comparable, if
18 not slightly lower, costs. The -- as described by their fact
19 witnesses, at least for the Delaware Facility, part of that
20 cost was setting up an internal tool that was built that they
21 intend to reuse if they, for whatever production is done here,
22 whether that's the 10 percent sample or the totality. So
23 they've already incurred some of the fixed costs of setting up
24 the procedures to go through this type of review. Presumably,
25 you don't need to do those fixed costs a second time.

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1 So this request is slightly larger. It's 12,000
2 claimants as opposed to 9,000 claimants. So that would
3 cause -- you'd expect it to go up by about a third just on
4 count, but then there's some efficiencies already of the fixed
5 costs and to a degree, there's overlap in the claimants, which
6 there is a degree of overlap between the actual individuals
7 that were requested. Presumably, they could merge in the
8 redaction that was already done for DBMP as opposed to redoing
9 the redaction on the same claimants. But even if they didn't
10 do that, comparable, maybe slightly lower.

11 BY MR. EVERT:

12 Q But to be clear, that only applies to DCPF, correct, not to
13 Verus?

14 A Correct.

15 Q So in sum, Dr. Mullin, why is this Trust Data one for
16 which, in your opinion, the 1200-claim sample should not be
17 used?

18 A The costs are relatively small. We said, you know,
19 everybody's PII is important. We are talking about at the end
20 of the scrubbing process zero-to-ten people's, you know, likely
21 just claimant name, as being inadvertently produced at the end
22 of the day.

23 Contrasting that with, you know, the uncertainty that going
24 to a 10 percent sample's going to inject into the process both
25 from an estimation perspective, but, probably even more

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1 importantly, a plan design and protecting future claimants and
2 kind of ensuring equitable treatment between future and pending
3 claims.

4 Q So do you have an opinion upon, about it, whether in this
5 instance the cost benefit analysis mitigates towards the
6 benefits far outweighing the costs?

7 A Yes. I -- in my opinion, the benefits far outweigh the
8 costs in this and all the data should be produced.

9 Q Thank you, Dr. Mullin. Those are all the questions I have.

10 A Thank you.

11 THE COURT: My sense was that the FCR, more or less,
12 supported this motion. Do you want to ask questions?

13 MR. GUY: I'd like to ask a couple, your Honor.

14 THE COURT: Please.

15 Thought we'd go ahead and get supporters and
16 detractors in that order, so.

17 DIRECT EXAMINATION

18 BY MR. GUY:

19 Q Dr. Mullin, good morning.

20 A Good morning.

21 Q What is your familiarity with the trust information that
22 was provided in the Garlock bankruptcy case?

23 A At a point in time I knew it decently well, but that case
24 ended a long time ago. So I have a general-level understanding
25 of it still.

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1 Q Do you understand that that trust information was produced
2 in the Garlock bankruptcy case?

3 THE COURT: Hang on.

4 MR. GUERKE: Your Honor, we have an objection to the
5 FCR asking questions in, in this proceeding. It's a
6 miscellaneous action filed in Delaware that was transferred to
7 North Carolina against our consent and the FCR has not
8 intervened or moved to join the proceeding and it's our view
9 that it's improper for the FCR to make argument, to comment,
10 and certainly to question a witness.

11 THE COURT: I understand the technical argument, but
12 I'm overruling that. My practice, generally, is to, to be
13 overinclusive on allowing parties to participate in a case that
14 had, particularly one that, while a defined miscellaneous
15 proceeding, that has case-wide effect.

16 So go ahead.

17 MR. GUY: Thank you, your Honor. And I would add
18 we've already argued in our papers and no one moved to strike
19 them. So a little late on that one.

20 BY MR. GUY:

21 Q Dr. Mullin, are you aware of what's occurred in the Garlock
22 case in terms of payments increasing or decreasing?

23 A Yes.

24 Q And have they increased or decreased?

25 A My understanding is that the payment amounts increased in

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1 the Garlock Trust.

2 Q Thank you.

3 MR. GUY: No further questions, your Honor.

4 THE COURT: Any other parties supporting the debtors'
5 motion? Affiliates have any questions of this witness? Good?

6 (No response)

7 THE COURT: All right. Then we'll get cross.

8 In case everyone knows, North Carolina practice allows
9 you to examine a witness from the table --

10 MR. KAPLAN: Oh.

11 THE COURT: -- from the counsel table if that's more
12 comfortable, but you're welcome to use the, the podium if that
13 is more in tune with your practice.

14 MR. KAPLAN: It, it is. Thank you, your Honor.

15 Michael Kaplan from Lowenstein Sandler on behalf of the Verus
16 Trusts.

17 CROSS-EXAMINATION

18 BY MR. KAPLAN:

19 Q Good morning, Dr. Mullin.

20 A Good morning.

21 Q We've met before, correct?

22 A Correct.

23 Q Had the privilege of taking your deposition in Washington,
24 DC, right?

25 A Correct.

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1 Q I wanna start off by seeing if we can find some areas where
2 we agree before, inevitably, we disagree, okay?

3 A Okay.

4 Q We agree that the number of claimants that would be called
5 for in the sample is 1,200 claimants, right?

6 A Correct.

7 Q Out of a possible 12,000 claimants, correct?

8 A Possible, out of the 12,000 that were requested in the
9 subpoena.

10 Q Right. Okay.

11 Now you said a few moments ago -- I think you actually
12 answered it a couple times -- that, "Yes, I can do all the
13 work," when asked the question about whether or not you can do
14 the math, right?

15 A Correct.

16 Q So the 1,200 claimants is sufficient in order to do the
17 math, right?

18 A Tech -- any number of claimants you can run the math on.
19 That's -- the question comes down to how much uncertainty will
20 exist in the result that that math produces.

21 Q Right. No. I, I certainly understand your testimony and
22 my question was just focused on can you do the math, yes or no,
23 and I think the answer is yes, right?

24 A You can, you can use the mathematical formulas, that's
25 correct.

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1 Q Okay. And you can use the math in order to estimate the
2 future liabilities, right?

3 A Correct.

4 Q You can use the 1,200 claimants in order to forecast and
5 design a plan, Correct?

6 A Correct.

7 Q You can use it to determine whether or not the debtors have
8 been, whether or not there were sampling -- excuse me --
9 disclosure issues in the previous histories, correct?

10 A Correct.

11 Q So the 1,200 claimants is sufficient to do the math?

12 A To execute a mathematical formula, yes.

13 Q Okay.

14 Now a number of times you talked about the fact that you
15 had these, I think you called them subpopulations. Do you
16 recall being asked those questions?

17 A Yes.

18 Q Okay. The question about subpopulations, are you doing an
19 estimate of a particular subpopulation?

20 A For many of the tasks, yes.

21 Q Okay. Are you -- am I -- let, let me see if I can ask you
22 a better question, which is when you come to court is your
23 total estimation of the debtors' liability going to be broken
24 down by a specific subpopulation?

25 A So at it's most basic level, that's by agreement at the

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1 moment just looking at mesothelioma claims --

2 Q Right.

3 A -- which is what has allowed us to reduce this request from
4 hundreds of thousands to tens of thousands.

5 So in that sense, we're focusing on only mesothelioma and
6 then ultimately, the subpopulations will have different
7 treatments under the debtors' theory versus the plaintiffs'
8 theory of how you should value claims.

9 Q So is it your testimony that someone who used Law Firm A is
10 going to be treated differently than someone who used Law Firm
11 B?

12 A Under the plaintiffs' theory of what would you have been
13 paid in the tort system, that's absolutely what happens.

14 Q I'm asking you when you do your estimate. You said that
15 one of the purposes of your, of this exercise is is you wanna
16 be able to estimate the debtors' future liability.

17 Are you going to provide, is it your testimony that you're
18 going to provide the Court with an estimate which says that
19 people who used Law Firm A should be paid this amount and
20 people who used Law Firm B should be paid this amount?

21 MR. EVERT: Your Honor, I'd just raise an objection.
22 I don't think it's appropriate to ask what he's going to
23 provide, ultimately, in estimation. I think it's, it will be
24 fair game to ask what he might do or what -- what -- what
25 things he wants to study, but a precise description, we don't

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1 know yet, so.

2 THE COURT: With that *caveat*, can you answer the
3 question?

4 THE WITNESS: Yes.

5 THE COURT: Go ahead.

6 THE WITNESS: So my expectation is to quantify the
7 liability both under the debtors' theory and under the
8 plaintiffs' theory. I'm not the one that decides which of
9 those two theories is correct, right?

10 BY MR. KAPLAN:

11 Q Okay.

12 A So I expect to be asked to quantify under both of those
13 theories. When addressing it under the plaintiffs' theory of
14 what would you have been paid in the tort system, those
15 payments do vary by law firm when the other facts are
16 comparable.

17 So I absolutely would be doing that analysis where you
18 break out law firms separately and estimate.

19 Q And that --

20 A -- in that manner.

21 Q I'm sorry.

22 And for that same reason you're planning on breaking out, I
23 think you said, jurisdiction and industry and occupation and
24 gender.

25 Anything else you're going to break out?

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1 A Ultimately, you're going to explore the data for what
2 causes material differences in settlement values and you wanna
3 control for those material differences. You -- so at the end,
4 that's what I'll be doing. I know 'cause I've done this enough
5 that law firm will be on that list if you're saying what were
6 people being paid in the tort system. Jurisdiction will be on
7 that list. Exactly what else is on that list, I don't know.
8 That varies by defendant and that's part of the work that I
9 need to do after I have all the data assembled.

10 Q And isn't it true, Dr. Mullin, you don't actually know what
11 data has been captured in the trust database, right? You
12 haven't seen it?

13 A I haven't seen the specific entries for these claimants,
14 that's correct.

15 Q Right. So you don't know whether or not it captured the
16 plaintiffs' law firm, do you?

17 A I generally already know the plaintiffs' law firm. That's
18 not really what I'm seeking from the Trusts. The Trusts is
19 really complimenting the exposure history record. In general,
20 the data, the debtors' database tells me the identity of the
21 plaintiff law firm.

22 Q Okay. Let's focus on what you just raised, which is the
23 exposure history.

24 Sitting here today, you can't tell the Court with certainty
25 that all the exposure history you're looking for is captured in

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1 either the Verus or the DCPF trust database, correct?

2 A I'd be surprised if all of it was, but it's going to
3 compliment and give me materially more information than I
4 currently possess just in the debtors' database.

5 Q Doesn't that assume that the information has been captured?

6 A So I've received trust data in different contexts. I'm
7 aware, in general, that it is recorded. They have fields that
8 record it and in every other context it has expanded that
9 information set. I expect that to happen here. Clearly, until
10 I receive the actual data I don't know the full extent of that
11 expansion of information.

12 Q Right. I just want to focus on the two Trusts, the
13 nonparties here, which is -- and to the question of do you know
14 whether or not the additional work exposure that you're looking
15 for has been captured? Yes or no.

16 A I know that, in general, they capture it. I don't know if
17 it's captured for any particular claimant.

18 So from a population perspective, that's going to provide
19 me an awful lot of information about work history and
20 exposures. Any particular claimant, that's not the way
21 statistics work. It doesn't let me say for a particular
22 claimant, but across the 12,000 claimants it will contain a
23 sizable amount of information.

24 Q Again, you, you are looking at -- have you seen -- let me
25 ask you this way.

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1 Have you already seen the data that's in the Verus or DCPF
2 Trusts that you're seeking?

3 A I've seen extracts of that data in different contexts.

4 Q My, my question, Dr. Mullin, again, is you're, you're
5 seeking information for 12,000 claimants from the Verus Trusts
6 and the DCPF Trusts, right?

7 A Correct.

8 Q Have you already seen the data that you are looking for?

9 A For some of those claimants, the answer will be yes.

10 Q Okay.

11 A Some of those claimants, for example, would have been in
12 the Garlock production. Some of those claimants would be in
13 the DBMP production. Some of those claimants may have been
14 produced in an insurance coverage matter that I was part of.

15 So have I seen it generically for some of the claimants,
16 yes. I don't bring data across cases. So I don't have access
17 to any of that information in the current matter. So I've seen
18 some of it, but not in a way where I have access to that
19 information in this current matter.

20 Q So how many of the 12,000 claimants have you already seen?

21 A I don't know the answer to that. I'd have to violate what
22 I told you about not bringing information across cases to do
23 that matching and answer.

24 Q Okay.

25 Now let, let's go back to the sort of overall purposes. We

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1 talked about the estimation. We talked about the plan
2 feasibility.

3 You are not doing an individualized review here, correct?

4 A claim-by-claim, a claimant-by-claimant review, right?

5 A Are you trying to use that term in the same sense they use
6 it in a trust distribution procedure or do you mean
7 something -- I'm not sure exactly what you're asking.

8 Q That, that's fair. It -- it -- when you are doing your
9 estimate, you are not trying to value individual claims,
10 correct?

11 A I'm not valuing individual, for example, future claims or
12 even pending claims. I will be doing individual review and
13 looking at some of the historically paid claims and looking at
14 those in detail. But the, the rest will be done in an
15 estimation process probalistically.

16 Q Right. And that's in the aggregate, correct?

17 A Correct. You're looking at populations or subpopulations.

18 Q Right.

19 Now a number of times during your testimony you used the
20 variations of the phrase "more precise" or "greater degree of
21 confidence" or "better estimate," etc. You recall giving
22 answers like that in response to the questions about why a
23 population would be better than a sample?

24 A Yes.

25 Q Sitting here today, am I correct that you cannot calculate

MULLIN - CROSS

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1 the uncertainty for either the population or the sample, right?

2 A Both are unknown 'cause they depend on the nature of the
3 data that gets produced. So you can't -- no one can answer
4 that question until after the data's produced.

5 Q Well -- you -- Doctor, I certainly am not gonna argue with
6 you about statistics. I'm just asking you whether sitting here
7 today you can tell the Judge if you got all 12,000 claimants
8 what the level of uncertainty would be in your estimate?

9 A Not in absolute levels. You can give guidance as to the
10 relative change in uncertainty, but not the absolute level
11 until you have the data itself.

12 Q Right. You also can't give the Judge the, to tell him how
13 much uncertainty there would be if it were just the 1,200
14 claimants, right?

15 A In only relative statements, not absolute statements.

16 Q Right. And so you need the data for that, correct?

17 A To quantify it as a specific number, yes. You --

18 Q Right.

19 A I need the data that's being requested before I can answer
20 that question.

21 Q So it's possible, I believe as you said, that, that the
22 1,200 claimants may be all that you need, right?

23 A I, I don't think that's correct.

24 Q Do you know for a certainty that the 1,200 claimants will
25 not be sufficient?

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1 A I know there will be questions almost with certainty that
2 will require me to look at small subpopulations. In every case
3 I've ever done this before, there's small subpopulations that
4 get high-claim values that are particularly relevant. I don't
5 know which ones those are here specifically yet, but unless
6 this is the first case of an asbestos defendant where that
7 isn't true, that's what I'm going to find here and the 10
8 percent sample's going to impair the ability to give good
9 guidance on that small group of claims that have
10 disproportionately high settlement values.

11 Q And how is it, Doctor, that you know that that small group
12 of claims exists in the Trust Data that you just told us you've
13 never seen?

14 A When we've done trust discovery before, virtually every
15 claim files against at least one if not multiple trusts. It's
16 very rare to find a claimant that files in the tort system and
17 files zero trust claims. That's a very rare outcome. So
18 there may be some that have no trust claims and that is also
19 relevant for me to know that there are none of those alleged
20 exposures. Confirming no alternative exposures is also
21 important and then others will have numerous trust claims.

22 Q Again Doctor, I just -- I -- I -- I really just want to
23 focus on these Trusts, okay? I, I don't represent anyone else
24 that I, that I know of yet in, in these.

25 So again, these Trusts, you don't know sitting here today

MULLIN - CROSS

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1 whether or not the Trusts -- that would be Verus and
2 DCPF -- have the subpopulation information you're looking for,
3 correct? Not asking you to speculate. I'm asking do you know.

4 A Well, it's not really speculating. When you're looking at
5 populations of claimants, right, it's like saying if there's
6 10,000 random people here, do you, and they're just random
7 people, do you know there's a female? And you go, well,
8 there's a probability if you say 50-50 raised to the 10,000th
9 power that there's no females. But yeah, there's gonna be
10 women in the group of 10,000.

11 So when you ask me do I know, if you ask me a particular
12 claimant, the answer's no, I don't know for a particular
13 claimant. When you talk about a universe of 12,000 claims and
14 the quantum of trust claims that are made in the tort system,
15 it is inevitable that the vast majority of these people are
16 going to have matches to numerous trusts and it's going to
17 provide additional information to me. I can't tell you exactly
18 which claims, but I can tell you when you look at a large
19 population there's certain conclusions you can make
20 statistically.

21 And so this is going to provide material supplemental
22 information. The exact information for any given claimant, no,
23 that is unknown.

24 Q Right. And, and so I think we talked about at your
25 deposition that -- and I'm just sort of using numbers out of

MULLIN - CROSS

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1 thin here, thin air here, which is that if you had 600
2 claimants of a, in a particular subpopulation, that might be
3 sufficient for what you're studying, correct? Your concern, I
4 think you told me, was when you get down to 30 or 20.

5 A Six hundred for many questions would probably prove
6 sufficient, that's correct.

7 Q Right. And so building off that, Doctor, is is how is it
8 that you know, again just these Trusts, that they have a
9 sufficient amount of data for each of the subpopulations, even
10 if you got all 12,000?

11 A So there may be some subpopulations that even with the
12 12,000 you don't have enough information. Maybe there's only
13 20 claimants that fit that in the Trust Data, but if you take
14 10 percent instead of getting 20, I'll have 2 and I can do a
15 little bit more with 20 than I can do with 2. But then all the
16 ones that would have had 300 now go down to 30.

17 So what you know is when you go to a 10 percent sample,
18 you're gonna have many more subpopulations where you now have
19 insufficient data than if you take the totality of the data,
20 right? That's what you know. You're getting one-tenth the
21 claims.

22 So you're going to greatly increase the number of
23 subpopulations you can't address. That may be increasing it
24 from zero to ten of interest. It may be increasing it from
25 three to eight. Those, I don't know yet 'cause I don't even

MULLIN - CROSS

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1 know which subpopulations at the end of the day are gonna drive
2 the analysis, but I know my odds of being left hamstrung by
3 having the 10 percent, you know, going to 10 percent, raises
4 that dramatically.

5 Q It -- now let's -- I wanna talk to you about the sample
6 here, which is -- is -- let me start with this question.

7 One, you've already designed the sample. In the event that
8 the Judge maintains his existing order, you've already created
9 a sample, right?

10 A I've proposed a sample. I don't know that the parties have
11 all signed off on that sample.

12 Q Fair enough. It's sort of like the comment about the
13 proposed order earlier, which is it'll come in pretty close to
14 final or otherwise. But yes.

15 And that's a, as I understand it, what, a strat, a
16 stratified random sample?

17 A Correct.

18 Q Right. And so that's just not -- again, there's a bunch of
19 lawyers in the room who did not take statistics. So let's just
20 see if we can break that down, which is that's just not a
21 random 1200 people. You go through and you pick every seventh
22 person in the population, right?

23 A Correct.

24 Q Right. It's designed to highlight certain categories or
25 factors that you're interested in studying, right?

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1 A It's attempting to maximize the efficiency of the sample
2 size.

3 Q Right. So you can in that case create a sample which
4 focuses -- this is purely hypothetical. I'm not suggesting
5 this is, is what you did -- but you can design a sample which
6 says I want more claimants who used, back to my innocuous Law
7 Firm A, correct?

8 A Correct.

9 Q Or it could be Law Firm B?

10 A Yes.

11 Q Or you could have more of your insulators or pipefitters if
12 you wanted, as you talked about earlier?

13 A That becomes more problematic 'cause I don't have the
14 complete work history of claimants. So if a claimant only has
15 one job in the claimants' database or the debtors' database but
16 it turns out they were a pipefitter for 20 years and that's not
17 in the database, I have no way of stratifying on the
18 information when I draw a sample that I don't have yet. So the
19 fact that I don't have complete industry and occupation
20 information means I really can't stratify on that because I
21 lack that information at the moment.

22 So that's a place where doing the stratification to try to
23 focus on industry and occupation ahead of time could,
24 ultimately, put you in worse shape. It may put you in better
25 shape, but it's a place where you, if you don't have complete

MULLIN - CROSS

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1 information, you can end up being worse off as opposed to
2 better off by trying to stratify.

3 Q Isn't it, Doctor, based on an assumption that the debtors'
4 work history is incomplete? You're assuming that.

5 A Well, I, I know the debtors' work history is incomplete for
6 many claimants. They didn't seek the information for some
7 claimants. So it -- I, I may have no information for certain
8 claimants. So in this sense I know I have an incomplete set of
9 information in just the debtors' database on that topic.

10 Q Right. And again, I'm not focusing on the 400,000
11 claimants in the debtors' database. I only want to focus on
12 the 12,000.

13 Can you tell the Court sitting here of the 12,000 you're
14 seeking, which you've already told the Judge you have the
15 information on, how many of those are missing, who have a
16 incomplete work history?

17 A In electronic form? Again, I don't know the answer to that
18 fully until one would go through. I could -- I don't know the
19 numbers off the top of my head to tell you which ones just have
20 blank fields.

21 So some have no information, which is, presumably,
22 incomplete if they were paid and had a gasket exposure.
23 Alternatively, some will have one or two jobs and I don't know
24 if that's complete or not.

25 Q Right. And you can't -- again, just to, see if we boil

MULLIN - CROSS

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1 this down -- you don't know sitting here of the 12,000 how many
2 have the zero, no work history at all, right?

3 A That's not something I refreshed my memory on before this
4 hearing. So --

5 Q But --

6 A -- I don't know that --

7 Q Fair enough.

8 A -- off the top of my head.

9 Q So I wanna turn back to the, the notion here which is is in
10 terms of the, your calculation of the certainty versus
11 uncertainty of, of what you did here.

12 We agree that you can't do that calculation yet. Can't do
13 the math 'cause you don't have the inputs, right?

14 A For the absolute level, yes.

15 Q Right. And so when, when you say for the -- you were asked
16 about, you know, the, the Permitted Purposes and the first one
17 was, was estimation, you said and I, I wrote it down here that
18 it'll be "more precise" or a "better estimate." Do you recall
19 saying that?

20 A Yes.

21 Q How much better?

22 A I suspect if I had to, I mean, the sample size is tenfold
23 on things that you directly estimate from that. That goes,
24 roughly, with the square root of ten. So a little bit more
25 than three-fold increase in the standard errors or confidence

MULLIN - CROSS

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1 intervals. You can stratify and mitigate that a bit.

2 So the stratification, you're still gonna be north of 2,
3 probably 2-1/2 times, but I don't know exactly. You're kind of
4 -- until you get the data back you don't know how much you
5 mitigated with the stratification. So it's probably a little
6 less than three, more than two is the relative change, but I
7 won't know until I'm done exactly where that comes.

8 Q But the relative change from what, Doctor? Because doesn't
9 it matter what you're multiplying the 1-1/2 or 2-1/2 or 3 by?

10 A Absolutely. And this is why I said, like, if you're trying
11 to forecast the number of claims in 2021, 10 percent sample's
12 probably fine. There's not that much uncertainty.

13 And so you're starting with, if you say, oh, they would
14 have gotten 1500 claims in the tort system, plus or minus 50,
15 and you say, okay, it's not plus or minus 50. It's plus or
16 minus a hundred. Maybe you're happy to live with that. When
17 you go out to 2030, it's not gonna be plus or minus 50. That
18 uncertainty's gonna get a lot bigger and by the time you get to
19 2040, you know, you may be a number plus or minus 25 percent.
20 Now you're making plus or minus 50 percent and going from plus
21 or minus 25 to plus or minus 50 percent, at least me, makes me
22 nervous about the ability to protect future claimants well.

23 So it varies by what question you're looking at. So for
24 certain questions, I'm in complete agreement. The sample would
25 likely be sufficient. For other questions, the sample's not

MULLIN - CROSS

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1 going to be sufficient. So it's not as simple as it works or
2 it doesn't work. It varies with the question that's being
3 asked.

4 Q Well, let me pause on that. You said the sample, you say
5 for some it is sufficient. We're certainly not gonna argue
6 about those, but let's talk about the ones you say with
7 certainty, with conviction there, that you know it's not
8 sufficient.

9 And my question to you, sir, is is aren't you just
10 speculating that it won't be sufficient? You don't know yet.
11 You haven't seen the data.

12 A I'll answer it statistically. Statistically --

13 Q Right.

14 A -- there's a small probability, very small, that if we had
15 a 10 percent sample, everything would still work out okay. I
16 can't say that has zero chance of occurring, right? But that's
17 a small probability. There's a very high probability that
18 that's gonna cause certain questions to have an increased level
19 of uncertainty that at least leaves me very uncomfortable and
20 the parties bearing most of that uncertainty are the future
21 claimants.

22 So the claimants that are gonna file 10 years from now, 20
23 years from now, those are the parties that are gonna bear the
24 weight of that uncertainty.

25 Q Can you quantify the uncertainty for the future claimants

MULLIN - CROSS

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1 in a number?

2 A I'll try it this way.

3 Q I just wanna know can you quantify.

4 A I'm --

5 Q Can you assign a number?

6 A I'm gonna try for you.

7 Q Okay.

8 A The majority of asbestos trusts have cut their payment
9 percentage heavily, many by more than 50 percent. The trusts
10 that have been designed in a more detailed manner, which the
11 Garlock Trust was one of those. Western Asbestos Trust was
12 one. Thorpe Insulation's another. Generally, the West Coast
13 trusts that have tried to do this more detailed and break
14 people out by their relative valuation and exposure categories,
15 in general, have raised their payment amounts, not lowered
16 them.

17 I wanna be in that latter world again. The increased data
18 improves our odds of living in that world and protecting future
19 claimants and in reality, in the other world future claimants
20 have often gotten less than 50-cent dollars relative to
21 pendings. That's the risk the future claimant is facing and
22 these data explicitly help you prevent that from happening.

23 And you're right. It's a gamble. You're gambling with the
24 future claimants' money, but it's -- that's -- that's who's
25 holding that risk if we go down that road.

MULLIN - CROSS

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1 Q Right. But -- last question on this subject, which is
2 is -- I wanna go back to, actually, what the Judge asked on
3 March 30th and one of the questions he asked -- and we talked
4 about it at your deposition - is is why isn't the 10 percent
5 sufficient and I believe, just so I understand it, your answer
6 is is it might be, but the cost benefit analysis says you
7 should give everything, right?

8 A In -- at a certain level, the costs of how many
9 claimants -- not claimants -- third-party PII would be revealed
10 is a probabilistic statement, probably less than ten. So
11 you're looking at a tradeoff of protecting what's likely the
12 name of ten coworkers or less versus the future payments to
13 hundreds if not thousands of future claimants. Those are the
14 two groups you're weighing the risks off of, you know. And in
15 -- from my perspective, getting that accuracy and protecting
16 those thousands of future claimants' payment percentage
17 outweighs the name of zero-to-ten coworkers.

18 Q And if you got all 12,000 claimant informations, can you
19 tell the Court right now how accurate your estimation would be?

20 A Again, not in absolute levels --

21 Q Right.

22 A -- until you've done all the work.

23 Q All right. Last, last couple questions. We should agree
24 on these. So let's try and end where we agree.

25 One, you're not a lawyer, right?

MULLIN - CROSS

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1 A Correct.

2 Q Okay. You are not a, what I would call a data privacy
3 professional, right? You don't hold any certifications in data
4 privacy?

5 A Correct.

6 Q Right. All right.

7 MR. KAPLAN: Your Honor, could I just have a minute to
8 confer with co-counsel and see if there's --

9 THE COURT: You may.

10 MR. KAPLAN: Thank you.

11 (Pause)

12 MR. KAPLAN: Your Honor, no further questions.

13 THE COURT: All right.

14 It is about time for a mid-morning break, anyway.
15 Would the parties like to stop there and then we'll pick up
16 with whoever else has questions of this witness? Are there
17 others that wish to examine the witness, I assume, before
18 rebuttal? Any other cross-examination from those opposed?

19 MR. GUERKE: Your Honor, it's possible. I don't think
20 so, but I, I'd like a moment at the break to consider that.

21 THE COURT: Okay.

22 Well, let's, let's take the break now and then if you
23 have questions, we'll let you ask them, then we'll get
24 rebuttal.

25 MR. GUERKE: Thank you, your Honor.

MULLIN - REDIRECT

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1 (Recess from 11:11 a.m., until 11:24 a.m.)

2 AFTER RECESS

3 (Call to Order of the Court)

4 THE COURT: Have a seat.

5 Other cross-examination of the witness? Did you
6 have --

7 MR. GUERKE: Not from DCPF, your Honor.

8 THE COURT: Anyone else?

9 MS. MOSKOW-SCHNOLL: No, your Honor.

10 THE COURT: Any redirect?

11 MR. EVERT: Your Honor, very briefly. So I'll just
12 stay at the table, if that's okay.

13 REDIRECT EXAMINATION

14 BY MR. EVERT:

15 Q Dr. Mullin, I just wanna ask you a, a quick question about
16 these hypothetical few claimants. I think you referenced ten
17 or so that might squeak through the scrubbing process of the
18 PII. Do you know what I'm talking about?

19 A Yes.

20 Q All right. I just wanna be clear. What would then have to
21 happen after they're missed in the scrubbing process for their
22 PII to be inappropriately disclosed?

23 MR. KAPLAN: Objection, your Honor. This is outside
24 the scope of cross. I did not ask about these ten people or
25 the scrubbing of their PII. So I don't know why we need

MULLIN - REDIRECT

1 redirect.

2 THE COURT: Technically, you're correct, but I'm gonna
3 allow it, anyway.

4 MR. KAPLAN: Okay.

5 MR. EVERT: Thank you, your Honor.

6 THE WITNESS: There would have to be a data breach
7 with one of the firms that possess that data.

8 BY MR. EVERT:

9 Q Okay.

10 Thank you, Dr. Mullin.

11 MR. EVERT: Your Honor, those are all our questions.

12 And, and I think with the testimony of Dr. Mullin and
13 our papers that we have on file, that would be the evidence
14 that we're providing for the Court here today.

15 THE COURT: Any other questions of this witness?
16 Anything else?

17 (No response)

18 THE COURT: Any that might come to mind during the
19 break?

20 (No response)

21 THE COURT: All right. You can step down. Thank you.

22 THE WITNESS: Thank you, your Honor.

23 THE COURT: All right. Do we need a moment before we
24 go to the other side, the opponents?

25 (No response)

WYNER - VOIR DIRE

1 THE COURT: Ready to call yours?

2 MS. MOSKOW-SCHNOLL: We are, your Honor.

3 THE COURT: Okay.

4 MS. MOSKOW-SCHNOLL: Thank you.

5 Your Honor, we call, we call Dr. Abraham Wyner.

6 THE COURTROOM DEPUTY: Place your left hand on the

7 Bible and raise your right hand.

8 ABRAHAM WYNER, DCPF'S WITNESS, SWORN

9 THE COURTROOM DEPUTY: Have a seat.

10 MS. MOSKOW-SCHNOLL: Your Honor, I think I'm gonna

11 stay here because I have a couple of slides for his

12 demonstratives and that way, I can do that.

13 THE COURT: That's quite all right. As I said, North

14 Carolina practice allows you to sit at counsel table. You

15 don't even have to stand. But --

16 MS. MOSKOW-SCHNOLL: Oh.

17 THE COURT: -- do what, what comes natural.

18 MS. MOSKOW-SCHNOLL: I would love to sit, if you don't

19 mind, your Honor.

20 THE COURT: Please.

21 MS. MOSKOW-SCHNOLL: Thank you.

22 VOIR DIRE EXAMINATION

23 BY MS. MOSKOW-SCHNOLL:

24 Q Dr. Wyner, could you please introduce yourself?

25 A Yes. I am Abraham Wyner.

WYNER - VOIR DIRE

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1 Q And where do you work?

2 A I work at the University of Pennsylvania Wharton's School.

3 Q And what do you do there?

4 A I am a Professor of Statistics and Data Science.

5 Q How long have you been a professor at Wharton at the
6 University of Pennsylvania?

7 A I'm heading into my 25th year.

8 Q Did you start there right after you finished school?

9 A No. I was a professor at Stanford University for a short
10 time and a postdoc and acting visiting assistant professor at
11 the University of California-Berkeley.

12 Q And what are some of your duties at Wharton?

13 A Primarily, it's research and teaching and I also have a
14 considerable number of administrative positions at this point.

15 Q Do you have an area or areas of specialization?

16 A Yes. I've been at this a very long time. So that, those
17 things have shifted over the years, but primarily, it's in data
18 analysis, statistical methodology, machine learning, its
19 applications, information theory and probability models.

20 Q And could you tell us about your educational background?

21 A Sure.

22 I got my degree in mathematics at Yale University and I got
23 my Ph.D. in statistics at Stanford University.

24 Q Have you published articles related to statistics or
25 statistical analysis?

WYNER - VOIR DIRE

1 A Yes, many.

2 Q And has your work been peer reviewed?

3 A Yes. I have many, many peer-review papers as well as some
4 unpeer reviewed.

5 Q Have you ever been engaged as an expert in statistical
6 analysis?

7 A Yes, many times.

8 Q Have you ever testified as an expert before?

9 A Yes.

10 Q And did that testimony involve statistical analyses?

11 A Almost in every case, yes.

12 Q Did the testimony involve the use of sampling?

13 A Very frequently, yes.

14 Q Have you worked with large intersecting datasets?

15 A Yes.

16 Q And did any of those datasets include data relating to
17 asbestos trusts?

18 A Yes.

19 Q And so you've done work with asbestos trusts?

20 A Yes, a considerable amount.

21 Q What type of work have you done for asbestos trusts,
22 generally?

23 A So I've worked for, exclusively for trusts which,
24 obviously, as we all know in this room, are created after a --
25 the debtors and -- after the bankruptcy. So typically, what

WYNER - VOIR DIRE

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1 I've been working on is evaluation of models, the, or creation
2 of models, the individual review model, which is the way future
3 claims are, are, are paid. I've also done extensive work on
4 evaluating how the payouts have changed over time and whether
5 the system for paying the, the claimants is tracking what was
6 forecasted. I've also looked at issues related to sampling and
7 in general, I've served as sort of a all purpose statistical
8 expert for the trusts, trustees and their, and their
9 counselors.

10 Q When you talked about just seeing if models were working
11 out correctly in the future for trusts, is that, are you
12 talking about, like, estimation, whether or not their
13 forecasted liability models were working? So they were paying
14 out the way they should?

15 A Yeah.

16 So once a trust is created, there's an average value,
17 scheduled values, and targeted values for IR claims and total
18 dollar amounts that are, that are included in the, in the TDP
19 and if you're missing those values, there's obviously, you can
20 overpay. That's obviously what's happened, as, as we heard
21 earlier from Dr. Mullin, for many other trusts. You might have
22 to introduce payment penalties or, or percentages. But
23 sometimes, you can underpay. In general, you have to look to
24 see how you're tracking and there are lots of tweaks you can do
25 to, to, to keep yourself from having undesirable outcomes.

WYNER - VOIR DIRE/DIRECT

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1 Q So when you've been involved with construction of IR
2 models, you've been looking at data, correct?

3 A Oh, yes.

4 MS. MOSKOW-SCHNOLL: Your Honor, we offer Dr. Wyner as
5 an expert witness in the field of statistical analysis and the
6 use of sampling.

7 MR. EVERT: No objection, your Honor.

8 THE COURT: So noted.

9 DIRECT EXAMINATION

10 BY MS. MOSKOW-SCHNOLL:

11 Q Okay. Could you please tell us about the assignment that
12 you undertook in this case, what you were asked to do?

13 A Sure.

14 At the last hearing the Court ordered that there be
15 evidence presented on the sufficiency of a sample and
16 particularly, the background was that 12,000 mesothelioma
17 claimants were at issue. They were held by, information was
18 held by the Trusts and it was --- the, the specific question
19 was can the debtors use 1200, a sample, appropriately designed
20 and weighted sample for their, their purposes and would that
21 cost them any accuracy.

22 So I -- actually, I opined on that directly, but I,
23 primarily, I was asked to respond to Dr. Mullin's declaration
24 and I did two things. I responded to the declaration and I
25 opined on the, the sufficiency of a sample.

WYNER - DIRECT

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1 I have to say I was rather surprised when I read
2 Dr. Mullin's declaration because nowhere in the declaration
3 does he actually talk about the sufficiency of the sample or
4 accuracy at all. He simply talks at length about how, how
5 there are costs associated and those are *de minimis* and,
6 therefore, more data, we can all agree, is better than less
7 data and, therefore, that's the argument. He did flesh out
8 some of the purposes and that was useful. He talked about
9 things that I was able to respond to and that was my charge.

10 Q And did you prepare an expert report?

11 A Yes. I did prepare a detailed expert report.

12 Q And what was your process in preparing that? Did you do
13 that on your own or did you rely on others?

14 A Well, thankfully, I had counselors to provide an incredible
15 amount of material for me to read, which they did at rather
16 short notice, I will say.

17 THE COURT: They do that to me --

18 THE WITNESS: Yeah.

19 THE COURT: -- quite a lot.

20 THE WITNESS: You know, I'm in the middle of a
21 semester. Fortunately, I'm only teaching -- I -- one, one, one
22 senior seminar. So I had the time at the right time to do
23 this.

24 So there's an incredible amount of stuff for me to
25 read and, and I read, read that and worked with the counselors

WYNER - DIRECT

1 to provide my expert report.

2 BY MS. MOSKOW-SCHNOLL:

3 Q Can you describe the materials you reviewed in creating
4 your report?

5 A So mostly, they were just exhibits and they're all in
6 Exhibit A and you can go through them.

7 Q Exhibit A to your report?

8 A Of my report, yeah.

9 Q And did you provide deposition testimony in this matter?

10 A I did.

11 Q What, if any, materials or additional materials did you
12 review in advance of providing your deposition testimony?

13 A So primarily, I, I reviewed Dr. Mullin's deposition
14 testimony itself, which was really different from the actual
15 declaration that he made, and I also looked at a response that
16 the debtors provided.

17 Q That would be the debtors' reply brief?

18 A Yes. That's the technical term.

19 Q And I think you also looked at the FCR's brief?

20 A Oh, yes. I saw that on the plane last night. Thank you.

21 Q Okay. Why didn't you review these additional materials
22 before drafting your report?

23 A Because they weren't, they weren't provided to me or
24 actually, some of the things didn't even come into existence.

25 So the deposition, obviously, didn't, didn't happen at the

WYNER - DIRECT

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1 time prior to the, the deposition itself. But I think it's
2 really important is that the deposition and the Futures' Claim
3 brief, whatever you wanna properly call that, outlined brand
4 new theories that had never, had never even hinted at in the
5 actual declaration itself.

6 Q And did you reach an opinion or opinions?

7 A I sure did, yes.

8 Q And did you reach those with a reasonable degree of
9 scientific certainty?

10 A Yes.

11 Q What ultimate opinion did you reach?

12 A So my ultimate opinion is -- you have to be, really, quite
13 careful about what, what is at issue here. What is at issue is
14 that we're looking at a, at the sufficiency of, of 1200
15 observations from a, a group of 12,000, right? So that's --
16 the fact that there are others is, is not on the table.

17 And so what Bates White and its experts, Dr. Mullin, are
18 gonna try to do is, is to provide a, a total liability
19 estimate, a total count on future claimants for different
20 disease levels. This is their, their obligation so they can
21 figure out how to, how much to fund the trust. And what I'm
22 essentially claiming is that that very big process which has
23 lots and lots of inputs, it requires information, much of which
24 Bates Whites [sic] already has, but the process of coming to
25 that conclusion will be not materially, practically changed by

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1 having 1200 as opposed to 12,000.

2 Q And just -- can you describe the statistical principles or
3 the methods that you relied upon in reaching that opinion?

4 A Yeah.

5 So they're basically foundational principle ideas. So
6 statistics having to do with accuracies of samples and
7 stratified samples and weighted samples and what we call
8 standard errors and, and things related to what we call
9 uncertainty calculations.

10 Q And, and do they have specific names or methodologies that
11 you were relying upon?

12 A Well, standard error calculations, sampling techniques. I
13 don't know.

14 Q Okay. And those are standard? You said --

15 A Absolutely foundational.

16 Q -- they're foundational?

17 So let's talk about your bases for that opinion. In
18 determining the accuracy of a sample, what do you need to know?

19 A Okay. Well, fundamentally, you have to know what's the
20 sample there to do for you. I mean, what, what is the
21 uncertainty? What is the problem? We often call that in
22 statistics a parameter. What is it that we're trying to use
23 the sample for?

24 So remember, we have 12,000. That would be what we call
25 the population and the population has certain characteristics.

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1 And our subsample, or our, our sample, I should call it, of
2 1200 is going to be used in place of the information you have
3 from the 12,000. So when you approach a problem, you have to
4 know what they are. So Dr. Mullin is actually quite helpful
5 and he indicated two parameters that we are interested at the
6 time that you would need to estimate. And one of them was the
7 proportion of claimants who failed to disclose their exposure
8 records. That was the first one. And the second one was the
9 average impact on the settlement value due to those incorrect
10 or improper disclosures.

11 So that already puts front and center two problems. The
12 problem, I mean, really fundamentally related to exposure
13 allegations, but I think it's important to, to kinda step back
14 for a moment and realize, well, what is this really all about,
15 right? Because there's a lot of assumptions that we all know
16 what we're, we're, we're trying to do here. So I wanna make
17 sure that it's clear.

18 So the basic idea -- and Dr. Mullin did a -- did a -- put
19 it up there front and center. We need to predict how many
20 claims are coming in and how many over, really over the lengths
21 of the trust. And we also need to know how much they're gonna
22 be paid, on average. And we typically do this by disease
23 level, but ultimately, there's only one number that we're gonna
24 want, which is the total amount. The TDP will then break that
25 down into different disease levels and average values and

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1 scheduled values and IR models and stuff of that nature. But
2 ultimately, it's just aggregates, overall averages, and, per
3 claim. And we also need to know how many claims they are. So
4 that's really the big, the big problem.

5 So what's at issue here is to figure out whether or not the
6 payments that have done in the past, which is the best way we
7 predict the future, which is, which is with the past, whether
8 maybe some of those are, have been overpayments, particularly
9 because they didn't disclose full occupation history or
10 industry history or exposure allegations. And, and some of
11 those might need to be modified and that would change our
12 averages, right? And so once we've changed our averages -- and
13 maybe we also change some of the future estimates on the
14 numbers that would come in based on having this, this, this new
15 information.

16 And so my essential conclusion was that if you are, have
17 only 1200 as opposed to full 12,000, nothing that is, that,
18 that's fundamental to this process is gonna be substantively
19 changed. And one of the reasons why -- and I'll have a chance
20 to talk about it, I'm sure later -- is that figuring out what a
21 future meso claim is gonna get ten years down the line, on
22 average, is gonna be really hard to do and how many there are
23 gonna be, on average, is also gonna be really hard to do, very
24 hard to do. And doing that well is, is, is, is, obviously, a
25 task, but the uncertainty in doing that is what I call

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1 irreducible. It's not -- you can get as much data as you want
2 and you're still gonna be very uncertain about the average
3 value of future mesos, for example. And the reason for that is
4 that we don't really know what future mesos are gonna look
5 like. The past mesos were a certain age. They had a certain
6 status of living. We knew certain occupations and exposures.
7 We knew their jurisdictions. We knew their sexes. And that's
8 gonna shift substantially over time in ways that are really
9 hard to predict. I mean, it's important to try to do so and
10 coming up with an average is, is something that's, is
11 necessary, but it's hard to do it really accuracy, accurately.
12 That's what I call the irreducible uncertainty in a prob, in a
13 problem like this.

14 And sitting where I've ben sitting all these years with the
15 trusts, is I can see them having, I can see the, the
16 consultants who did the original forecasts -- and I've looked
17 at many of them -- I can see the problems that they have when
18 they try to predict things way down the road. It just gets,
19 largely, offtrack. And that's expected because it's a very,
20 very hard problem to predict accurately. It's not, it's not a
21 failure of the design, although I do say some trusts have
22 probably failed mightily to do it properly. But it's a very,
23 very hard problem.

24 And so the question is, here, is when I have 12,000 or, or
25 1200 or we have very specific information here just about

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1 exposure allegations, this is gonna have a, a small impact on,
2 it can have an impact on -- on the -- on the -- on the actual
3 average. It can do that, but having 1200 as opposed to 12,000
4 won't change that impact very much. And the uncertainty that
5 you would introduce by having 1200 as opposed to 12,000 is very
6 small compared to that really big uncertainty, which is what
7 are mesos gonna look like and how many are they gonna be in 20
8 years from now.

9 Q You know, I think -- let's go to your demonstrative now.

10 'Cause I think --

11 A Ooh.

12 Q -- rather than wait.

13 MS. MOSKOW-SCHNOLL: Look, it worked.

14 Can everyone see that? Yeah?

15 BY MS. MOSKOW-SCHNOLL:

16 Q So I think this is what you were just describing, but maybe
17 it would be easy if we have something we can all look at while
18 you're talking about it.

19 A Sure. I, I can do this 'cause I -- now I have to say
20 there's a -- there's a -- this is -- there's a title here.

21 I'll go through this. It says Future, Forecasted Future
22 Liability with an asterisk. And I put that there because it's
23 hypothetical. Don't look at these numbers and say that I
24 calculated them from anything. I'm just trying to tell a story
25 and that story is dedicated to the problem of uncertainty.

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1 So we're not really interested in the forecasted value. I
2 just need a value and I, I grabbed one, 545. And that was one
3 of the numbers that someone threw around as a potential, kinda
4 ballpark for total liability.

5 And so what Bates Whites would do and they would take all
6 the data they could get and, and they may not come up with
7 this, but I just threw out numbers that are kinda consistent
8 with the kind of numbers I've seen in the past. They'd have a
9 lower and upper bound onto how much the total liability would
10 be. It's, it's, it's not a confidence interval. It's what we
11 properly call a prediction interval. So, and that's pretty
12 clear. I wanna predict how many -- how -- what the lower bound
13 would be and the upper bound. It's the kinda thing that I
14 actually do all the time. I mean, if I'm trying to predict how
15 many wins a baseball team's gonna get, I'm gonna tell you a
16 range, low to high.

17 So 545 is the estimate, the expected value, and 400-to-700
18 is the range and the distance, which here is 300 million, is
19 the uncertainty. So you should be looking at the length of
20 that line to tell you what's the uncertainty in that forecast.

21 Now right below it is the forecast that you would have
22 gotten if you didn't use all 12,000. You used only 1200. And
23 then, of course, everything else that the, the, the consulting
24 firms and Dr. Mullin and Bates Whites have at, at their
25 disposal, which is a lot. And what they would do is if they

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1 didn't have the, if they didn't have the full 12,000 -- they
2 only have 1200 -- they're gonna end up with a slightly
3 different number. That's what happens when you sample. You
4 don't get the same answer. But what I -- my analysis says that
5 the number won't be that different, maybe 540 instead of 545.
6 But more importantly, much more importantly, the length of the
7 interval, the upper-to-lower bound is about the same size.

8 What Dr. Mullin is having you believe -- and he doesn't
9 write this in his declaration and he didn't talk about it here
10 on the stand, but he talked about it in his declaration -- he
11 straightforwardly said that your uncertainty in the overall
12 forecasted liability is gonna be three times bigger. And I've
13 drawn you a line to indicate how, what it means to be three
14 times bigger going down to under a hundred million -- I just
15 made up 66 million -- all the way up to something over a
16 billion.

17 Now when you hear that, you're like taken aback. You're
18 like, "Oh, my God. I don't want this. You can't do sampling.
19 You're gonna make, you're gonna just throw the baby out with
20 the bath. We'll never know anything with any accuracy if we
21 sample." That's just, that's just not how it works. Because
22 sampling is not the -- the -- the introduction of sampling
23 uncertainty is not multiplicative. It's additive.

24 Q Okay. I'm gonna -- I'm -- I think this is what you're
25 talking about now.

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1 A It is.

2 Q And how do you calculate it?

3 A You're make, making me put on my professor hat here. Very,
4 very -- all right.

5 So now we agree --

6 Q As, as I've told you many times, we are all lawyers. Most
7 of us don't know anything about math. So --

8 A So one of the things that -- that --

9 Q -- professor away.

10 A One of the things that's very hard for people to understand
11 is that, that uncertainty doesn't add. It does -- certainly
12 doesn't -- it doesn't add directly. And the analogy that I
13 gave in my deposition was what we call the -- the -- the simple
14 analogy is the, the chain is only as strong as its weakest
15 link, right? So if I have a, a ten-link chain and they range
16 in, in, in strength from, from strong to weak, it's gonna break
17 at its weakest. And so it doesn't matter to strengthen the
18 strongest. It's the weakest that's gonna drive everything.
19 And that's really the issue here.

20 So getting back to it and I have a couple of numbers and
21 names that I've given to things. And I -- the, the previous
22 demonstrative made it clear that what I'm talking about is
23 irreducible uncertainty, the really difficult task.
24 "Irreducible" just means really hard, right, the really
25 difficult task of predicting what a future meso will be and how

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1 many they'll be or all the other disease levels. That's what,
2 that uncertainty I'm calling Sigma. And then there's a
3 sampling uncertainty, the uncertainty that's introduced because
4 we only had 1200 observations, not 12,000. And that we call
5 Tau.

6 Now the problem is I don't really, I mean, we have to
7 establish what's Sigma and Tau is. So I'm just gonna throw out
8 numbers which I think are, are, actually, a little bit too
9 favorable against what I'm trying to say here, just to be, just
10 to be clear. So I'm throwing out Sigma is about a hundred
11 million. So I'm trying to guess the total value and so that's
12 gonna be about a hundred million, plus or minus 4 to 6. Maybe
13 it's even bigger. Now if there's no sampling, no sampling at
14 all, Tau would be zero, okay?

15 So the total uncertainty according to my formula, which is
16 written over there. It's -- you don't need to even use it
17 because there's no additional uncertainty. So the uncertainty
18 starts at a hundred and stays at a hundred. Now if you have a
19 hundred million uncertainty, Tau, and now, Sigma, and now we
20 add in some sampling uncertainty. Ooh, we only have 1200. So
21 we have some extra uncertainty. So what's gonna happen? Well,
22 that might be -- actually, I think it's a lot smaller than 20
23 million, but it's, but we'll just call it 20 million.

24 Here's the formula. Sigma, it's Sigma squared. So 100
25 squared, woo-hoo, big number, plus Tau squared. Now take the

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1 square root. If you then figure out what the overall certain,
2 uncertainty is, it's almost exactly where you started, a
3 hundred to a hundred and two. And the point here is that
4 sampling does add a little uncertainty, but it's negligible
5 compared to the big task.

6 Now we're not saying you don't get any value out of 1200.
7 Oh, you're gonna do a lot of stuff with that. That's gonna --
8 it's -- I'm not saying you shouldn't do an investigation about
9 alleged exposures and those issues, very necessary, but the
10 difference between 1200 and 12,000, it just isn't that much.
11 Because 1,200 is a big sample. And the uncertainty here is
12 it's, it's the strong part of the chain. The weak part is the
13 predictions.

14 Q And that's all based on statistical principles, right?
15 You're not just pulling this out of thin air?

16 A No. It's fundamental -- yes. It's -- I'm not pulling it
17 out of just thin air. It's fundamental statistical principles.

18 Q Okay. Let's go back when -- and you were talking about
19 when you reviewed Dr. Mullin's declaration you pulled out two
20 parameters that he mentioned in his declaration. I think you
21 said the first parameter was proportion of claimants who failed
22 to disclose alternative exposures and the second was the effect
23 of partial information on average claim values.

24 A Yes.

25 Q And are those, are those what you would expect if you're

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1 trying to figure out the overall, you know, number of estimated
2 liability?

3 A Absolutely. So those are very specific parameters of the,
4 of the population and they're going to affect your overall
5 dollar amount. That's really at issue here, is that when -- if
6 you go back and look at the meso claims on average, well, maybe
7 they misrepresented their exposure levels. And so, therefore,
8 the dollar amounts in the past are too high and we need to
9 adjust that given the fact that we have the different history
10 of exposures and maybe those claims were overvalued. And so,
11 so figuring out the percentage of, of claimants that would have
12 a change and, and what the change would be are the two primary
13 issues, of course.

14 Q So, so it makes sense that he wants to measure these
15 parameters, the ones that he mentioned in his declaration?

16 A Yes.

17 Q Did he, in his declaration, did he talk about the, needing
18 the data for any other purposes?

19 A Not really -- not -- his declaration didn't say anything
20 specifically.

21 Q In Dr. Mullin's declaration did he mention the need for
22 data to study subpopulations?

23 A No, not at all.

24 Q In his declaration does, does Dr. Mullin ever discuss why a
25 sample of 1,200 is insufficient?

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1 A No, never, not once.

2 Q As an expert, if you were submitting a report to the Court
3 on your plan to use data, to use a dataset, would you
4 articulate all your intended purposes, or at least all your
5 major intended purposes for that data?

6 MR. EVERT: Objection, your Honor. Calls for
7 speculation.

8 THE COURT: Overruled.

9 THE WITNESS: Yes, I would. That would be the focus.

10 BY MS. MOSKOW-SCHNOLL:

11 Q So let's discuss again the first parameter of interest
12 noted by Dr. Mullin, the proportion of claimants who failed to
13 disclose alternative exposures.

14 Would a sample of data from 1200, 1,200 claimants provide
15 an accurate result for testing this proportion?

16 A Yes, and I detailed exactly in my report how accurate it
17 would be.

18 Q And is that, again, based on statistical principles?
19 That's how you determine how accurate it would be?

20 A Yes.

21 Q And let's discuss the second parameter, the effect of
22 partial information on average claim values.

23 Would a sample of data from 1,200 claimants allow
24 Dr. Mullin to calculate the average size of the impact of
25 nondisclosure on average claim values?

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1 A Yes.

2 Q And you heard Dr. Mullin testify, right?

3 A Yes, I did.

4 Q Did he basically acknowledge that a sample would be fine
5 for that?

6 A Yes, he did.

7 Q So for these two parameters or purposes noted by Dr. Mullin
8 in his declaration, would there be any material benefit to
9 using the full census versus a sample?

10 A He certainly didn't articulate a purpose and I couldn't
11 think of one and the purposes that he did articulate don't
12 require more than a large sample of 1,200. And so my
13 conclusion stood that it doesn't, won't materially or
14 practically change things to have more data.

15 Q Now he -- didn't he mention, Dr. Mullin, mention or discuss
16 the analytical burden of sampling?

17 A He did.

18 Q Did he, did he explain what he meant by that?

19 A I didn't -- he didn't explicitly explain, but it seemed to
20 me that he was talking about the extra work that the
21 statisticians would have to do to deal with a, a sample. And
22 it, it is a little bit of work, yes, but we're well equipped to
23 do it.

24 Q Is it substantial?

25 A Not really, no.

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1 Q Is it basically just doing another calculation that is a
2 calculation that just exists in the statistical world?

3 A Yes. It's, it's what Dr. Mullin called the "math."

4 Q Okay.

5 Did you review Dr. Mullin's deposition testimony?

6 A I did.

7 Q In his deposition did Dr. Mullin provide additional reasons
8 for why he wants claims data for 12,000 claimants versus 1,200?

9 A Yes, he did.

10 Q And what were those two additional things, or the
11 additional reasons?

12 A He talked about two of them that I recall specifically.
13 One of them was this idea of subpopulations. That sorta popped
14 up in the declaration. Somehow, he talked at length about how
15 he needs to build estimates for individual subpopulations and
16 that having 1200 wouldn't be sufficient for, for estimating
17 the, the subpopulations. And the second thing he talked about
18 was the effect of the inaccuracy, the introduction of
19 additional sampling variation on the total amount and that
20 related to my previous declaration.

21 So those are the two things he introduced.

22 Q And was his deposition the first time that this came out?

23 A Yeah, that was it. Wasn't in the declaration at all.

24 Q Okay. So let's go through these.

25 So the first is the small subpopulations.

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1 A Uh-huh (indicating an affirmative response).

2 Q Having read his deposition testimony and now having heard
3 him testify, do you, do you understand why he needs that data?

4 A Well, that's interesting. No, I don't understand why he
5 needs the data. I know why he's telling you he needs the data,
6 but I think I need to put some context here.

7 The subpopulations, there are, obviously, lots of
8 subpopulations. You have different law firms and you have
9 different jurisdictions, you have different occupations and
10 industries, and you can even throw in things that I've never
11 seen matter ever, which is things like sex and, of the, of the,
12 of the claimant. I mean, it's possible. You can, can always
13 do that, but you have to really remember what the task is here.
14 The task is to calculate the, an average value or an aggregate
15 value for the trust.

16 I don't think I've ever seen -- and I'm not sure it's at
17 issue here -- but I don't think Bates Whites and Dr. Mullin is
18 charged with the task of making many trusts. We have the
19 trusts for pipefitters and we have the trusts for shipbuilders
20 and we have the trusts for pipe builders who are 20 years old
21 who live in Arkansas. We don't need to build a trust for all
22 of those. We're building one trust with one dollar amount.
23 And yes, you can try to arrive at that dollar amount by
24 building up from the, from the subpopulations to the overall
25 value, but if you -- remember, our goal is the overall value.

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1 The fact that some of the subpopulations are not as accurately
2 estimated as you would if you had a lot more data is ultimately
3 rather irrelevant to the ultimate task. Let me give you an
4 analogy. You didn't ask me, but I run the Wharton Sports
5 Analytics and Business Initiatives. I'm gonna use a football
6 analogy. I hope you're okay with that.

7 If I'm trying to measure the quality of a football team,
8 okay, how can I do that? Well, a football team is comprised of
9 lots of parts. So I could try to measure the quality of its
10 running team and I can look at its special teams and its
11 safeties and its secondaries and its, and every single
12 situation that'll come in. Now a team might have 10,000 --
13 I'll just throw it out. Actually, maybe I'll use the number
14 12,000 -- 12,000 plays and if I had all 12,000 I could really
15 probably get a really good estimate of all the attributes that
16 make a football team a, a, a football team, but some of them
17 are gonna be really rare 'cause some of them don't really show
18 up that often and those, I'm not gonna get quite that
19 accurately.

20 But I'm ultimately interested in just evaluating the
21 quality of the football team and 1200 used to measure the
22 quality of the football, which is what I want, is gonna be way
23 more than enough. Sure, I'm not gonna know exactly the
24 contribution of a very rare subpopulation to that overall
25 quality, but ultimately, I don't need that for evaluating the

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1 quality of the team itself.

2 And so if there is any specific need why you need to know
3 for the overall purpose a very precise number on a
4 subpopulation, Dr. Mullin didn't explain that.

5 Q Are small subpopulations generally relevant to estimate
6 total future liability?

7 A Well, generally not because if it's a small subpopulation,
8 then, by definition, you don't need that much information
9 'cause they're small and especially when you throw in a
10 statistician's toolkit, which is weighted and strat, weights
11 and stratification. When you know what you're looking for and
12 what, you know what drives uncertainty, you can target the, the
13 subpopulations that drive uncertainty and that, of course, is
14 what's proposed.

15 Q And, and I believe Dr. Mullin said something to the effect
16 of that he was particularly interested in small subpopulations
17 with high-claim values.

18 A Yes. And in fact, that's actually very important. The
19 stratification -- in fact, if you go back a step and you say,
20 well, we got 12,000. We're looking at mesos in the first
21 place. We're looking at them because they're high value.
22 Valuation, valuations of the claims, the payment values that
23 are attached to them is a huge, huge factor in all of this.
24 And so the stratification will target the, the large value. So
25 any small subpopulation that has any appreciable number of

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1 large claims will absolutely be included in our 1200.

2 So when I talk about sampling 1200, I'm actually talking
3 about an efficient sampling of 1200 and the efficiency is gonna
4 be gained by looking at the large claims and disproportionally
5 sampling large claims. And so that is, of course, what's
6 proposed.

7 Q And would you agree, then, with Dr. Mullin's statement that
8 sampling can mitigate uncertainty, I mean -- sorry --
9 stratification or the way you, the method of sampling can
10 mitigate uncertainty?

11 A Yes. In fact, the method of sampling can mitigate
12 uncertainty enormously. It's a very important task, very
13 important. Stratification is a very important task and when
14 you have this incredible detailed information about the
15 claimants -- now -- and you have -- you know what they were
16 paid, you know what their law firm was and for all of them,
17 Bates Whites knows this. They know the jurisdiction. They
18 know all kinds of information and some of them might be -- have
19 no -- missing fields, but that's information by itself, by the
20 way. Missing this is often, information. We know what they're
21 alleged occupation is. We don't know whether that would
22 change, of course. That's the purpose of the exercise.

23 But we have a lot of information available as to do a
24 detailed stratification to make sure that the characteristics
25 of the sample match the characteristics of the population, at

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1 least the known characteristics of the populations. You want
2 to make sure that they match pretty well and particularly if
3 you have a driver, like payment size. That's the one that
4 you're gonna use and in particular, you know, this is not
5 the -- this -- the -- we actually have two pieces of
6 information to go on here. We have Bestwall case where
7 Dr. Mullin's colleague, Dr. Gallardo-García, he proposed a
8 sample almost exactly the same situation and I looked at it and
9 it was something I, it was put into evidence and, and I read
10 and all the stratification was on size. No effort to stratify
11 on law firm, no effort to stratify on jurisdiction, no effort,
12 no subpopulations that we heard of, occupation, it was all
13 size.

14 And ergo, I mean, subsequently, we have another, we have a
15 -- I, I saw an e-mail that detailed a, a sample for this
16 purpose and that purpose, again, was entirely driven by sample
17 size. No subpopulations on law firms or jurisdictions or
18 anything else, driven by size because, frankly, it's the size
19 that matters.

20 Q And why does the size matter? Is it because if something
21 only appears on a random, like very infrequently, that that
22 just won't impact the overall average, right?

23 A Yeah. Appearances of things that are frequent --
24 infrequent things can have an impact if they're really, really
25 large. And so when you sample you have to be concerned that

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1 you're gonna miss things that are infrequent. That's true. I
2 mean, you will miss things that are infrequent, but infrequent
3 things won't have an impact unless the, unless the size that's
4 attached to them is large enough to have that impact.

5 So you mitigate that by making sure you sample large ones.
6 In fact, generally, you go for all the largest ones. So you
7 don't even do a sample at all. The first strata is all the
8 largest ones and that's a very standard auditing practice. So
9 that's, that's kinda how you, you, you make sure that, that
10 information on some of the subpopulations doesn't hurt your
11 overall estimate because it doesn't -- it -- it won't if you do
12 it properly.

13 Q And in his, in his deposition Dr. Mullin said, "If a law
14 firm only has 300 claims, then I would need all 300. Dr. Wyner
15 and I would agree that 30 claims is not enough." Do you agree?

16 A Again, you have to have a purpose for what, what, what the
17 "enough" is, right? So if he were to build a trust just for
18 this law firm and it's gonna be funded and there's no money
19 going in and out and it's gotta fund every claim for that law
20 firm in perpetuity, 30 won't be enough. But that's never the
21 goal here. The goal is to fund all of this, all the thing
22 simultaneously, and one little law firm being slightly
23 misestimated is only a small piece in a much bigger picture.

24 It goes back to my initial argument with the, with the,
25 with the football team. If I, if I only have 30 special teams,

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1 I might not get the special teams right, but it's not gonna
2 affect the overall estimate of the quality of the football team
3 as a whole. And that's really what we're trying to do here, is
4 estimate the total amount of liability, not the specifics. But
5 you know, you have to have a question when you say something is
6 not enough. Thirty is not enough. What's the question and
7 what is it not enough to do? If, if I have a question, if law
8 firms come in two types, are they, do they always represent
9 claimants who never failed to disclose any, any allegations,
10 exposure allegations or do they always do it, one or the other?

11 Thirty'll do that wonderfully 'cause you'll know quickly
12 whether you're either group. If it's in the middle, it can
13 figure out are you 50 percent? You can do that well, as well.

14 So it all depends on the level of accuracy that you need
15 and when you -- you can't just throw out number is not enough
16 until you tell me what you're trying to do, right? So I'm
17 gonna do another sports analogy. Here we go.

18 If I have a, two baseball players and I'm trying to decide
19 who's better and I'm trying to decide one is, one is bad, is,
20 is mediocre, batting average of .270. Another is terrific,
21 .300. Will 30 observations -- 30 -- a sample of 30 from each
22 of them be able to do it? The answer is no. You can't do it
23 with 30. They're, they're too close. So you can't do it.

24 So when you say something's not enough, you have to have a
25 purpose. What's it for? And being able to say specifically

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1 accurate things on the law, on the law firm and the basis is
2 necessary only if you're trying to build a trust specifically
3 for law firms. But we're not trying to do that. We're trying
4 to build an aggregate, an overall trust, and we'll get plenty
5 of information about the trust, the law firms that appear
6 frequently and with large values due to our stratification.

7 Q They said in their reply brief, Jones Day wrote in their
8 reply brief that, "A sample of 1,200 would limit or render
9 impossible debtors' ability to study subpopulations."

10 Do you agree with that?

11 A Well, no, not in a material way. It won't -- it won't --
12 not -- it will render your ability to study subpopulations not
13 differently than for any purpose, important purpose of this, of
14 this matter in any substantive way.

15 Q So the second new point that you mentioned was that errors
16 introduced through sampling can have a great impact on
17 estimating future liability and Dr. Mullin opined that using a
18 10 percent sample could triple the amount of uncertainty.

19 Do you agree with that?

20 A No. I don't agree with that even remotely.

21 Q And that comes back to the demonstrative that we already
22 went over?

23 A That's right.

24 Q Okay.

25 Are there any significant benefits to using a full census

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1 rather than the sample in determining and estimating future
2 liability?

3 A Not that any I can see at this point.

4 Q Do you recall that Dr. Mullin stated in his declaration
5 that the broader population of asbestos claims number is
6 400,000. So the 12,000 claims they've subpoenaed is itself a
7 sample? And I think he testified to that today, again.

8 A He did.

9 Q Does that have any impact at all on the efficacy of using a
10 sample of 1,200 versus a full sentence of 12, census of 12,000
11 mesothelioma claimants?

12 A So that brings up two issues I need to clarify. First,
13 this is something that I teach almost the first day of class,
14 which is the accuracy of a sample depends only on the sample
15 size, not on the size of the population that it's drawn.
16 People have a very hard time with that. If I tell you I'm
17 taking a random sample of a thousand from a population of
18 20,000, that's no less accurate or more accurate than a sample
19 of a thousand taken from a population of 20 million.

20 Q Now is that statement -- I'm assuming that's based on some
21 type of principle.

22 A That's based on fundamentals of sampling without
23 replacement or with replacement, actually, in this context.
24 Basic probability theory, a statistical theory demonstrates
25 that. There's, there's something called the correction factor,

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1 which is actually in my report that I introduced, but the broad
2 principle is absolutely valid.

3 So introducing the idea that this is 1200 out of 400,000
4 somehow doesn't change anything at all. The accuracy of 1200
5 depends on 1200, not the fact that it's drawn from, from
6 400,000, but that's actually not what's at issue here. What's
7 at issue is the accuracy of 1200 compared to 12,000 and that
8 12,000 isn't a sample in the sense of a statistical random
9 sample. It's just a subset. And I wouldn't, I wouldn't call
10 12,000, the meso, I wouldn't call that a sample. I mean,
11 technically, it might be, but it's a subset of the data, the
12 subset that we're interested in.

13 And so what we have is a sample, a random sample weighted
14 and appropriately stratified of 1200 from the 12,000 that we're
15 interested in. The 400,000 is really not a, nothing here.

16 Q And Dr. Mullin opined both at his deposition and today on
17 the stand that you, a statistician can't tell you the sample
18 size you need before the data's produced. Is that correct?

19 A I'd be out of a job if I couldn't do that. I mean, the
20 fundamental issue in almost medical study is to do just that.
21 It's called a power analysis. You -- you -- you see things --
22 certain things are not available accurately ahead of time, but
23 they can be approximated or bounded. We have a, we have
24 information on the effect size, we call them, or effect size
25 that we're trying to measure. And so that guides the

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1 construction of a sample.

2 So no. You can absolutely opine and provide some useful
3 information on the size of a sample before you generate a
4 study. I, I hate to tell Pfizer that their study of the COVID
5 vaccine was just done out of thin air because they didn't, no
6 idea what they were -- they -- what they were doing when they
7 created their sample size.

8 Q In sum, just briefly, why is it your opinion that a 1,200
9 sample is sufficient here?

10 A Because the, the problems at issue relate to proportions,
11 proportions of, of the data that has alternative exposure
12 allegations, and the change in the size of the, of the value
13 given those -- those -- those -- those changes. Those are
14 averages and there's proportions. There's something that we
15 wish to calculate for the entirety of the population and we'll
16 be able to do them quite accurately with 1200 observations
17 appropriately weighted and stratified.

18 Q Thank you.

19 THE COURT: Anything else?

20 MS. MOSKOW-SCHNOLL: Your Honor, would you like a
21 paper copy of the demonstratives?

22 THE COURT: That would be fine. Thank you.

23 Any other questions before we get -- we'll reverse the
24 order. The parties that are objecting to the debtors' motion,
25 anyone want to ask questions of the witness? Anyone else, then

1 we'll come back to Mr. Evert?

2 MS. BENNETT: No.

3 THE COURT: We good? All right.

4 Cross.

5 MR. EVERT: Your Honor, this is the first that we've
6 seen these demonstratives. So I was gonna ask for a minute and
7 given the time, I didn't know if it made sense to just break
8 for lunch.

9 THE COURT: How do you folks feel?

10 I was gonna let you run up to as late as 1:00, but we
11 need to take a break at some point.

12 MR. GUERKE: I, I suggest we go to 1:00, your Honor.

13 THE COURT: Why don't we take -- how much time do you
14 need to look at the demonstratives?

15 MR. EVERT: Just give me --

16 THE COURT: Ten or fifteen?

17 MR. EVERT: -- 15 minutes, your Honor, and that'll be
18 fine.

19 THE COURT: All right. Let's use the time as best we
20 can.

21 We'll take, hopefully, a ten-minute break. If you
22 need 15, we'll go that far. Let us know when you're ready.

23 THE WITNESS: Can I get down?

24 THE COURT: And of course, you can step down, but you
25 don't need to discuss your testimony thus far with anyone right

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1 now, okay?

2 (Recess from 12:07 p.m., until 12:19 p.m.)

3 AFTER RECESS

4 (Call to Order of the Court)

5 THE COURT: Have a seat.

6 Ready for cross?

7 MR. EVERT: Thank you, your Honor. I think that,
8 hopefully, got me a little more organized.

9 THE COURT: Okay.

10 MR. EVERT: Michael Evert for the debtors, your Honor.

11 CROSS-EXAMINATION

12 BY MR. EVERT:

13 Q Hello, Dr. Wyner.

14 A Hello.

15 Q Good to see you again.

16 I think you've illustrated today that your primary of
17 expertise is as a statistician, is that fair?

18 A Yes.

19 Q And you've been involved, I think you told me previously,
20 in a number of pieces of litigation where you testified as an
21 expert on the issue of a given sample and what that sample
22 means?

23 A Yes.

24 Q And the dispute that occurs in that litigation about what
25 the sample means is all about the sampling error, is that fair?

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1 A Typically, the sampling error and issues related to error
2 and variance and bias.

3 Q And the difference between the true value and the, of the
4 population and the value of the estimate is, essentially, the
5 definition of the sampling error, is that right?

6 A Yes.

7 Q And it -- sampling error is an error that we expect to
8 occur when we make a statement about a population that is based
9 only on the observations contained in the sample, is that fair?

10 A Very good.

11 Q And there's also a sample variation that occurs where the
12 results from one sample will differ from those provided from
13 another sample, is that true?

14 A Yes.

15 Q And you agree with me that sampling leads to a loss of
16 accuracy?

17 A I mean, yes, it agrees in the sense that more data is
18 better than less data, but the real question is always how much
19 better. And with samples there's what we call a diminishing
20 return.

21 So once the sample is fairly large, there's, or, actually,
22 it's a theorem. Each additional data provides less information
23 than the previous piece of information.

24 Q And another negative of sampling is that, the litigation
25 that ensues over the meaning of the sample, which you just

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1 talked about previously, right?

2 A Yes.

3 Q And if you analyze the entire dataset rather than a sample,
4 by definition there's no sampling error, is that right?

5 A That's right.

6 Q And if the entire population is available, the chief motive
7 for examining a sample rather than the population is cost,
8 right?

9 A Yes.

10 Q So one should undertake a cost benefit analysis to
11 determine whether or not to use a sample?

12 A That's a good idea.

13 Q All right.

14 And I think you agreed with me that if the cost is zero,
15 then you should always prefer the population to a sample, is
16 that right?

17 A Well, every positive number is bigger than zero. So yes.

18 Q Okay.

19 Now in your testimony today you, you focused on the issue
20 of how to fund the trust in the sense of that's what you saw as
21 the issue posed to Dr. Mullin, is that, is that fair?

22 A Well, I mean, Dr. Mullin talked about that in his
23 declaration and this is -- and, and in his deposition -- and he
24 didn't talk about, really, anything else.

25 Q All right. So let me -- let me -- let me make sure I've

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1 got that.

2 So did, did you read the subpoena?

3 A Yeah, I read the subpoena, sure.

4 Q Okay. So, so do, do you recall that in Paragraph 5 of the
5 subpoena it says, "The subpoenas seek evidence that is relevant
6 and necessary to specific purposes in connection with the
7 estimation of the debtors' liability for current and future
8 asbestos-related claims and the negotiation, formulation, and
9 confirmation of a plan of reorganization in these cases"?

10 A Yes.

11 Q All right. And do you remember that it said that, in the
12 subpoena, that, "The determination of whether pre-petition
13 settlements provide a reliable basis for estimating the
14 debtors' asbestos liability, the estimation of the debtors'
15 asbestos liability, and the development and evaluation of trust
16 distribution procedures for any plan of reorganization
17 confirmed in these cases"?

18 A Yes.

19 Q Do you recall that from the subpoena?

20 A Yes.

21 Q Okay. So you, you had seen that there was a lot more at
22 issue for the data here sought from the Trusts than how much to
23 fund the trust?

24 A Well, ultimately, those things are very vague, right? So
25 they're not specific. So if you talk about creation of a TDP,

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1 well, I don't think this issue -- the TDP has lots and lots of
2 attributes into it for what are the rules, what are -- and none
3 of these things have to do with this data.

4 So when you say about construction of, say, the TDP, well,
5 what attributes of it? One, one of them would be what are the
6 scheduled values gonna be? What is the predicted, what is the
7 average value gonna be for the IR models? Those are things
8 that are, again, focused on liabilities and averages.

9 And so, yes, there's a whole discussion on the TDP, but you
10 have to be specific about what is involved here and, and what's
11 related to those issues. And again, the things that I can
12 conceive of where these issues are really at, at, at stake are,
13 relates to, basically, values involving averages, percentages,
14 proportions, totals.

15 Q So as I understand your testimony, it was in there, but it
16 just wasn't specific enough, is that, is that what you just
17 said?

18 A Well, I mean, not only not specific enough, but, but
19 Dr. Mullin wasn't specific --

20 Q Okay.

21 A -- so.

22 Q And likewise in his declaration where Dr. Mullin said, "The
23 relationship of exposures alleged to the various occupations
24 and trades of the debtors' historical claimants and the extent
25 to which the full range of alleged exposures is changing over

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1 time are important to estimating the debtors' legal liability
2 share," you, you had seen that as well in his declaration,
3 correct?

4 A Yes.

5 Q So you had seen that Dr. Mullin talked about studying
6 occupations and trades of the debtors' historical claimants and
7 the like. Again, not specific enough for you?

8 A No, because it doesn't talk about the way that intersects
9 with the quantity that is affected by sampling.

10 Q Okay.

11 So Dr. Wyner, I'm trying to find --

12 MR. EVERT: Do you have his declaration, Wyner's
13 declaration?

14 MR. HIRST: Uh-huh (indicating an affirmative
15 response).

16 MR. EVERT: Thank you.

17 I apologize.

18 THE COURT: Take a moment. That's good.

19 (Pause)

20 BY MR. EVERT:

21 Q Ah. In, in your declaration, Dr. Wyner, you said -- and we
22 talked about this at your deposition -- you said, "If called to
23 testify, I may also explain principles and terminology referred
24 and alluded to in this report as well any document, as well as
25 any documents referenced herein," do you remember that?

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1 A Vaguely, I suppose, yeah.

2 Q And, and I asked you about it at your deposition and I
3 said, "Does that essentially mean, 'If I don't use the same
4 words that are in my report, don't hold it against me?'"

5 A I don't recall exactly, but something to that effect.

6 Q Okay. All right.

7 So, so we can agree you're not tied to the words you used
8 in your report, is that right?

9 A No. Yeah.

10 Q All right.

11 So your focus of your testimony today rather than these
12 issues about negotiation and formulation of a plan and TDPs and
13 the like, instead it's been focused on one aspect of
14 Dr. Mullin's role, which is the overall estimation of how much
15 to fund the trust, is that fair?

16 A Well, I mean, that has been the thrust of what I've been
17 talking about because that's the things that Dr. Mullin talked
18 about in his declaration and it's also things that he talked
19 about in his, his actual testimony right over here today.

20 Q Some of the things, would you agree?

21 A Sure. I mean, that's what --

22 Q Okay.

23 A I can only respond to things that come up.

24 Q Well, it's some of the things he talked about --

25 A Uh-huh (indicating an affirmative response).

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1 Q -- not all of the things he talked about, would you agree
2 with that?

3 A I think we're splitting hairs, but yes.

4 Q Okay. And it's your opinion that the effort to try to
5 estimate the current and future asbestos claims against the
6 debtors is one that's fraught with, essentially it's fraught
7 with uncertainty, is that fair?

8 A Yes. That's absolutely true.

9 Q Okay.

10 A I don't think anyone would disagree with that.

11 Q And I think that your opinion, as you expressed as I
12 understand today, is that the sampling error that would, by
13 definition, result from the use of a 1200-claimant sample
14 instead of a 12,000-claimant population would be immaterial in
15 light of the overall uncertainties in the estimation of the
16 asbestos liabilities, is that right?

17 A That's right.

18 Q And am I correct that at the time you first rendered that
19 opinion you had not read the order ordering estimation in this
20 case?

21 A I'm not real -- I don't recall. Sorry.

22 Q Okay. We, we talked about it. You'd not read it at the
23 time of your deposition. So it's fair to say you'd not read it
24 at the time you rendered your opinion --

25 A Yeah.

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1 Q -- is that fair?

2 A That'd be my written opinion, yes.

3 Q Yes.

4 A Yeah.

5 Q And, and you rendered this opinion despite the fact you
6 have never before published an opinion or expert report on the
7 forecasting of future asbestos claims, is that right?

8 A None -- I have never given one for a court, for example, or
9 published it in -- but I've given opinions to trusts on a
10 private basis, yes.

11 Q You have never before rendered an opinion or an expert
12 report on the forecasting of future asbestos claims, is that
13 fair?

14 A You have to be careful. I -- the second part, yes, that's
15 fair. I've never issued an expert report.

16 Q Okay.

17 A But offered an opinion, I've given many opinions.

18 Q I understand. I understand. We all have a lot of
19 opinions.

20 And, and you've never before published an opinion or an
21 expert report on the value of current and future asbestos
22 claims pending against a company, is that fair?

23 A That's fair, yes.

24 Q And you have not been involved in any form in the
25 confirmation of a plan of reorganization, is that fair?

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1 A That's fair. Well, secondary reorganizations. I've been
2 involved in, in, in NARCO's case, which was just reorganized.

3 Q Well, let me just make sure for, for the Court's benefit.

4 You mean the, the trust recently settled with the funder
5 and they are modifying the trust accordingly, is that what you
6 mean?

7 A Yes, that's what I mean.

8 Q Okay.

9 And in, and in fact, the only times that you have looked at
10 issues -- and obviously, you've done a lot of work and I know
11 sports statistics is a huge expertise of yours and all -- but
12 the only times you've looked at issues related to future
13 asbestos claiming has been in connection with your consultancy
14 with two trusts, is that right?

15 A Correct.

16 Q And those two trusts are the NARCO Trust and the DII Trust,
17 is that right?

18 A That's right.

19 Q All right. And in those instances what you have done is
20 you have reviewed more than one actuarial or other consulting
21 report that have made estimates as to the future instance of
22 mesothelioma, correct?

23 A Correct.

24 Q And when you've reviewed those reports you provided to your
25 clients at NARCO and DII your critique of those estimates based

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1 on your expertise in statistics, is that fair?

2 A Yes.

3 Q But you have never before built a model for forecasting
4 future claims like the model Dr. Mullin described today and has
5 built before and will be building here, is that right?

6 A That's correct.

7 Q And the work you did for the NARCO Trust was associated
8 with the individual review model, correct?

9 A Part of the work I've done.

10 Q Okay. And the goal of the individual review model was to
11 value a claim pursuant to the NARCO trust distribution
12 procedures, is that fair?

13 A Correct.

14 Q And you based that model on various factors that affect the
15 severity of damages and evaluating a claim, correct?

16 A That's right, as --

17 Q Among those factors were an injured party's industry,
18 correct?

19 A Yes.

20 Q Occupation?

21 A Uh-huh (indicating an affirmative response).

22 Q Age?

23 A Yep.

24 Q Law firm?

25 A Yep.

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1 Q Economic loss?

2 A Also.

3 Q Dependency?

4 A Yes.

5 Q Life status of the claimant?

6 A Yep.

7 Q Many of the same factors that Dr. Mullin described today,
8 is that correct?

9 A Yes.

10 Q And you were not surprised when we talked about at your
11 deposition that Dr. Mullin was also interested in considering
12 those factors, is that right?

13 A Potentially, yes.

14 Q All right.

15 Now when you did your work for the NARCO Trust did you have
16 the entire database?

17 A I had a lot of data. I'm not sure what, if I can answer I
18 had everything, but I had a lot of data.

19 Q Do you believe you had a sample of the NARCO data?

20 A Well, we certainly subset it, but we didn't do random
21 sampling. Again, I don't think so, no.

22 Q Okay. You, you think you had the entire population of the
23 data, is that correct?

24 A Well, it's not the entire population. I, I had the subset
25 of the population that was relevant to the tasks that I was

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1 performing.

2 Q I see.

3 You said in your direct testimony that forecasting claims
4 ten years down the road is really hard to do. Did I basically
5 get that right?

6 A Yes.

7 Q All right. And as I understand it, what you're suggesting
8 here today is adding sampling error, which is some level of
9 uncertainty, to make it harder?

10 A I'm sorry. Can you repeat the, the second half of that, or
11 just start from, from again?

12 Q What you're suggesting today is that we add sampling error
13 to add some level of uncertainty which just makes it harder?

14 A Yeah. It makes it harder, but -- and, and my, my essential
15 point was it makes it harder in a way that's not material or
16 practically worse.

17 Q I see. So the answer to that is to use less data?

18 A No. The answer to that is -- well, there's a, there's a
19 cost benefit analysis and there's a cost at getting this data
20 and the -- and there's a -- if that weren't there at all, then,
21 of course, this wouldn't be an issue, but there is an issue of
22 cost. And I wasn't asked to opine on cost. I'm just under the
23 operating assumption that somebody here cares a lot about cost.

24 And so given that that exists, I was asked to talk about
25 the benefit side and try to quantify that and I did that as

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1 best as I could without really trying to compare it to
2 anything. I let other people talk about that.

3 Q I got it. You're not here to talk about the cost side?

4 A Not really, no.

5 Q So you -- so you -- you -- you stand by your position that
6 if the cost is zero, you should take the entire population, is
7 that right?

8 A Well, that's an easy one.

9 Q There you go.

10 Now I wanna talk for just a second about your mentioning of
11 Dr. Mullin's partner, Dr. Gallardo-García's, declaration in the
12 Delaware Bestwall matter. Do you remember that discussion?

13 A I did.

14 Q And I, I think you -- I didn't hear in your direct if you
15 said that you were aware, you were aware that Dr. Gallardo-
16 García's declaration was directed to issues that arose in the
17 case after a sample had been ordered by the Court. Are you
18 aware of that?

19 A Yes.

20 Q And you're aware, ultimately, that decision on a sample was
21 reversed on appeal?

22 A I'm not sure.

23 Q All right.

24 And are you, are you aware at all of the extent of the
25 litigation over the sample that had occurred prior to

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1 Dr. Gallardo-García's declaration?

2 A No, I'm not aware.

3 Q All right. So when you say you would have said more, or
4 something like that, in Dr. Gallardo-García's declaration, you
5 have no concept of what was already said in the case?

6 A Well, I don't have the background, no.

7 Q Okay. And either way, you'd agree with me that, consistent
8 with the position of the debtors here, that sampling relative
9 to a full dataset increases the analytical cost and reduces the
10 precision of the results, agreed?

11 A Tech -- I mean, certainly increases the analytical cost and
12 it does, it does lower the precision. But again, the relevant
13 question is to what degree?

14 Q I, I understand, but that's exactly what Dr. Gallardo-
15 García said in his declaration, didn't he?

16 A I don't remember what he exactly said.

17 Q Okay.

18 A So.

19 Q Would you -- you, you have no recollection as to whether or
20 not in that declaration he said, "Sampling relative to a full
21 dataset analysis increases the analytical cost and reduces the
22 precision of the results"?

23 A I mean, again, that, that statement is sort of technically
24 true, but practically irrelevant.

25 Q All right.

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1 And --

2 MR. EVERT: One minute. Bear with me.

3 (Pause)

4 BY MR. EVERT:

5 Q Apologize, Dr. Wyner. Stay with me one minute here.

6 THE COURT: And for housekeeping purposes, we'll run
7 up till about 1:00.

8 MR. EVERT: I, I'll be through shortly, your Honor.

9 THE COURT: Okay.

10 MR. EVERT: If I can remotely get myself organized
11 over here. So my apologies.

12 (Pause)

13 BY MR. EVERT:

14 Q So in focusing on how much to fund the trust, Dr. Wyner,
15 you have not really focused on the issues of the estimates and
16 forecasting that goes into the confirmation of a plan of
17 reorganization, is that fair to say?

18 A That's fair.

19 Q And it's fair to say that you've not focused on the
20 estimates and forecasting that goes into the question of
21 whether a plan is feasible, is that fair?

22 A That's fair, too.

23 Q And, and in your work for trusts you are always aware of,
24 of the ongoing issues in regard to claiming against those
25 trusts, is that fair?

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1 A Yes.

2 Q So can you tell me the DII Trust, which is one of the two
3 trusts where you have asbestos experience, what has happened to
4 the payment percentage in that particular trust for future
5 claimants?

6 A I'm not currently -- I haven't done an evaluation recently,
7 so I'm not sure. But payment percentages are often very much
8 in place in many trusts.

9 Q The payment percentages go down when the trust has more
10 claims than they forecast, isn't that right?

11 A That's right. That's absolutely right.

12 Q All right. And would you be able to agree with me that the
13 DII Trust has gone over the last 15 years from a hundred
14 percent payment percentage to a 60 percent payment percentage?

15 A Yes, that's true.

16 Q All right.

17 Thank you, sir. Those are all the questions I have.

18 THE COURT: Okay.

19 Others? Mr. Guy.

20 MR. GUY: Thank you, your Honor. I'll be very quick.

21 I guarantee we're gonna get lunch.

22 CROSS-EXAMINATION

23 BY MR. GUY:

24 Q Dr. Wyner, good afternoon.

25 Are you aware there's no agreed sample here between the

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1 parties?

2 A There was -- I know that there's no agreed sample, but
3 there certainly was a proposed sample.

4 Q Thank you.

5 And we all agree that more data is better than less, right?

6 A I think everybody does.

7 Q Right. Do you -- well, you are aware because you've worked
8 for trusts as a statistician, but are you aware that all the
9 trusts use statisticians to prepare their forecasts?

10 A Well, I'm gonna get particular here. There are a lot of
11 people who put on the hat of a statistician who aren't, but
12 there, they all hire people who call themselves statisticians,
13 yes.

14 Q And you said in your testimony earlier a lot of them got it
15 wrong?

16 A Well, I mean, not in the, in the sense that the forecast
17 didn't match what actually happened and that's probably, I
18 mean, this is the principal reason why you have payment
19 percentages, although there could be others as well.

20 Q So for the Trusts that are here today arguing that they do
21 not want to provide full information, only wanna provide a
22 sample -- they're listed here, AC&S, Combustion, GI, GST,
23 Kaiser, Quigley, THAN -- are you aware that all of those, other
24 than GST, have reduced their payment percentages?

25 A I'm not aware, but I'm not surprised.

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1 Q THAN, for example, I can represent to you, reduced its
2 payment percentage from a hundred percent to 10 percent.
3 That's a magnitude of what?

4 A That's a big magnitude, but I'm not sure that the trusts
5 are the ones who, who funded the, the, who funded the trusts.
6 Those were done by Bates Whites, right? Don't they the ones
7 who come up with the amounts, not the trusts?

8 So if there's any underfunding, it's not the trusts that
9 did it.

10 Q Well, it was funded at a number that the experts determined
11 was sufficient to pay all claimants a hundred percent.

12 A Yeah. It's hard to do, isn't it?

13 Q Right.

14 So you said before that, you know, just adding a little bit
15 of information --

16 A Yeah.

17 Q -- is gonna result in negligible benefit?

18 A Compared to this enormous uncertainty, yes. That's right.

19 Q If you're a future claimant in THAN --

20 A Uh-huh (indicating an affirmative response).

21 Q -- who's now getting 10 percent, would you say that's a
22 negligible prejudice --

23 A Well --

24 Q -- compared to the current claimant who got a hundred
25 percent?

WYNER - CROSS

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1 A But that's not -- you're -- there's a cause and effect
2 here, right? So the effect is not the, I mean, the, the
3 sampling didn't cause that. It's caused by something else.

4 Q Well, the sample, we don't know whether they used a sample,
5 but we know that they had forecasts in these cases and they got
6 them wrong, correct?

7 A That's right, yes.

8 Q Right.

9 Do you agree with me there's a probability that they might
10 have gotten a better forecast if they'd had more data?

11 A Well, I can't put a probability on anything that isn't
12 random. So I can have, I have to reject trying to answer that
13 question.

14 Q But it's not zero?

15 A It -- again, it's not a -- it's not -- it's not like --
16 it's not zero. It's -- it would be or it wouldn't. You'd have
17 to know what it is. It's not an issue of chance, I mean.

18 So the real question is you would have to do, is you'd have
19 to look, okay. Let's go back in time and see what was
20 available to them at the, at the, at the process where they
21 made the forecast. Was there any data that was available to
22 them in sample or in entirety that would have seen, allowed
23 them to see that their forecasts in the future would not be
24 accurate? It's not a matter of probability. It's really a
25 matter of evaluation.

WYNER - CROSS/REDIRECT

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1 Q So why do you think all these trusts, the majority of
2 trusts get it wrong?

3 A I'm not gonna speculate on that.

4 Q And you don't think for a second it could be anything to do
5 with the amount of data they have available to them?

6 A Oh, God. I -- as I said, I can't speculate and I can, we
7 can think of lots of things, but I don't think the, a sample of
8 1,200 as opposed to 12,000 was the driving element. I mean,
9 there's gonna be a lot of big things where things, explanations
10 for why things went wrong and that's not gonna be one of them.

11 MR. GUY: Nothing further, your Honor.

12 BY MR. GUY:

13 Q Thank you, Dr. Wyner.

14 A Okay.

15 THE COURT: Anyone else of this witness?

16 Ms. Moskow --

17 MS. MOSKOW-SCHNOLL: I just have a very brief --

18 THE COURT: Sure.

19 MS. MOSKOW-SCHNOLL: -- brief redirect.

20 REDIRECT EXAMINATION

21 BY MS. MOSKOW-SCHNOLL:

22 Q Mr. Evert was going through, like, all the things you
23 looked at when you were critiquing models used for estimating
24 future liability like occupations and law firms and gender, and
25 whatever, all those things, right?

WYNER - REDIRECT

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1 A Yeah --

2 Q And --

3 A -- roughly.

4 Q And, and then he said that aren't those the same kind of
5 things that Mr., Dr. Mullin wants to look at, remember that?

6 A Yeah, I do.

7 Q But aren't, aren't you doing two different things?

8 A Yes, completely different things. I'm building an IR
9 model, or have built IR models. IR models are about giving a
10 value to an individual and making sure that that value is the
11 proper value as compared to what that individual would have
12 gotten if he had been sitting in a, in a courtroom. That's the
13 goal of an IR model. That's not the goal here. You won't --
14 what the goal here is to figure out how to fund the trust and
15 all its ramifications and all its issues. It's not an IR
16 model. That's something that happens much later.

17 Q And so can, can Dr. Mullin review subpopulations data even
18 using a 1,200 sample?

19 A Of course. There's gonna be lots of subpopulations
20 available to him with 1,200 observations, particularly when
21 it's stratified.

22 Q Okay. Thank you.

23 THE COURT: Anyone else?

24 (No response)

25 THE COURT: Okay. You can step down. Thank you, sir.

1 All right. We're about quarter till 1:00. Is this a
2 good time for a break?

3 Will someone tell me where we're going afterwards?
4 Are we ready to argue or is there other evidence to be
5 presented?

6 MR. GUERKE: Good afternoon, your Honor. Kevin Guerke
7 for DCPF.

8 I have a question about what's in the record right
9 now --

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

12 MR. GUERKE: -- which may inform us on what our next
13 steps are. We have submitted the declaration of Richard
14 Winner. Richard Winner is present here today. His dep, his
15 deposition was taken and the deposition was attached to one or
16 more filings.

17 At our last hearing we submitted into the record a
18 sample claim form and the DBMP invoices. Just a point of
19 clarification. Are those items in evidence for this case?

20 THE COURT: I would assume that's a matter of
21 discussion between the attorneys and, potentially, argument.

22 Are you --

23 MR. EVERT: We have no objection, your Honor.

24 THE COURT: -- good?

25 All right. Let's, let's accept those --

1 MR. EVERT: I --

2 THE COURT: -- as being in evidence.

3 MR. EVERT: Let me just say. Our, our assumption has
4 been that all the papers that have been submitted in
5 association with this have, are in the record.

6 THE COURT: All right. Are we all in agreement the
7 declarations that have been filed are received in evidence for
8 this hearing?

9 MS. BENNETT: We join in that understanding, your
10 Honor.

11 THE COURT: Okay. We're all, all good with it? Yes.

12 MR. EVERT: Yes, your Honor. Yes, your Honor.

13 MR. GUERKE: Okay. But subject to the, the motion to
14 strike and the objections to Dr. Mullin's --

15 THE COURT: Right.

16 MR. GUERKE: -- deposition -- I'm sorry --
17 declaration.

18 Well, thank you, your Honor. That, that clarifies --

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

21 MR. GUERKE: -- things.

22 We will, we'll discuss at the break our next step.

23 We'll, we'll discuss it with the debtors.

24 THE COURT: Okay.

25 This -- why don't we take an hour and then you can get

1 something to eat and have whatever discussions you need and
2 pick up at about a quarter till, okay?

3 MR. MASCITTI: Thank you, your Honor.

4 THE COURT: We're in recess.

5 MR. EVERT: Thank you, your Honor.

6 (Lunch recess from 12:46 p.m., until 1:47 p.m.)

7 AFTER RECESS

8 (Call to Order of the Court)

9 THE COURT: Have a seat, all.

10 We got everyone?

11 I think the question was had as to where we were on
12 the, on the objecting parties' witness presentation.

13 Do we have more witnesses to, to present?

14 MR. HIRST: It's the objectors' turn, but I think
15 we've reached a deal with the Objectors on some of the factual
16 testimony coming in.

17 THE COURT: Okay.

18 MR. HIRST: The two witnesses in the room, as you
19 know, your Honor, Mr. Eveland from --

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

22 MR. HIRST: -- Verus and Mr. Winner from DCPF, their
23 deposition, their declarations are in the record and have been
24 for some time. Their depositions, their complete transcripts
25 are actually attached to our reply brief that was filed last

1 Friday, whatever day it was filed last, or two weeks ago.

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

4 MR. HIRST: I believe the parties have agreed that
5 we'll agree to basically rest on that being the factual record
6 for those two witnesses. There's no need to call them live.
7 We won't cross them live. And so --

8 THE COURT: All right.

9 MR. GUERKE: That's correct, your Honor. And there,
10 there are, as I mentioned before we broke, the additional two
11 invoices from DBMP and the claim sample that I submitted at, at
12 our November 30th hearing. And I could, I could hand those up
13 if, if you're interested.

14 THE COURT: Yes. That, that would be helpful. Save
15 me from having to go back and look.

16 But otherwise, we're gonna receive their testimony by
17 declaration?

18 MR. HIRST: Yep.

19 THE COURT: Okay.

20 MR. HIRST: With the deposition transcripts as well.
21 That will serve as the cross.

22 THE COURT: Begging the question, then, are there
23 particular places in the transcripts that I need to go look at
24 or do you, were you gonna highlight those or do you want me to
25 read all of it?

1 MR. HIRST: So your Honor, I mean, we certainly -- I
2 guess from our perspective I wouldn't wanna force you to read
3 all of it, having sat through all of it. We highlighted in our
4 reply brief, I think, the transcript cites we thought were --

5 THE COURT: Okay.

6 MR. HIRST: -- particularly relevant and we may
7 highlight some spots in the deposition during argument.

8 So I think, I think you're probably good relying on
9 us, but if you're --

10 THE COURT: All right.

11 MR. HIRST: -- terribly interested, go for it.

12 THE COURT: Objecting parties the same?

13 MR. GUERKE: Yes, your Honor. We didn't, we didn't
14 highlight all the relevant testimony that he gave. That was
15 consistent with his declaration, but his deposition testimony
16 is consistent with his declaration and we would submit it on
17 that basis.

18 THE COURT: Okay, very good.

19 All right. Then are we ready to argue?

20 MR. GUERKE: One, one housekeeping item, your Honor.

21 THE COURT: Yes, sir.

22 MR. GUERKE: Richard Winner traveled all the way down
23 from the great state of Delaware and since he won't be
24 testifying today, may he be excused?

25 THE COURT: Any objection?

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1 MR. EVERT: No objection, your Honor.

2 THE COURT: Released. Thank you.

3 MR. GUERKE: Thank you.

4 MR. KAPLAN: Same for Mr. Eveland, your Honor?

5 THE COURT: Again?

6 MR. EVERT: No objection, your Honor.

7 THE COURT: All right. Thank you, Gentlemen.

8 MR. EVERT: Your Honor, the only thing that we have
9 left is we had wished to call Dr. Mullin for a brief rebuttal
10 on the demonstrative that was used in the direct of Dr. Wyner.

11 THE COURT: Okay. We're through with evidence on this
12 side, on the objecting parties, unless we have rebuttal,
13 counterrebuttal?

14 (No response)

15 THE COURT: All right. Go ahead. Call him.

16 MR. EVERT: Thank you, your Honor.

17 We'd call Dr. Mullin, Charles Mullin, back to the
18 stand, please.

19 And Dr. Mullin, you'll remember you're please, please
20 remember your under oath still.

21 DR. CHARLES H. MULLIN, DEBTORS' WITNESS, RECALLED ON REBUTTAL

22 (Set up of demonstrative to be displayed)

23 DIRECT EXAMINATION

24 BY MR. EVERT:

25 Q Dr. Mullin, thank you.

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1 So you were able to be here and see Dr. Wyner's testimony,
2 is that right?

3 A Correct.

4 Q And I wanted to ask you about the second demonstrative that
5 he used in his testimony, which is up on the screen now and is
6 entitled Negligible Impact of Sampling on Overall Forecast
7 Uncertainty.

8 Have you had a chance to look at that?

9 A I have.

10 Q And if you could, Dr. Mullin, explain to me how that, that,
11 this demonstrative does not accurately reflect your testimony?

12 A So I don't object to the mathematical formula if you're
13 estimating a given item, that you have these two components,
14 but the formula, it's basically assumed an answer. It starts
15 with total uncertainty in the absence, its sampling of 102 and
16 has, you can eliminate 2 percent of that uncertainty. You go
17 from 102 down to a hundred.

18 So it's basically embedding the assumption that if this
19 data's not helpful, then taking a sample of data that wasn't
20 helpful doesn't hurt you very much because it wasn't helpful in
21 the first instance. So this has embedded in that that
22 irreducible uncertainty dominates, which actually isn't true in
23 this context. And that's the real flaw in this, is that it's
24 not true that these ratios of a hundred million to 20 million
25 are right.

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1 And he didn't say those were right. These were
2 illustrations, but, as I recall his testimony, he said, if
3 anything, he thought the hundred million was being generous.
4 Maybe that should be bigger and maybe the 20 million should be
5 smaller so that maybe it's even less than a 2 percent change
6 and that core assumption is what's wrong.

7 When you're estimating future claims, the techniques for
8 that have evolved dramatically over the last 40 years. That
9 first forecast is Nicholson's 1982 paper. That forecast is not
10 accurate. That forecast used 13 occupational groups, industry
11 occupation groups. The current state-of-the-art forecasts, the
12 one that Bates White used in Garlock, the one that we intend to
13 use going forward here, uses the three-digit industry and
14 occupation codes from the U. S. Census data. That gives you
15 over 10,000 cells of people in different industry and
16 occupation combinations. It takes advantage of the digitalized
17 data put together through the University of Minnesota IPUMS
18 Program, digitalized all the U. S. Census data. So now you can
19 bring that in. That wasn't available until the 2000s. That's
20 what gives you that foundation. And so today on the modern
21 models, not the old Nicholson model, not the old KPMG model --
22 those ones are outdated and they predate the availability of
23 this information -- those do allow you to very accurately
24 project the future demographics.

25 So if you want to know the demographics of people with

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1 mesothelioma 10-or-20 years from now, that now you can do with
2 a high degree of accuracy. That wasn't true 40 years ago. The
3 trick is to map that level of accuracy to a given debtor's data
4 and you can only do that mapping if you have reliable industry
5 and occupation information. I have it from the U. S. Census
6 data for the population. I know how the population
7 demographics will change, but I need to know which subsets of
8 that to map in. That's the advantage.

9 And so you may well -- I don't know exact numbers -- but in
10 my opinion your, the irreducible part here is smaller than the
11 reducible part. So if you flip these around and said it was 20
12 million for Sigma and a hundred million for Tau, you'd get an
13 80 percent improvement. That 20 percent for Sigma, the total
14 uncertainty with no sampling would be 20. You reverse the
15 numbers, it's still 102. So then you go from 102 down to 20.

16 So it's all about how helpful do you believe the data's
17 gonna be. If you don't believe it's helpful, he's absolutely
18 right. Taking a subset of data that's not helpful won't hurt
19 us. If you believe it's helpful, then taking a subset of the
20 data is really gonna hurt you. And this doesn't give you any
21 guidance as to which of those is correct. My experience in
22 doing this, the models that we've been using since Garlock have
23 proven very accurate. The Garlock Trust validates that in how
24 the projections have played out. In our financial reporting
25 work and insurance underwriting work and work in different

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1 contexts, those projections have been panning out.

2 So we're in a different position now. What you may have
3 thought of as irreducible uncertainty 30 years ago, today is
4 very much reducible and it's the industry and occupation data
5 that really allows you to get that benefit.

6 Q And how will the full census of the 12,000 claimant trust
7 data help you do that?

8 A So it's going to allow me to map that claimant information.
9 What are the high value industry and occupations and exposure
10 patterns in the claimant data? How does that, then, map to
11 what's available through all the U. S. Census data to tell me
12 how many claimants will look like those very particular groups
13 in the future?

14 So that's what allows you to say precisely how many in
15 these high-value claimant occupation group if we're doing a
16 Garlock-style claims resolution procedure. How many are in the
17 high-value group? How many are in Tier 2? How many are in
18 Tire 3? Tier 5 don't -- yeah. The bottom tier doesn't matter
19 that much 'cause they don't get a lot of money. But the top
20 tiers really matter and it's, the industry and occupation data
21 is what's critical for being able to map that to what is,
22 actually, very good data now on the future demographics.

23 Q And when you said it's "very good data now," has that data
24 evolved over time?

25 A Absolutely.

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1 Q Yeah.

2 Thank you, Dr. Mullin.

3 THE COURT: Again, Mr. Guy, any, any questions of this
4 witness in rebuttal?

5 MR. GUY: No, sir. I wouldn't dare.

6 THE COURT: How about from the objecting parties'
7 side?

8 MR. KAPLAN: Yeah. I think --

9 THE COURT: Mr. Kaplan?

10 MR. KAPLAN: Your Honor, I'll take you up on the North
11 Carolina practice of just standing here today, if --

12 THE COURT: We normally sit, but you're welcome to do
13 that as well.

14 MS. MOSKOW-SCHNOLL: I got it right. I sat.

15 MR. KAPLAN: I'm, I'm sitting, then. This is
16 fantastic.

17 THE COURT: You have old eyes. You can't, you can't
18 read your papers if you're standing.

19 MS. BENNETT: Exactly.

20 THE COURT: Go ahead.

21 MR. KAPLAN: Thank you, your Honor.

22 CROSS-EXAMINATION

23 BY MR. KAPLAN:

24 Q Dr. Mullin, if I understand this formula correctly, it's
25 the square root of Sigma squared plus Tau squared. That's what

MULLIN - CROSS/WYNER - DIRECT

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1 Dr. Wyner lectured us on and I'm trying my best to repeat those
2 and sound intelligent, is that correct?

3 A That's the formula on the screen.

4 Q Okay. Can you give me the, sitting here today, again
5 focusing on this case and these Trusts, can you give me the
6 input for Sigma?

7 A I can't give you a precise number, no.

8 Q Okay. Can you give me the input for Tau?

9 A Again, no. I can -- those are things we won't know till
10 later.

11 Q Thank you.

12 MR. KAPLAN: No further questions, your Honor.

13 THE COURT: Anyone else?

14 (No response)

15 THE COURT: Mr. Evert?

16 MR. EVERT: No, your Honor.

17 THE COURT: You may step down. Thank you.

18 THE WITNESS: Thank you, your Honor.

19 MS. MOSKOW-SCHNOLL: Your Honor, may I briefly put
20 Dr. Wyner back on the stand?

21 THE COURT: You may.

22 ABRAHAM WYNER, DCPF'S WITNESS, RECALLED ON REBUTTAL

23 DIRECT EXAMINATION

24 BY MS. MOSKOW-SCHNOLL:

25 Q Just remind you you're still under oath.

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1 What do you think of Dr. Mullin's statement that
2 irreducible uncertainty should be flipped with sampling
3 uncertainty?

4 A I completely 100 percent disagree.

5 Q And can you explain why?

6 A Well, I think there's two issues here. One is that we're
7 confusing the sampling uncertainty and the, with the point of
8 doing this exercise. I'm not saying the data, getting the data
9 isn't gonna change forecasts. It very well can do that. What
10 I'm really talking about is the difference between getting 1200
11 observations and getting 12,000. That's what we call sampling
12 uncertainty.

13 So the data itself can make a big impact on, on, on the
14 kinds of forecasts that are made, possibly. It could make
15 nothing. We'll have to wait and see until we see the data.
16 But sampling uncertainty is measurable. We kinda know
17 approximately what it, what it is, right? That's when you have
18 1,200 observations.

19 So I'm -- I'm -- I'm -- it is interesting to know that the,
20 the consulting firms that get together to make these forecasts
21 have gotten better. That's good to know, but I look, you know,
22 every, quarterly, every six months that, at what's coming into
23 the trusts that I, that I, that I consult for and these numbers
24 are bopping around like a ping-pong ball. And that's what I
25 mean by irreducible uncertainty. I mean, we just don't -- it's

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1 very hard to predict how many are gonna come in. I mean, maybe
2 over --

3 And so I -- I -- I -- my general sense is that Sigma is
4 just way bigger than Tau. And that's just the way to put it in
5 straight mathematical terms. Dr. Mullin says it's the other
6 way around. I know what this, what Tau is and I know what,
7 'cause that's something I can compute based on sample. I know
8 it's a really small number and it just doesn't jive with what I
9 think I understand about what we call Poisson processes, right,
10 the numbers of mesos that you would get in any given year.
11 It's -- these are for any individual is a, these are modeled
12 with, with collections of binomials and they create Poisson
13 processes and, and when you aggregate them up, they have other
14 distributions and the standard deviations on those are pretty
15 large, right?

16 So how many claims you're gonna get in a year and how --
17 how -- how -- how valuable they are. They're really large. I
18 mean, we try to track -- so one of the things we try to track
19 is the average age of a meso, right? We know what happened in
20 the past and we wanna know what, when they finally come in,
21 what age are they going to be. Remember, the exposures all
22 happened a long time ago.

23 So yes, it's good to know that these models are getting
24 better, but there's still a huge amount of just natural
25 variability that's just built into human beings. Some get

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1 sick, some don't, some report, some don't, things happen. They
2 have dependents and economic loss and all these things are
3 random variables, right? You can't forecast them at -- at --
4 perfectly and that is what we call the irreducible uncertainty.

5 Q I think that's it.

6 A That's it.

7 Q Thank you.

8 THE COURT: Mr. Evert?

9 MR. EVERT: Your Honor, I just have one question.

10 THE COURT: Yes, sir.

11 CROSS-EXAMINATION

12 BY MR. EVERT:

13 Q Dr. Wyner, just to be clear, you've never tried to make one
14 of these forecasts, correct?

15 A From ground zero, no.

16 Q Yeah, okay.

17 Thank you very much.

18 MS. MOSKOW-SCHNOLL: Thank you.

19 THE COURT: Anyone else?

20 (No response)

21 THE COURT: You may step down.

22 Any other evidence to be presented?

23 MR. HIRST: None from the debtors, your Honor.

24 THE COURT: Y'all need a few minutes or you're ready
25 to argue?

1 MR. HIRST: We're ready to go.

2 THE COURT: Okay. Please proceed.

3 Debtors first.

4 MR. HIRST: Okay. The only thing we may need a minute
5 to do is get our computer plugged in, but let's see here.

6 THE COURT: Okay.

7 Well, then, for the benefit of all the lawyers in the
8 room, while I don't normally say much about my personal
9 background, there was a time in 1981 when my college roommate
10 and I, both economics majors, decided where we were going. He
11 decided to go to the MBA School at Wharton and I decided to go
12 to law school. I'm so pleased, so. Of course, he has been
13 retired for five years now and owns three homes around the
14 country, but notwithstanding that.

15 Ready to proceed?

16 MR. HIRST: It looks like we are.

17 MR. HART: Uh-huh (indicating an affirmative
18 response).

19 MR. HIRST: Yeah, we are.

20 Good afternoon again, your Honor. Morgan Hirst for
21 the debtors.

22 Your Honor, at the March 30 hearing you made the
23 comment that the subpoena proceedings have kinda tied you up in
24 knots and it was an apt metaphor because it's -- it's -- 11
25 months later, it's certainly tied me up in knots and one of

1 those knots you had in your shoe when you were a kid, it's like
2 quadruple knotted and needed to get, you know, it had gum in it
3 and you needed somebody to come in and unwedge it for you. We
4 hope today we've kinda un, loosened those knots up for your
5 Honor --

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

8 MR. HIRST: -- and got you to a point where we can get
9 to a decision once and for all and believe the best way for us
10 to start is to go back over a few simple points that your Honor
11 knows, but I think are worth going over again, anyway.

12 We issued the subpoenas to get information from the
13 Trusts for the 12,000 mesothelioma claimants who resolved
14 claims against the debtors from 2005 till the petition date.
15 We call it the Trust Data. The Court approved those subpoenas
16 before we sent 'em, approved 'em just about 11 months ago after
17 contested hearings on those. Your Honor found the Trust Data
18 at that time to be relevant and necessary to estimation of the,
19 of the debtors' asbestos liabilities, but also to the
20 development/evaluation of trust distribution procedures for any
21 plan of reorganizations, reorganization. Those are what are
22 referred to in the subpoena and in your Honor's trust order as
23 the Permitted Purposes.

24 The entire, the entirety of the Trust Data here is
25 obtainable from DCPF and Verus and it's obtainable in

1 electronic form. It's not the type of thing we have to go
2 gather documents or go into a warehouse. It is all reduced to
3 electronic form. And so as a result, collecting it and
4 ultimately producing it is done by electronic queries. It does
5 not, the evidence will show -- and it's reflected in the
6 deposition transcript -- the actual queries don't take very
7 long. They take a data analyst to write this code and query
8 down the information.

9 We heard today -- and Dr. Wyner doesn't disagree,
10 Dr. Mullin doesn't disagree -- when you can have the entire
11 dataset, when it's available to you, it's better than having a
12 sample. It eliminates the, the sampling error. It eliminates
13 uncertainty that comes with samples. It eliminates litigation
14 about the propriety of the sample chosen and how reliable that
15 sample is for the conclusions it's being used to do. No one
16 credibly disagrees with these points.

17 Dr. Mullin testified that if he is restricted to a
18 sample of the Trust Data here his forecast for estimation, his
19 forecast for confirmation, his forecast for trust distribution
20 procedures, they will be less precise. They will have more
21 uncertainty. This is particularly so in attempting to forecast
22 claims and claiming within certain parameters, which Dr. Mullin
23 talked about, like occupation, industry, gender, law firm,
24 jurisdiction. This is what was done for the trust established
25 in Garlock. The trust, as we heard, just doubled its payment

1 percentage, a positive note. In short, because these
2 characteristics are all subpopulations of the Trust Data, you
3 may end up with some of these small populations exhibiting
4 these characteristics and if we limit ourselves to a sample,
5 we're gonna end up limiting ourselves to a very small group of
6 those.

7 You heard Dr. Mullin say if the debtors have to live
8 with a 10 percent sample, we'll live with it and we will be
9 able to put forward calculations at estimation and at, at plan
10 confirmation based on that sample, but do we think it's a good
11 idea for us? Do we think it's a good idea for the Court when
12 you're gonna be making all of these critical decisions whenever
13 you get the chance to make them in the future? And the
14 answer's no. Doing so risks our forecasts having less
15 precision and less certainty and your Honor having less
16 certainty in your own decisions when we come to estimation.

17 Given the downside, given the immense protections that
18 your Honor put in for the Trust Data in question here -- and we
19 haven't talked much about it today and we'll talk a little bit
20 about it in closing here -- but we have immense protections in
21 your trust discovery order for the confidentiality of the
22 documents, of, of the Trust Data. We have numerous ways to
23 eliminate almost entirely or certainly dramatically reduce the
24 burden on the Trusts. We're paying for all of this, the
25 debtors are. The option is for the Trusts to do the redaction

1 work they claim to need to do. We have to do it no matter
2 what, we through Bates White.

3 So the Objectors, of course, they've been pushing for
4 a sample from, and, and to their credit, they've been
5 consistent about it from Day 1. This has been a position of
6 theirs for 11 months, but they ultimately have no risk in the
7 outcome. They will not be here in two years, three years,
8 whenever we get to do estimation and plan confirmation.
9 They're not going to be here having to defend the sample in
10 front of your Honor. We're going to have to live with it and
11 your Honor's gonna have to live with it.

12 Now the one argument the Objectors have raised, where
13 the so-called burden would fall on them, is the burden of
14 redacting this PII that they claim might be inadvertently
15 included in some of the text fields that the subpoenas request
16 and your Honor knows we are not asking for the PII to be
17 produced. Our subpoenas don't ask for any PII, whatsoever. We
18 already have it for all the claimants that are actually being
19 sought. We likely have it for many of the nonclaimants who the
20 Trusts have indicated they're concerned about that might be
21 included in there. We might have it for the same reason they
22 do. Because it was, it was submitted to us. But they've
23 raised a concern about that and as I said, your Honor's trust
24 discovery order deals with this in a variety of ways.

25 And first of all, starting with the protective order,

1 the, the protections in your confidentiality order. That is
2 the way we ordinarily deal with confidentiality issues in
3 litigation, including confidentiality issues that are far, that
4 are at least equal to or even beyond the confidentiality
5 considerations here. They have the right to redact the
6 information at our cost. Bates White has to redact the
7 information at our cost. You heard Dr. Mullin say after the
8 testimony he heard about how DCPF does it and after how Bates
9 White will do it the chance of any PII coming to Bates White,
10 ultimately, is, is incredibly low and then for that PII to
11 ultimately be exposed to the world then requires a data breach
12 at Bates White.

13 So your Honor, hopefully for the last time, let me go
14 over in a little more detail some of these points and we'll
15 start with our presentation. Because we've done so many of
16 these I think we can breeze through these fairly quickly.

17 If we can go to slide -- and these are the four
18 categories we're gonna talk about today. We'll start with the
19 subpoenas.

20 You can go to the next slide, Rob.

21 So you know the claimant population we're talking
22 about. As Dr. Mullin said, it is, I mean, we didn't just throw
23 this number out when we crafted these subpoenas in the first
24 place back last April. We were deliberate about what we chose
25 and we do not choose all 400,000 claimants who filed asbestos

1 claims against us. You can see the categories of information
2 and you're familiar with these as well and a lot of them, to be
3 perfectly honest with your Honor, are not particularly
4 confidential, claimant law firm, date claim was filed,
5 approved, etc. Those are the categories of information we
6 want.

7 Next slide, Rob.

8 So you know the timeline, I think, as well. Eleven
9 months ago is when we issued the subpoenas. The amount of
10 litigation -- and Mr. Guy'll probably like this for one of his
11 charts -- but the amount of litigation that has been involved
12 in the subpoena fights, not with just Verus and DCPF, it's --
13 it's just -- it's astronomical and it's been, frankly, nearly a
14 full-time job for a few of us over the last 11 months. And so
15 far, we have information from one of those groups of subpoena
16 targets. We have information from Paddock and that's it.

17 So your Honor knows your rulings. We talked about it
18 at the beginning of the day when we set up the status of where
19 we're at. The motion to quash had been denied other than the
20 sampling and your Honor granted our right to rehearing and
21 we're here to talk about whether the sampling is sufficient.

22 So if we can skip up to, actually, Slide 8, Rob.

23 So the Permitted Purposes -- and I talked about these
24 in the intro -- and this is straight from your Honor's trust
25 discovery order. This is straight from the, the attachment to

1 the subpoenas. So all of the subpoena recipients received this
2 when they received the subpoena. This is what we're seeking,
3 this is what you approved us to seek this information for, and
4 this is why we want to use it and it's, it's pretty clear what
5 we want to use it for. It's not just estimation. It's for a
6 variety of roles when it comes to plan confirmation.

7 Next slide.

8 So you know, I think it became pretty clear from
9 Dr. Mullin's testimony forecasting is a lynchpin of what we're
10 gonna do in so many ways here in estimation, at plan
11 formulation, at plan confirmation. We need to forecast a
12 variety of things. We need to forecast claim counts. We need
13 to forecast claim dollars. We have a lot of things to forecast
14 and we're forecasting quite a ways out, as Dr. Mullin testified
15 about today. And these forecasts -- and you heard Dr. Mullin
16 say it -- are gonna rely extensively on what we get in the
17 trust discovery. Do we have other sources? Of course, but the
18 trust discovery is gonna be an important piece of how
19 Dr. Mullin forecasts.

20 So your Honor, this is in Page 1 of our reply brief,
21 and I'm not gonna read all of these out, but this is where the
22 parties do agree -- and by "the parties," I, I frankly mean
23 Dr. Mullin and Dr. Wyner here -- about the importance of
24 sampling and how sampling works. And I guess the, the, the
25 bottom line of it all is that at the end of the day, if it's

1 available and all else being equal, getting the entire dataset
2 is better than getting a sample. Reduce the sampling error and
3 knocks out sampling error and that is an undisputed point.

4 Next slide.

5 You heard Dr. Mullin talk about uncertainty is one of
6 the drawbacks here and you heard Dr. Wyner confirm sampling
7 necessarily creates sampling error. It necessarily adds to
8 your level of uncertainty. There's certainly debate as to what
9 that impact was, but there's no debate that there is an impact.

10 You also heard, like another thing Dr. Wyner and
11 Dr. Mullin agree on, forecasting for 30 years, which is what
12 we're gonna be doing here, is a hard job and we want to
13 eliminate as few of the, as much of the uncertainty as we
14 possibly can that we can possibly control for. Because there
15 are things we can't control for when we forecast. So we wanna
16 reduce as many of that as possible and one of the things we can
17 reduce is the effect of sampling error from the Trust Data if
18 we have the entirety of the Trust Data.

19 Dr. Mullin also talked about, I think both in his
20 deposition, but I think today as well, that a lot of the, a lot
21 of the things he's forecasting come from multiple inputs. It's
22 not just a, a stagnant piece, your Honor. It's, it's multiple
23 inputs at once and when you have uncertainty on one piece of,
24 one factor and uncertainty on another factor, when you mix 'em
25 together it's not just additive. It's a multiplicative

1 process. And so your level of uncertainty jumps even more on
2 those types of forecasts.

3 Next slide.

4 Second drawback or category of drawbacks relating to
5 sampling is the lack of sufficient information and this goes to
6 the subpopulation points I think you heard quite a bit about
7 today. And there's no doubt some of these are gonna be studied
8 and put before your Honor. The occupation and industry code
9 are certainly keys to our view and the Garlock view of the
10 world on legal liability. And unless I can convince Mr. Wright
11 to take a different view for the ACC, we know they're gonna
12 have a tort liability figure and that's gonna involve law firm
13 and jurisdiction. And so these are all factors we're gonna
14 have to study and if we're limited to 1200 claims, you increase
15 the possibility -- and do we know what it is now? Of course we
16 don't -- but we increase the possibility that we're not gonna
17 have a big enough sample for some of these particular
18 subpopulations Dr. Mullin wants to study.

19 Next slide.

20 And who pays the price? Well, I mean, we've heard who
21 pays the price and we've heard it *ad nauseum* today. The
22 forecasts are forecasting future claiming and the farther out
23 we go, it's gonna be the future claimants who -- the, the more
24 uncertainty there is, the more at risk the future claimants
25 are. The closer we can get to where we wanna be, the less

1 likely it is that the future claimants, we're gonna come up
2 short for the future claimants in terms of the trust.

3 So few things about the way -- and this partially
4 comes from the briefs, your Honor. It also partially comes
5 from today -- but there's a variety of ways that the Objectors
6 either misstate or misunderstand Dr. Mullin's analysis. All we
7 heard today and frankly, in the briefs, was about estimation
8 and how we can be fine with a sample for estimation and how we
9 can be fine, frankly, for a sample for discovering undisclosed
10 claiming history and the like. And as to that second point,
11 Dr. Mullin doesn't disagree and we've all -- and he said that
12 right upfront. We're gonna be working off a sample when it
13 comes to, to that point, but the Permitted Purposes, as your
14 Honor knows, go way beyond that and Dr. Mullin testified in
15 details concerning that. Plan formulation, plan confirmation,
16 plan funding, all of these things, the creation of the TDPs,
17 these are all Permitted Purposes for use of the data. They're
18 all ways we intend to use it in this case and they're all
19 impacted significantly by being reduced to a sample.

20 In Garlock -- another point they raised -- this was in
21 their briefs, your Honor -- they said we already have this info
22 from our own claims database. We have occupation and industry
23 codes and there's two points I would say on that. There's two
24 points. No. 1, it comes from Garlock. Garlock points out, and
25 not necessarily, there's a different world of disclosure in the

1 trust-disclosing world than there is in the tort-liability
2 world. They get, frankly, higher levels of information, is
3 what Judge Hodges found, than we do. And so there's gonna be a
4 lot of cases we don't have it. And so, you know, we will need
5 this and, and Dr. Mullin testified about how the Trust Data
6 will supplement what we don't have and in many cases, we don't
7 have a lot.

8 The Objectors -- and this was what you heard at the
9 end and so I won't go over it too much, in part, because I
10 won't do it nearly as well as Dr. Mullin did -- but the, the
11 Objectors oversimplify the impact of the sampling error by
12 this, this idea that the entire process is so fraught with
13 uncertainty that the error is very small. And Dr. Mullin
14 explained why that's so, but at bottom, why would we accept any
15 uncertainty at all? Why would we accept controllable
16 uncertainty? If we can control aspects of that uncertainty to
17 make it better, why, why wouldn't we do that here?

18 And, and then the fourth point, I guess, is, is about
19 Dr. Gallardo-García's declaration in Bestwall. I think your
20 Honor knows this, but just to make sure you do understand the
21 timeline. Dr. Gallardo-García's declaration came after the
22 ruling by the Delaware District Court ordering a sample. And
23 so he was justifying the sample that Bestwall was intending to
24 use. There was lots of litigation, as your Honor knows, before
25 that District Court opinion where the parties were fighting

1 about whether any sample needed to take place and of course, as
2 your Honor knows, that ruling in Bestwall was then reversed by
3 the Third Circuit and Bestwall, of course, has a complete
4 dataset from DCPF seek, in response to the subpoena. And by
5 the way, they have a complete dataset with all of the PII we're
6 talking about today. Remember, the Bestwall subpoena as
7 originally drafted requested PII. They have it all. And so in
8 large part, we believe Dr. Gallardo-García's affidavit is
9 absolutely right, it's correct, and it's completely relevant to
10 the, what we're talking about today.

11 Okay. Next slide.

12 So then, let's look to the benefit side of sampling.
13 And just, and this is not the topic we've spoken a lot about
14 today, but it's the topic I think your Honor's heard a lot
15 about in past months. And so just a reminder. First of all,
16 reminder of what we don't seek in the subpoena. We, we crafted
17 the subpoena very narrowly. We are not seeking any of the
18 traditional categories of things that courts deem to be
19 confidential. We aren't seeking PII. We aren't seeking
20 settlement amounts. We aren't seeking medical info. We aren't
21 seeking financial information. Judge Silverstein, when she had
22 the Paddock motions to quash in front of her on these identical
23 subpoenas, said that for the fields we are asking for, which I
24 showed you earlier, "many of these are the fields of
25 information that could be gleaned from any complaint filed in

1 the tort system."

2 So this is not secret information. This is
3 information that, that these claimants filed when they filed in
4 the tort system, in the first place.

5 So then to the, the burden and I mentioned this at the
6 outset. There is virtually -- and you'll see in the deposition
7 testimony -- there's virtually no burden in querying the, the
8 digital information requested by the subpoenas. Every single
9 field that is requested by our subpoenas is available
10 electronically and available for being queried. And the
11 testimony in Verus from Mr. Eveland was that one of their data
12 analysts, "This would be a routine task to draft up the code
13 necessary and would take a couple hours."

14 So pulling the data down is, is not a burden. And the
15 burden is gonna be the same whether it's 10 percent or a
16 hundred percent or it's gonna be marginally different running
17 those queries. It is not gonna be anything material.

18 So burden, as you know, that's been identified is
19 redacting this PII that's found in the narrative fields. So
20 lots of ways we've gone about doing this.

21 We can go to the next slide.

22 The first way is the trust discovery order your Honor
23 entered and the multitude -- you've heard me refer to this as
24 the protective order on steroids. Because it is. It's the
25 most rigorous protective order I've ever been a part of in

1 terms of protecting this PII that may exist in the fields. And
2 Judge Silverstein also confronted that in Paddock and she
3 ruled, she liked your Honor's trust discovery order. She said
4 this is how we deal with these things in litigation. We trust
5 that the Bates Whites of the world and the Jones Days of the
6 world and the Evert Weathersbies of the world are gonna do what
7 we signed up for in the protective orders. And there's been no
8 evidence that Bates White has ever misused any of this
9 information that's been sent to them.

10 And so you have a, you have a protective order which,
11 your Honor, frankly, on its own should be sufficient to protect
12 the confidentiality info here. But that's not all we did.

13 And then here's the chart as well that shows all of
14 the different things we included in that protective order, your
15 Honor. And it covers a multitude of different categories in
16 terms of how you use the data, how you, how it's produced to
17 us. We have the, the matching key and the anonymization
18 process in place, how, how it can be accessed and who can
19 access it, how it's gonna be stored and secured. And then
20 ultimately, how it's gonna be deleted and removed when the case
21 is over.

22 So as I said, I think this is enough. This is what we
23 usually use in litigation, these types of protective orders to
24 protect confidential information. But your Honor did more here
25 and we agreed to do more here as well.

1 And this gets back to, your Honor, maybe part of --
2 and you can blame us for this one, your Honor -- back to
3 November 30th. Our trust discovery order includes the same
4 process that your Honor implemented in DBMP back January of
5 2022 and it was to allow specifically for the trust claims
6 facilities to redact this information. Any PII that was found
7 in the exposure fields, which DCPF indicated in DBMP could be
8 there, your Honor put in, into the trust order they have a
9 right to redact it and if they, and whether or not they choose
10 to exercise that right, we have an obligation to look for it
11 and redact it.

12 And so we have two additional steps in there and all
13 of this, regardless of who does it, we're paying for it. We,
14 the debtors, are paying for it. Whether it's the Trusts that
15 decide to do it, we owe them, we owe them the cost of doing so.
16 And that's the next slide. That's Paragraph 19 of the trust
17 discovery order here.

18 So then you heard, after all this, is there some risk?
19 And, and you'll hear the Objectors say that, that there
20 shouldn't be, we shouldn't permit any risk of disclosure of, of
21 PII, that, that any risk is, is too much risk. And you heard
22 Dr. Mullin testify about what that risk is and how we get, the
23 panoply of events that essentially have to happen for that risk
24 to come true.

25 So first off, DCPF and Verus, who've made very clear

1 they intend to do this redacting process, they have to miss
2 stuff and based on the process DCPF used -- we don't know what
3 Verus uses yet because they haven't done it -- based on what
4 DCPF did in DBMP Dr. Mullin said that a double-blind analysis
5 usually covers 99 percent. Then you get Bates White to do it.
6 That should cover 99 percent of the remaining 1 percent and
7 that leaves you somewhere between zero and ten claims where you
8 might have some scant PII that gets to Bates White. In DCPF,
9 Mr. Winner testified that most of -- in the DB -- in responding
10 to -- eeh. Too many Ds -- in responding to the DBMP subpoena,
11 your Honor, DCPF said most of the non-claimant PII was
12 coworkers' names.

13 So if we assume the majority of the zero-to-ten are
14 coworkers' names that find their way into Bates White --
15 they're still secured at Bates White. Bates White is still
16 under all the obligations of the protective order. That
17 information is still stored with hundreds of thousands of other
18 claims -- and then there would need to be a data breach and
19 Bates White and Dr. Mullin's testimony is that Bates White
20 hasn't had a data breach and Bates White is subject to some of
21 the most stringent security protocols out there. You heard
22 Dr. Mullin talk about being HITRUST and SOC 2 certified, which
23 are -- and he explained what, what exactly the, the, the
24 requirements are to get to those certifications. They're
25 certifications concerning data protection by third party

1 outside entities on data protection and data security and Bates
2 White has met those qualifications. And you'll read and you'll
3 see in our briefs we asked DCPF and Verus both about these
4 certifications. Neither of them have them. Verus is very
5 interested in getting them, both SOC 2 and HITRUST. They just
6 haven't done it yet. And so with due respect, there's an
7 argument that this data is safer at Bates White than it is
8 where it currently sits.

9 Okay. Now a couple of quick points specific to,
10 first, DCPF and then to Verus. You know, we do believe what
11 happened to DBMP proves that the burden is not undue here. We
12 have this -- your Honor ordered a complete production in DBMP
13 and DCPF went about and did the redaction work pursuant to the
14 confidentiality order that they can do in this case. The data
15 was produced in 45 days. It was a cost of \$86,000. Is that,
16 is that insignificant? Of course not. \$86,000 is a lot of
17 money, but in the scope of these cases and when we're the ones
18 paying for it, your Honor, it really is fairly immaterial and
19 certainly doesn't constitute an undue burden. There's no
20 indication that any PII wasn't properly redacted.

21 And there is two items that, that come out of that
22 which should benefit us in this case and should reduce the
23 burden on DCPF in complying with the subpoena here. One, they,
24 they created the program for how they would do the redaction.
25 So it's done. Two -- and Dr. Mullin testified to this -- some

1 of that data is gonna be overlapping. Some of the claimants on
2 DBMP are gonna be claimants here. We don't know how many. We
3 don't know how significant an amount, but there's gonna be some
4 overlap. There's no reason the redaction they already did for
5 Morgan Hirst in responding to the DBMP subpoena can't be done
6 for Morgan Hirst in responding to the Aldrich subpoena.

7 So next slide.

8 I want to talk about Verus a little bit and this was
9 something we raised in our reply brief and, and Mr. Eveland
10 testified to. But Verus, the ACC filed a motion in this case
11 back in March seeking to retain Verus to review the PIQ forms
12 in this case and compile the PIQ information and do an analysis
13 of the PIQ information. And that, that work, of course, that
14 Verus' seeking to do in this case is gonna be paid for by the
15 debtors. That work involves -- and your Honor knows the PIQ
16 form 'cause you approved it. The PIQ form asks for an
17 enormous amount of confidential information from both current
18 claimants and related parties to current claimants, including
19 Social Security numbers, including all the same types of PII
20 that we're hearing about here. Verus thinks that could
21 potentially take thousands of hours of work, this, this PIQ
22 work that they intend to do, that they're seeking to do in this
23 case.

24 So on the one hand, you have Verus saying, "Well,
25 we're just gonna hire new people to do that work. We're, it

1 won't be a problem and we're happy to have the debtors pay for
2 it and we're happy to have these new people work with this very
3 sensitive data," while on the other hand, they're refusing to
4 respond to subpoenas seeking, frankly, not seeking PII, but
5 that may contain some PII. That would also be paid for by the
6 debtors. It, it undermines, your Honor, their entire claim of
7 undue burden in this case when they're willing to do it on
8 something they wanna do, but claiming undue burden on a very
9 similar task paid for by the same entities when they don't
10 wanna do it.

11 Last point, your Honor. Your Honor said -- and we
12 totally agree -- that this case and DBMP are two different
13 cases and your Honor's gonna have different rulings in those
14 cases and there are times those two cases are gonna take
15 different trajectories along the way and there's no doubt about
16 that. But here, we have identical subpoenas to what we had in
17 DBMP. They ask for the exact same thing. We have the same
18 protections in place for them, the same redaction processes.
19 There is simply -- and for a similarly sized population. DBMP
20 was 9,000. We're 12,000 here in terms of the claimants.

21 This, in our view, is not one of those cases where it
22 makes sense to diverge from DBMP in your ruling here. They're
23 identical issues and we think that the DBMP ruling that your
24 Honor made, reaffirmed after a motion to reconsider, is the
25 proper one.

1 So to conclude, your Honor, ultimately, we're gonna
2 have to work with this data to estimate, to do claims
3 formulation, to do, to do plan formulation, to do trust
4 distribution formulations. We've heard how Dr. Mullin intends
5 to use it. We've heard from him how he sees the drawbacks here
6 and Dr. Mullin's somebody who's done this a number of times.
7 There's no question as to the relevance of this data in light
8 of Garlock and in light of your Honor's order.

9 The Objectors, on the other hand, have gone to
10 incredible efforts to try and demonstrate the other side, 11
11 months of this to try and prevent us from getting this data.
12 They spent tens of thousands of dollars on counsel. They've
13 hired an expert. They've litigated motions to quash. We've
14 had evidentiary hearings, all of it based on, according to
15 them, their stated desire to ensure we don't get PII that we
16 don't want and we probably already have.

17 We deal with production of confidential information
18 all the time. We deal with it through protective orders.
19 We've dealt with it here with a even more robust protective
20 order. The number of events that have to occur for this data
21 to get invert, inadvertently and improperly disclosed -- and
22 "this data" meaning the PII in question that may slip
23 through -- is so unlikely to occur it's essentially a non-
24 existent risk.

25 So when you compare all the cost benefits, which we've

1 talked about from Day 1, the benefits of us getting the
2 entirety of the data, and the minimal costs in doing so and the
3 fact that we're the ones bearing the costs, anyway, we think
4 the, the ties of the, that are so knotted up, frankly, untie
5 themselves. We don't think this is a particularly close call,
6 your Honor. We ask that you order for full compliance by DBMP,
7 by DCPF and Verus with the subpoenas as, as issued. And absent
8 any questions, I have nothing more, your Honor.

9 THE COURT: Thank you.

10 Affiliates want to say anything by way of closing,
11 Mr. Mascitti?

12 MR. MASCITTI: No, thank you, your Honor. We join in
13 the request.

14 THE COURT: Okay.

15 All right. Mr. Guy?

16 MR. GUY: Thank you, your Honor.

17 As everybody knows, I'm not technologically very
18 competent and we might run out of battery. So I'm, I'm gonna
19 hand out some hard copies.

20 THE COURT: Okay.

21 MR. GUY: And I, I don't know whether I'll have enough
22 for everybody.

23 May I approach, your Honor?

24 THE COURT: You may.

25 (Copies of FCR's presentation distributed)

1 THE COURT: Thank you.

2 MR. HIRST: And your Honor, we realize we didn't hand
3 up a copy of ours to you.

4 THE COURT: All right. Thank you.

5 MR. HIRST: May I approach?

6 Yeah. We can give them to you as well. Sorry.

7 THE COURT: Appreciate that.

8 (Copies of debtors' presentation distributed)

9 MS. MOSKOW-SCHNOLL: Thank you.

10 THE COURT: All right. Whenever you're ready.

11 MR. GUY: Yeah. Thank you, your Honor. This won't be
12 long.

13 Our favorite chart, fees. So yeah. The National
14 Stadium, they have the President's Run.

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

17 MR. GUY: You've probably seen that and they have
18 these huge costumes and they fall over and everybody laughs.
19 It's kinda mean, actually.

20 So the one far ahead is Bestwall, 254 million. When I
21 first started practicing law I just couldn't imagine being in
22 the bankruptcy court and the legal fees being 254 million. And
23 it's not over.

24 Aldrich is racing ahead of DBMP. Right now, 83
25 million. In fairness to Aldrich, we go up through April '23.

1 DBMP, 76 million.

2 And I always put Paddock on here, your Honor, because
3 it never changes because they actually did a deal for the "Big
4 Dusty" and the FCR's fees in there, very impressive, \$2
5 million. \$610 million, TDP, 100 percent payment percentage.
6 We should be so lucky.

7 So your Honor, we've done a, an analysis of how
8 asbestos trusts have done and these include the Trusts that are
9 actually here today, well, Verus and DC, DCPF on behalf of
10 those Trusts. And this isn't all the trusts, sure, but it's a
11 huge majority of them, your Honor, and they've all paid less
12 between the period of 2008 to '22. And some of them are real
13 doozies. DII, that goes from a hundred percent. That's the
14 trust that I believe Dr. Wyner worked on. That's down to 60
15 percent. That's like 40 percent less if you're a future.
16 That's not negligible. That's not the 100 to the 102. That's
17 a real impact. That's disparate treatment. That's failure,
18 failure to accurately estimate, forecast liabilities.

19 Keene Creditors Trust, your Honor. That's very
20 impressive. Starts off at 1.1 percent and now it goes all the
21 way down to .84. That's gonna run out of money. It's just a
22 question of time. How can I say that, your Honor? You're now
23 at the bottom. 1.1, shut down.

24 If you're a future claimant who was exposed to
25 asbestos made by UNR, you're getting nothing. And everybody

1 says, "Oh, trust us. It's gonna be okay. A sample's good
2 enough." It wasn't good enough for UNR.

3 Lummus, your Honor, hundred percent, down to 11
4 percent. That's a failure. That's a significant order of
5 magnitude.

6 You heard me ask Dr. Wyner, "Well, would more data
7 have maybe helped? Would that have, perhaps, allowed these
8 trusts with more data in their hands do a more accurate
9 forecast?" And he didn't really want to answer, but we know
10 the answer. More data is always better.

11 Shook and Fletcher, your Honor, a hundred to 76.

12 And THAN, your Honor, that's one of the Trusts here,
13 starts at a hundred percent. And I asked Dr. Wyner. He said,
14 "Well, that's, that's the fault of Bates White." Actually,
15 they weren't in that case. And Bates White doesn't determine
16 what -- the trust determines what the payment percentage should
17 be. The ACC and the FCR negotiate that using their experts.
18 And Dr. Wyner was like, sorta criticizing the experts. "Well,
19 they're not really statisticians." And I think the ACC's
20 experts and my experts, for that matter, would disagree with
21 that.

22 But they can only do what they have with what they
23 have and if they don't have enough data, there's a really good
24 chance they're gonna get it wrong. I don't think for a second
25 that any one of those experts engaged in some sort of, "Well,

1 let's sorta let, let's have a highly inflated number because
2 that's gonna be great for the currents and we'll stick it to
3 the futures." I don't believe that. They got it wrong and
4 they got it wrong more than they got it right. And the reason
5 is simple. They didn't have enough data. They didn't have a
6 bar date, either, your Honor.

7 So wanna go to the Garlock settlement page. I wanted
8 to put a list of trusts that have actually really done a good
9 job and it's a short list. There are some others, but this is
10 the one trust that's doubled what it's paying asbestos
11 creditors. Dr. Wyner sorta suggested, well, that's a bad
12 thing. That's a good thing 'cause we got it right.

13 Your Honor, I think the battery died.

14 So the evidence-of-suppression slide. I'm on that
15 one, your Honor. You, you'll remember what Judge Hodges said
16 and he said, you know, there was evidence of suppression in
17 half the cases, okay? And Ms. Ramsey, who may be on the phone,
18 she very candidly admitted the other day that she doesn't want
19 that to happen again on her watch. And you know, in our
20 filings we've said, well, it really doesn't impact the current
21 claimants because they haven't been paid. What it does impact
22 is the law firms. And she freely said, you know, Judge Hodges
23 was very critical of the tort lawyers.

24 So that brings us to the question of why are we all
25 here? Why are the Trusts trying so hard not to give

1 information that they know will be useful, to keep it from a
2 future Aldrich and Murray trust? These are all trusts that
3 have failed to do their job because they didn't have data and
4 they are fighting tooth and nail. Twenty plus filings -- I've
5 never seen anything like it -- over a valid subpoena. Tooth
6 and nail to keep information that the trustee in an
7 Aldrich/Murray trust, if we ever get there, will be able to use
8 to accurately forecast values, just as the trustee, by the way,
9 did in Garlock.

10 Next page.

11 And the Garlock CRP, your Honor. Your Honor agreed,
12 approved this language. The ACC approved this language. The
13 tort law firms on the ACC approved this language. It was
14 negotiated by the FCR for the very purpose of what we're
15 talking about today:

16 "The trustee shall have access and may rely upon,
17 among other things, the debtor's various claim
18 databases, including information reported in response
19 to each asbestos claims bar date" -- that's key --
20 "settled claims bar date, the debtor's questionnaires,
21 and the forecasting models and estimates of the
22 debtors, the ACC, and the FCR."

23 We basically wanted the trustee, Lewis Sifford, to get
24 everything he could. And he did. And he uses Ankura to do
25 these analyses and we look at it every year and we are

1 conservative because that's our job, but it's working.

2 So we're not talking about -- we -- our issue isn't on
3 like evidence of suppression, but we do think that's motivating
4 this more than burden. It's motivating it more than PII, but I
5 don't understand that, either. Because the debtors have
6 already said, "We're gonna have a sample of claim files.
7 There's gonna be 1200 claim files." The data that we want,
8 that we, the FCR, care about is the data in the 12,000 because
9 that's what gives you the ability to have a much more accurate
10 forecast. And Dr. Wyner, Dr. Mullin, no one disagrees with
11 that basic principle. The more information you've got, the
12 better, the more accurate your forecasts are gonna be.

13 Thank you, your Honor.

14 THE COURT: Thank you.

15 All right. Objecting parties. Who wants to lead off?

16 MR. GUERKE: Good afternoon, your Honor. Kevin
17 Guerke, again from Young Conaway, on behalf of DCPF.

18 I think we need a level-set and to, to go back to the
19 original motion to quash. This motion to quash was heard under
20 Rule 45. Rule 45 requires application of a different standard
21 than the authority to issue a subpoena under Bankruptcy Rule
22 2004. That, that's the Rule that applied in Bestwall and DBMP.
23 That's not in play here. That was an important part of the
24 November 30th ruling. Your Honor was wearing a different hat
25 that day and properly viewed this dispute through the lens of a

1 compliance court. Your Honor was right to order sampling based
2 on the burden to nonparties, like DCPF and the Verus
3 Facilities. And the, and the Court's sampling ruling was
4 consistent with other compliance courts' ruling on similar
5 issues. The Court heard the facts, the Court considered the
6 information, and made the correct ruling November 30th.

7 Fast forward four months, to March. After Bates White
8 and the debtors already proposed a workable sample back in
9 December, debtors filed this motion, or their motion to
10 reconsider, but there were no new facts, just repackaged old
11 arguments that you heard again today. The, the process that
12 we've had to go through since the Court ordered a 10 percent
13 sample is incredible. After the ruling, the debtors went out
14 and got a new expert. After the ruling, they said they wanted
15 to take depositions. After the ruling, they required live
16 testimony of our witnesses.

17 Under Rule 45(d), "A party or an attorney responsible
18 for issuing a subpoena must take reasonable steps to avoid
19 imposing undue burden or expense on the person subject to the
20 subpoena." The Court under Rule 45(d) must enforce that duty.
21 Rule 45 obligated the debtors' to minimize the burden on the
22 target of the subpoenas and the debtors have done the opposite
23 here. They've, they've maximized the burden with no regard for
24 the non-party targets of these third-party subpoenas and
25 they've utterly failed to meet their obligations under Rule 45.

1 In 11 months. -- your Honor, we've, we've proven burden on many
2 levels and in 11 months the debtors still haven't explained
3 with any clarity why they need a hundred percent of all 12,000
4 claimants. All they can point to is an unknown, tiny loss of
5 precision, but they can't quantify it and they won't quantify
6 it.

7 The, the facts matter. Back in November, the Court
8 was presented with different facts than in DBMP. The Court
9 agreed that it heard different facts on November 30th. Our
10 argument then was simple and it included hard evidence and a
11 detailed explanation of DCPF's burden. The information was
12 different than in DBMP. As a result, the ruling was different.
13 Perhaps, the demonstrative that I used on November 30th was
14 helpful. I said it back then. I didn't understand the
15 process. I didn't understand the redactions until I saw it on
16 paper. That's why we submitted it for your Honor's review.

17 The sample claim production, your Honor, has been
18 marked as Exhibit, DCPF Exhibit 2. I handed it up earlier.
19 And as you can see and as we discussed in November, it shows
20 the end result of the redaction process where name and Social
21 Security number of non-claimant coworker or spouse with
22 secondary exposure had information, the claimant added
23 information in the narrative fields and it had to be redacted.

24 The debtors' main argument is a lack of precision
25 using a sample, but Dr. Mullin was unable to tell us what the

1 loss of precision actually is. Debtors have the burden here
2 and they failed to meet that burden on the most fundamental
3 point, the most fundamental piece of their argument.
4 Dr. Mullin has already designed a sampling protocol that would
5 be reliable, efficient, and representative. He excluded all
6 this stuff that he says now is so important and he starts his
7 sampling protocol in 2014 and focuses on the amount of
8 settlements. His sampling protocol from December conflicts
9 with his current argument that he needs to control for industry
10 and occupation. Debtors' position on the sufficiency of a
11 sample is not credible. Dr. Mullin's position or positions are
12 not credible. He managed just fine with 10 percent in
13 December, just like the debtors managed to come up with a, with
14 a sample of their own historical claim files when it suited
15 them.

16 As we described last November, the burden on DCPF is
17 real and it's significant. DCPF submitted burden evidence
18 that, that has not been challenged, still hasn't been
19 challenged. Richard Winner testified at his deposition
20 describing the burden. It was, it was consistent with the
21 declaration, consistent with everything I represented to the
22 Court November 30th. The hard dollars, the hard-dollar costs
23 do not reflect the true burden. The invoices from DBMP don't
24 change the burden. It shows the burden and those are marked,
25 your Honor -- I, I handed them up -- they're Exhibits 3 and 4.

1 These invoices show the burden from the DBMP production. The
2 invoices reflect nearly 1100 hours of DCPF time over several
3 weeks. And these, these aren't temps. These are DCPF
4 employees who are doing the review and redaction. Forty of 'em
5 were involved in the DBMP production and not just low-level
6 employees, the COO, managers, the entire operation was
7 affected.

8 DCPF is in the business of processing claims. It
9 could not review claims from elderly, sick, and dying claimants
10 when it was bogged down responding to these subpoenas. Claim
11 processing was delayed. Production was hurt. That was
12 described in detail in Mr. Winner's deposition. It's one thing
13 to, to reimburse costs. It's very different when people are
14 being pulled from their job for an extended period of time.
15 It's an enormous distraction and it's detrimental to DCPF's
16 business. DCPF, as, as reflected in the two invoices, worked
17 on the DBMP production for, for nearly four months and -- I'm
18 sorry -- three months and there are 3,000 more claimants at
19 issue in this case than in DBMP. That's a 33 percent increase.

20 Almost 150,000 claims matched the 12,000 claimants at
21 issue in Aldrich and there can be multiple exposure records
22 associated with each one of those 150,000 claims. All of those
23 have to be reviewed. Sampling reduces that review burden, the
24 burden on DCPF, 90 percent, 135,000 fewer claims that DCPF
25 would have to review with a sample. And DCPF has to review the

1 production. It, it has to protect the PII in its database.
2 It's not a choice. It's not solely based on the language in
3 the subpoena. It's a contract obligation. DCPF has a duty to
4 protect and maintain the security of the confidential and
5 highly sensitive information that it stores. Protecting that,
6 that data is DCPF's highest operational priority. It's easy to
7 say that DCPF had a choice. Any party to a contract has a
8 choice not to comply with the contract, but that's a, a bad
9 decision. That's a dangerous decision and not a prudent course
10 of action. It's our, it's our obligation and one that we take
11 seriously.

12 The subpoena here can't be viewed in isolation. In
13 fact, the debtors are encouraging the Court not to look at the
14 Aldrich Pump subpoena alone. The debtors and Bates White want
15 to group all these together as if it's one string or one case.
16 So let's look at it in that context.

17 The serial nature of these subpoenas. The serial
18 nature of these subpoenas magnifies the burden. Forcing DCPF
19 to repeatedly go through the same exercise does not -- does not
20 review -- does not reduce the burden. Running a marathon once
21 is difficult, but, but one is very different than running back-
22 to-back-to back marathons. The cumulative nature of these
23 subpoenas needs to be taken into account. The relentless
24 campaign of subpoenas directed at nonparties like DCPF should
25 stop. DCPF does not work for Jones Day. DCPF is not an arm of

1 Bates White. It's not a party to this case or any of the
2 others.

3 Debtors acknowledge sampling is generally accepted and
4 admit that the sample Bates White designed was efficient,
5 representative, and reliable. Why wouldn't an efficient,
6 representative, and reliable sample work for estimation which,
7 by definition, is not an exact calculation? Why wouldn't an
8 efficient, representative, and reliable sample work for
9 aggregate claim numbers? The Court has already pointed out
10 estimation does not require precision. And here, here, your
11 Honor, the, the debtors have simply failed to meet whatever
12 standard applies to reconsider the November 30th ruling. The
13 Court's November 30th ruling should not be reversed.

14 Estimation has not been completed in Bestwall or DBMP.
15 There's no telling at this point that the trust discovery
16 allowed in Bestwall and allowed in DBMP was appropriate or
17 useful. The Court's November 30th sample ruling resolves,
18 solves this dispute and it possibly resolves similar disputes
19 in the future. A sample could avoid a, a future fight with
20 nonparties like DCPF. This case could be a test balloon for a
21 better, less expensive, less intrusive, less burdensome
22 process.

23 We ask the Court to please deny the motion and uphold
24 your Honor's November 30th ruling.

25 Thank you.

1 THE COURT: Thank you, Mr. Guerke.

2 All right. Who's next?

3 MS. MOSKOW-SCHNOLL: Your Honor, I think I'll go next
4 and I'll do North Carolina way.

5 THE COURT: All right.

6 MS. MOSKOW-SCHNOLL: 'Cause I have blisters on my
7 feet.

8 THE COURT: Well, now, we argue standing. That's
9 different.

10 MS. MOSKOW-SCHNOLL: Oh, sorry.

11 THE COURT: Sorry.

12 MS. MOSKOW-SCHNOLL: Got it.

13 THE COURT: But you can do it from the counsel table.

14 MS. MOSKOW-SCHNOLL: Okay. Thank you. 'Cause I may
15 put up a slide or two.

16 I first wanted to -- Mr. Guerke did the whole
17 overview. So I'm gonna tailor what I say and not restate a lot
18 of what he already said, which I completely agree with on
19 behalf of the DCPF Trusts.

20 And by the way, I'm Beth Moskow-Schnoll, Ballard
21 Spahr.

22 So Mr. Guy speaking for the FCR, he put up this chart
23 showing asbestos trusts that reduced their payment percentages.

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

1 MS. MOSKOW-SCHNOLL: The problem is that we don't know
2 which of those trusts had estimation proceedings where they
3 used sampling or they used a full census of data, they didn't
4 do any -- we have no idea. There's no record about any of
5 that.

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

8 MS. MOSKOW-SCHNOLL: So really, that gives us no
9 guidance, whatsoever. And him saying more data always means
10 better estimation, I don't know where that came from 'cause
11 again, there was no evidence to that effect. You know, he said
12 the reason they got it wrong is they didn't have enough data,
13 but who knows what data they did or didn't have.

14 And one point that I just learned. DII has actually
15 not gone down. It adjusted its values. The values went up.
16 So they instituted a payment percentage so that the values
17 being paid to the claimants actually went up even though the
18 payment percentage went down. So DII is not an example of,
19 where payments went down.

20 And then he also held up Garlock as and aspiring for
21 what we should all want because they're the only trust that's
22 doubled what it is paying. And Dr. Wyner properly pointed out
23 the fact that what you want is people to get paid what they
24 should get paid. So that actually isn't what anyone's aspiring
25 towards, but saying that they got it right when they're less

1 than five years old really doesn't tell us anything because
2 it's, as Dr. Wyner testified, it's the uncertainty in the
3 future, like the far future, that's really, really hard to
4 figure out. So five years out, it's great that they figured it
5 out, but it's not necessary. It doesn't mean that they're
6 gonna be doing that well down the road.

7 So next, you know, this, this rehearing, it started at
8 the last hearing where the Court actually said, "What I wanna
9 hear is why isn't a sampling sufficient, sample sufficient?"
10 That was your question and Dr. Wyner really is the only person
11 who answered that question directly. What he said was, "A
12 random sample that is large, weighted, or stratified towards
13 larger settlement values would be particularly, practically,
14 and material no less accurate than a full census of 12,000
15 claimants in the targeted population and," you know, "for
16 determining the parameters of interest that Dr. Mullin
17 mentioned."

18 Now it's interesting, too, that Dr. Mullin in his
19 deposition, his declaration only cited two parameters of
20 interest. Those were proportion of claimants who failed to
21 disclose alternative exposures and the effect of partial
22 information on average claim values. Okay. Well, that's good.
23 And then Dr. Wyner issued his expert report and all of a sudden
24 now Dr. Mullin's like, "Uh-oh. I have to acknowledge that a
25 sample is fine for those two things that I put out there," and

1 he said that repeatedly now. "Yeah, we can absolutely use
2 sampling. It's sufficient for determining proportion of
3 claimants who failed to disclose alternative exposures. It's
4 sufficient to, for determining the effect of partial
5 information on average claim values."

6 So then in his deposition he comes up with this new
7 thing, "I need to study these subpopulations," but he doesn't
8 even explain in his deposition when, like, why he needs to
9 explain these subpop, you know, study these subpopulations and
10 frankly, it's still unclear to me why exactly he needs to study
11 these subpopulations. Because as Dr. Wyner pointed out, he's
12 not doing an IR. He's not looking at every individual claim to
13 figure things out and he has to come up -- his main job is
14 determining estimation, which, which is, again, as Mr. Guerke
15 said, not, you know, it's something that's hard to do. It's
16 fraught with difficulty, but it's also uncertain in and of
17 itself.

18 So, so then he comes up with this, the need to study
19 small subpopulations and if he has a sample, maybe he won't
20 have enough in these small subpopulations for him to be able to
21 study. But again, he hasn't really explicitly stated why he
22 needs the data. He's not doing an IR. And generally, small
23 subpopulations aren't that relevant because, as I've learned in
24 working with Dr. Wyner, you know, if you have something that's
25 little, its impact on the greater population of things is going

1 to be very minor.

2 But here, they're interested in small subpopulation
3 with a large settlement value. Well, even Dr. Mullin
4 acknowledged that if there's any kind of error or sampling
5 error, I mean, you can mitigate issues with the sample you
6 choose. Knowing that they may want some information about,
7 they want the high-claims information, the sampling, the
8 stratified sampling that they've proposed and that they've done
9 in the other cases and in this one, they're taking --
10 they're -- they've stratified by settlement value and then
11 they're taking virtually everything in the top bucket, like all
12 the most valuable claims.

13 So they're gonna get that information if they're the
14 big claims. I mean, they can stratify to get that information
15 if that's really what they're interested in. So that's gonna
16 be, they're all gonna be captured. So that's not actually an
17 issue using a sample.

18 Then, then we have -- I'll put this up again if I can
19 figure it out. I think somebody has to turn off their thing so
20 I can put mine on.

21 MR. HART: We're off on this side.

22 MS. MOSKOW-SCHNOLL: You're off?

23 Are you controlling or no?

24 (Setting up of demonstrative to be displayed)

25 MS. MOSKOW-SCHNOLL: Okay. Now, you know, Dr. Wyner

1 was testifying based on principles of statistics. Dr. Mullin
2 was not. He didn't ever talk, he didn't use formulas, he
3 didn't refer to formulas, but he got back on the stand to talk
4 about this formula that Dr. Wyner talked about, the Negligible
5 Impact of Sampling on Overall Forecast Uncertainty. And he
6 said, "No, no, no. This is wrong. The irreducible uncertainty
7 in forecasting is actually because of better, better methods of
8 figuring out forecasting. That's less than the sampling
9 uncertainty." Well, that's categorically wrong. Sampling
10 uncertainty is based on a formula and that's how you can
11 determine it. And if you even think of common sense, right, so
12 you have this formula that's used to determine sampling
13 uncertainty which, again, you can control for with making a
14 proper sample. And I think we would all agree Dr. Mullin knows
15 how to make a sample and he's done it several times and said
16 that they're reliable and efficient and they're terrific. How
17 can the, the uncertainty of the sample caused by sample be
18 greater than the uncertainty of trying to figure out how many
19 people may file a claim for mesothelioma in 40 years? That,
20 that doesn't make any sense. It just categorically is not
21 true. It -- it -- it defies common sense.

22 So what are we down to? We have the other issue about
23 the fact that, you know, he didn't, he didn't raise this
24 subpopulation issue until his deposition and then he didn't
25 really talk about it much in his deposition. He didn't really

1 explain what he was gonna do. A little more came out today,
2 but it really sounds like he presented this whole subpopulation
3 thing because he realized that, yeah, sampling does work.
4 Sampling is sufficient. And in fact, he's acknowledged the
5 sufficiency of sampling. He's acknowledged he could do all his
6 work with a sample. What he says is that the accuracy would
7 be, would be less. There'd be more uncertainty. But again,
8 with this formula that we showed you, that's just not true.

9 The other thing is that if he was so focused on these
10 subpopulations and they are so important, then how come every
11 stratified sample he's done is all based on value, right? It's
12 all stratified on value. And even in picking out what they're
13 going to look at, they, they decided that they wanna only look
14 at mesothelio, mesothelioma claims because they're the most
15 valuable. So even that is kind of a stratification.

16 So what you have is their acknowledgment that what
17 really matters is value because, obviously, if you're gonna
18 strat, if you're gonna be figuring out, estimating future
19 liability, you need to know what value you have to work with
20 and that's their ultimate goal.

21 So now we're in this situation where, you know,
22 they've acknowledged that sampling works and they've been
23 acknowledging this for a long time.

24 You know, we'll go back to Jorge Gallardo-García. We
25 understand it'd already been said 10 percent, but basically, in

1 his declaration he says, "I can work with 10 percent. I came
2 up with a great sample. It is, it's representative. It's
3 efficient. It can, it can provide a reliable characterization
4 of Bestwall's mesothelioma claims history." And then in, in
5 Bestwall, Jones Day wrote in its motion to approve resolved
6 claim sample, they said:

7 "Consistent with Rule 16, the use of an appropriate
8 sample will provide an efficient mechanism by which
9 the parties and the Court can address issues presented
10 by the estimation proceeding. The resolved claim
11 sample's random, representative sample that will
12 provide reliable information on the resolution history
13 of the Bestwall mesothelioma claims."

14 And in Bestwall, they also cited the Manual for
15 Complex Litigation for the proposition that, "Acceptable
16 sampling techniques in lieu of discovery and presentation of
17 voluminous data from the entire population can save substantial
18 time and expense."

19 And then in a December 19, '22, 2022 e-mail Morgan
20 Hirst wrote that the sample it was proposing "would be a
21 representative and efficient sample that can provide a reliable
22 cross-section of Aldrich/Murray mesothelioma claims settlement
23 history." This is them saying that, that it will present a
24 reliable cross-section.

25 And then Dr. Mullin acknowledged that if, that

1 sampling will work here for estimating future liability and
2 then he -- then he went back -- he started on the whole
3 subpopulation thing.

4 So even with this, their additional bite at the apple
5 Aldrich still fails to answer the Court's explicit question, is
6 sampling sufficient. Dr. Wyner has told you absolutely it is.
7 Dr. Mullin has said, "Well, it presents more uncertainty," but
8 he doesn't tell you how much uncertainty. Dr. Wyner showed you
9 that if there is additional uncer -- well, there will be some
10 additional uncertainty, but it's so minor that in the -- in the
11 -- the outcome really won't be noticeably different. It's not
12 gonna be material.

13 So I'm just gonna get back to these slides that I
14 have, that I've used before, if the Court will just -- if I --
15 the Court will just indulge me for one second.

16 THE COURT: Take a moment.

17 (Pause)

18 MS. MOSKOW-SCHNOLL: Okay. You have seen these slides
19 before --

20 THE COURT: Right.

21 MS. MOSKOW-SCHNOLL: -- about the cast of characters.

22 You know, the question is, you know, the ultimate
23 question here was is a sample sufficient. I think we've proven
24 that it is, but when you look at what they're asking for and
25 you look at the history in this, in these cases you see how out

1 of control it's really become.

2 So we look at Bestwall, DBMP, and Aldrich Pump and
3 Murray Boiler. The trust subpoenas compel data of 36,000 trust
4 claimants. That's a lot of data from a lot of people. That's
5 19 different trusts that they've subpoenaed. And the issue's
6 this: That, you know, they started out in Bestwall seeking --
7 you know, they're saying here, they got up there and they
8 proudly said, "Look, we're not looking for PII. We're not
9 looking for settlement amounts. We're not looking for medical
10 info. We're not looking for financial data." Well, guess
11 what? That is what they were seeking in Bestwall and it wasn't
12 until the Trusts pushed back and said, "No, we're not giving
13 you that because we wanna protect our claimants' data," that
14 then they stood back and said, "Oh, you know what? We have
15 PII. We have all this other stuff." Well, why were they in
16 the first place asking for stuff they don't need? Our
17 contention is they're still asking for stuff they don't need,
18 just like they always have been. They want all the data, but
19 they don't need all the data.

20 And just another example of how much we're talking
21 about here, is we look at, you know, claims data, all, means
22 "all electronic information data contained in any claims
23 database within DBMP's possession." And you know, "all
24 electronic information and data contained in any claims
25 database."

1 And we think, your Honor -- it's not think -- we just
2 -- the Court should just stop this now. We should, we should
3 just limit it to the 10 percent. And again, it's not so much
4 the 10 percent. It's the fact that 1,200 is a lot of data that
5 they can do everything they need with.

6 Thank you.

7 THE COURT: Thank you.

8 Anyone else? Okay.

9 MS. BENNETT: Good afternoon, your Honor. Lynda
10 Bennett from Lowenstein Sandler on behalf of the Verus Trusts.

11 On March 30th, your Honor posed two questions that was
12 supposed to be the purpose of hearing, the hearing today. One,
13 why sampling is not sufficient and would not work and two, why
14 sampling doesn't reduce the risk of even just human error in
15 disclosing PII. And as has already been mentioned, it is the
16 debtors' burden to answer both of those questions today. And
17 the debtors have used every means available to avoid answering
18 these questions directly. Instead, they've tried to reframe
19 the question into what is the burden or what is the cost, but
20 your Honor has already performed the balancing of those
21 interests when your Honor on November 30th concluded that 10
22 percent was reasonable, proportional, and fair to address the
23 burden issue.

24 So this hearing was supposed to be about why sampling
25 does not work, not why the debtors think that full production

1 would be better, but the debtors have transformed the
2 sufficiency analysis that you asked for into an analysis of
3 what would yield ideal information.

4 In the debtors' papers and the testimony that we heard
5 from Dr. Mullins [sic] today, it's ladened with references to
6 more complete information, enhanced reliability, avoidance of
7 what the debtors characterize as unnecessary uncertainty. But
8 importantly, your Honor, there's no quantification from the
9 debtors or their expert as to what this alleged inaccuracy or
10 what, what the materiality would be of that perceived
11 inaccuracy if something less than 10 percent was produced.

12 And let's be, let's be clear, your Honor. The debtors
13 are not entitled to perfect information. Your Honor framed it
14 properly on March 30th when you asked how much does the debtor
15 need to satisfy, how much information do they need to satisfy
16 how they're going to use it. And when the debtor and
17 Dr. Mullin were pressed on that, they've conceded, as they
18 must, that, actually, 10 percent is sufficient, but they would
19 just prefer more. At best, what Dr. Mullins can tell you is
20 that that's a potential for inaccuracy. He didn't tell you
21 there will be. He said there's a potential for it. And our
22 expert, Dr. Wyner, has explained why more isn't needed and
23 that's because if more information is produced, it doesn't
24 materially alter the trend analysis that Bates White has stated
25 they will perform to estimate the debtors' future liability.

1 The debtors have responded to that reality of Dr. Wyner's
2 report and opinion by shifting the position of the target
3 again.

4 So initially, Bates White was conducting a macro
5 analysis looking for trends, particularly among the high-value
6 dollar claims which, as Dr. Wyner testified, can and is
7 accomplished through the very kind of stratification process
8 that Bates White endorsed and validated in Bestwall and
9 importantly, that the debtors in this case were negotiating for
10 months after the November 30th ruling and before they decided
11 to renege on compliance with that and seek reconsideration or
12 rehearing on that issue now.

13 And now that the debtors have to defend why the 10
14 percent sample is not enough, Dr. Mullins tries to pivot to a
15 more micro or granular analysis that's seemingly focused on,
16 as, as counsel for DCPF was just talking about, these
17 subpopulations, which were not disclosed anywhere in his
18 declaration, and sound more like an individualized review which
19 was, he did not disclose that he was performing and that he's
20 not qualified to perform. And Dr. Wyner has provided the Court
21 with the empirical, the empirical formula-based analysis that
22 directly contradicts what, Dr. Mullin's provocative statement
23 that 10 percent could more than triple the level of uncertainty
24 associated with the future estimates. It's simply not true and
25 you were given a specific example that demonstrated that.

1 Your Honor, there's an obvious answer to the dilemma
2 if you perceive this battle of the experts to be unclear in any
3 way, although we strongly stand behind Dr. Wyner's position
4 that 10 percent is more than enough for the stated purposes and
5 needs, and that is to order the 10 percent production of the
6 random sample and then if necessary, if at some point later the
7 debtors and/or Dr. Mullins can come forward and show with good
8 cause why additional information is needed, so be it. But 10
9 percent is certainly more than enough and he cannot identify
10 for you today any information that he can't get from the 10
11 percent sample and, and be able to do his work.

12 And your Honor, as I mentioned, I represent the Verus
13 Truss and this is, ordering the 10 percent now is a
14 particularly elegant solution because the very reason that I'm
15 here in this beautiful State of North Carolina today and not in
16 New Jersey, the compliance court where these subpoenas would
17 have otherwise been litigated, was because the debtors agreed
18 that we would make our 10 percent production and they were
19 prepared to comply with your Honor's ruling on November 30th.

20 So in the interest of fairness and equity, your Honor
21 should require the debtors to honor that 10 percent sample,
22 certainly with respect to the Verus Trusts and comply there.

23 I wanna just touch briefly on the privacy and
24 confidentiality concerns, as Mr. Anselmi will address that more
25 directly on behalf of Verus.

1 But your Honor, at a very high level, common sense
2 level in terms of protecting PII, the less information that's
3 produced the less at risk it is. And it sounds very nice to
4 say that Bates White has never had a security breach before and
5 Jones Day hasn't had a security breach, but we all know what
6 can happen. That can happen tomorrow and in most instances and
7 most organizations face the question of when they will be
8 breached, not if they will be breached. And so your Honor was
9 correct in recognizing that unless there's a good reason to
10 produce more than the 10 percent and put more than 10 percent
11 of information at risk, why do so? And the debtors who had the
12 burden to answer that question have not answered it.

13 And we know that human -- and, and as Mr. Guerke
14 referenced, the information that's at stake is for uninterested
15 -- they're not claimants. What we're really talking about are
16 the dependents, the coworkers. And it is extremely
17 confidential information that relates to mental health issues
18 and, and things of that nature, family dynamic issues, that
19 don't belong out in the open for no good reason.

20 And so your Honor with that, I join in the arguments
21 that DCPF has made and we would respectfully request that your
22 Honor enforce the 10 percent sampling ruling.

23 Thank you.

24 THE COURT: Thank you, Ms. Bennett.

25 MR. ANSELM: Good afternoon, your Honor. Andrew

1 Anselmi from Anselmi & Carvelli on behalf of Verus Claims
2 Services.

3 I first wanna thank you for the privilege of arguing
4 before this Court. It's my first time to this Court and North
5 Car, and to Charlotte, as a matter of fact.

6 THE COURT: Welcome.

7 MR. ANSELM: I think it's important to place into
8 context why we're here, at least why the Verus Parties are
9 here. We came here voluntarily. We consented to have our
10 motions from New Jersey transferred here on the basic
11 understanding that 1,200 rather than 12,000 claimants'
12 information was going to have to be produced. Now our
13 adversaries could shake their heads and they could parse words
14 over what we agreed to. That was clearly the understanding and
15 we came here with the understanding that that 1,200 claimants'
16 worth of information would be subject to the implementation by
17 your Honor.

18 I say that as a starting point because I think it
19 should be the ending point. Your Honor has since that time
20 heard a lot of testimony over why 1,200 claimant records should
21 not be insufficient. The debtors have not sustained their
22 burden. They have -- they say -- their expert said he provided
23 an opinion with a reasonable degree of scientific certainty,
24 but he did no such thing. Instead, he gave a nonexpert,
25 factually breadth opinion that there is no cost; so therefore,

1 more data has to be the appropriate answer. It fails.

2 Paragraph 16 of their reply brief, the debtors go so
3 far as to say that the costs that they're taking an over-
4 cramped view of are unnecessary and that to whatever extent
5 they're expended, they're be reim, being reimbursed, anyway.
6 So they're zero. Verus isn't choosing to review this critical
7 information in the same way that DCPF is not. They have to
8 review this information and why they have to review this
9 information is of critical importance. This isn't a one or
10 two-hour exercise. These subpoenas call for the reviewing of
11 narratives that contain a lot of sensitive information not only
12 about the claimants, not only about their families or
13 dependents, but it could be coworkers and other folks. These
14 are not jobs that can be delegated to new employees. As
15 Mr. Eveland has testified in his reply declaration, he needs
16 critical employees that are part of Verus to review this
17 information because they are familiar with the data.

18 They know what they're looking for. They've conceded
19 that they don't know what it goes into for a Verus review.
20 They conceded on direct -- and I give them credit for their
21 candor -- that whatever arguments they're making about DCPF and
22 what they might have done in another litigation on building
23 tools and berging redactions, you can't say that about Verus.
24 Verus hasn't done it. Verus has to start from scratch. This
25 is a time-intensive exercise to protect confidential

1 information from being breached, perhaps for the first time,
2 but who wants that to happen in the absence of sustaining a
3 burden as to why 1,200 is not sufficient and at the same time,
4 as DCPF has pointed out, other people, other claimants are
5 gonna have their claims delayed. Why? Because of speculations
6 of what may be in these records. We just don't know. They've
7 conceded it. They conceded it several different ways. They
8 don't know what they're looking for. They said it's unfair to
9 ask them what they're looking for until they see it and at the
10 same time, as Mr. Eveland has testified through his
11 declaration, his proprietary information is being potentially
12 compromised.

13 So where are we? The debtors have clearly not
14 sustained their burden. You don't sustain your burden on
15 speculation. Even an expert doesn't get that liberty.
16 Dr. Wyner, on the other hand, told you very simply on a very
17 complicated issue it's not about the percentage. It's about
18 the number. 1,200 claims is plenty and he gave you the reasons
19 for that. He not only gave you the reasons for it, he gave, he
20 gave you a formula. He gave you several formulas and presented
21 in a way that we all understood it.

22 So what's the answer, your Honor? The answer is what
23 Ms. Bennett just said. The answer is what we understood was a
24 reason we were coming down here. Let's start with a 10 percent
25 sample. Let's see what it bears. Let's, let's take away the

1 speculation, the doomsday scenarios that Mr. Guy was referring
2 to without making a nexus to whether that was due to inadequate
3 samples or not, whether that was due to not getting the
4 information that's being sought on this hypothetical
5 speculation. Because if they can't find anything, then there
6 will have been zero risk of compromising personal information
7 from some 10,800 claimants.

8 Thank you, your Honor.

9 THE COURT: Thank you.

10 Anyone else? Mr. Hogan.

11 MR. HOGAN: Good afternoon, your Honor. Daniel Hogan
12 of Hogan McDaniel on behalf of the Non-Party Certain Matching
13 Claimants.

14 Your Honor, I rise to join in the objections that you
15 heard earlier. I don't intend to repeat any of the arguments
16 that you've heard, but I did want to emphasize just a couple
17 points.

18 So at the end of the day, your Honor, the information
19 that's being sought is my clients' information. It's their,
20 it's their information. It's their private concerns, their
21 issues, their, their, their dirty laundry, for lack of a better
22 term, your Honor, and they're entitled to have that protected.
23 They, that was the expectation that they had when they
24 submitted this information to these Trusts.

25 And so your Honor, again, I don't want to repeat

1 what's been said, but I do wanna focus on burden just for a
2 moment because in this Court with the benefit of your Honor, I
3 realize that burden's a big issue. It -- it -- it hung me out
4 to dry on my motion with regard to anonymity in that you said I
5 didn't meet my burden with regard to the ability to do that.
6 And that's a separate issue. We put that aside. That's on
7 appeal. I get that. But I do want to emphasize that the
8 debtors have not made their burden. They have not satisfied
9 the requirements necessary under Rule 59(c) in that there
10 hasn't been a change in any sort of intervening law. There
11 isn't any new evidence at trial that we've heard. And so in
12 this instance, you know -- and the, the other thing is that
13 there hasn't been a clear error that would prevent manifest
14 injustice.

15 And so from our perspective, your Honor, we believe
16 that the debtors have failed to meet their burden with regard
17 to a need for this rehearing and that the Court should grant or
18 deny their ability to, to have the sample taken away.

19 And thank you, your Honor.

20 THE COURT: Okay.

21 Mr. Wright.

22 MR. HIRST: So your Honor, I'll just note the ACC
23 hasn't actually filed a brief here. I always like hearing from
24 Mr. Wright, but I, I, I know the, the new thing here is that we
25 don't, if we don't file a brief in response to a motion, I

1 believe oral argument's not supposed to be conducted.

2 MR. WRIGHT: Your Honor, we, we did file an objection
3 to the rehearing itself.

4 THE COURT: I recall that.

5 MR. WRIGHT: It did contain a substantive --

6 THE COURT: I'll listen. Go ahead.

7 MR. WRIGHT: Thank you, your Honor. I, I do promise
8 to be brief.

9 Your Honor, the ACC is now engaged in the estimation,
10 the estimation proceeding that you ordered. One of the
11 purposes for that estimation that you heard today, actually one
12 of the purposes you heard today for needing this information is
13 to develop the trust distribution procedures. Your Honor, I
14 refer you back briefly to your oral ruling. That was not one
15 of the purposes. So to the extent that their reliance today is
16 needing 12,000 claimants for trust distribution procedures,
17 that was not what estimation was ordered for. In fact, your
18 Honor, it was -- estimation was -- the proper purposes,
19 assisting in negotiating, formulating a plan, demonstrating
20 confirmability of that plan, voting, and determining how many
21 claims are out there and what their magnitude is, nothing about
22 trust distribution procedures.

23 The other aspect you've heard today, your Honor, is
24 about the, the proposed sample that was earlier in the case.
25 The Committee did work on that proposed sample. The Committee

1 was prepared, subject to confirmation from the debtor of a
2 couple of provisions, to agree to that sample. And the reason
3 why we were willing to agree was because it would reduce the
4 burden on all parties. It would reduce the analytical burden
5 on the Committee and certainly the debtor from looking at
6 12,000 claimants as opposed to 1200. The arguments you've
7 heard today weigh almost in favor of the Committee going back
8 and telling your Honor that we need to look at all 12,000. If
9 the debtor needs to look at all 12,000 claims, so does the
10 Committee and that's what we deserve.

11 So your Honor, I, I, I would say that if, if it's a
12 choice between 12,000 or 1200, the Committee would support your
13 Honor's prior decision to limit this to 1200 claims.

14 Thank you, your Honor.

15 THE COURT: Anyone else?

16 (No response)

17 THE COURT: Rebuttal?

18 MR. HIRST: Thank you, your Honor. I usually like to
19 stick to my three points in rebuttal, but when you have seven
20 people arguing against you it might expand slightly beyond it.

21 THE COURT: But is it additive or is it a
22 multiplicative?

23 MR. HIRST: That's a good question, your Honor. I
24 think it's gonna be additive.

25 So we start with the fact that all of the Objectors

1 and perhaps most noteworthy, the ACC, ignores the very document
2 that started this entire thing, the subpoenas, and the
3 Permitted Purposes for which your Honor ordered that we could
4 issue these subpoenas. And those Permitted Purposes, indeed,
5 did include the development and evaluation of trust
6 distribution procedures for any plan of reorganization. We're
7 not just talking about estimation here. We're talking about
8 the purpose of these subpoenas. This is squarely within it and
9 for all of the objections we heard during the last set of
10 arguments, none of them confronted that use. None of them
11 confronted the testimony Dr. Mullin gave about how he plans to
12 use it for trust distribution procedures, how he plans to use
13 it for plan confirmation.

14 The importance of this information was, or any
15 questions about the importance of this information were put
16 aside by Garlock and they were put aside by your Honor when you
17 ruled this was relevant. Your Honor may not necessarily adopt
18 the Garlock model, but from a question of discoverability and
19 relevance for discoverability purposes Garlock put an end to
20 the question of whether this information is relevant. It's
21 incredibly relevant, your Honor, and it was something that
22 Judge Hodges obviously relied on in great detail.

23 On the uncertainty, the -- I, I suspect I will never
24 say the word "subpopulation" again as many times as I have in
25 the last hour or so, but Dr. Mullin testified that the 1200-

1 claimant sample does not mean you will get 1200 of all the
2 things he's looking for or he's gonna be looking at, including
3 things he identified in his first declaration that we issued
4 with our motion for rehearing. We don't know what we're gonna
5 get from that 1200 sample. And we keep being taken for task,
6 or Dr. Mullin keeps being taken to task by the Objectors for
7 not calculating the amount of uncertainty. 'Cause keep in
8 mind, nobody disputes there is uncertainty created by the
9 sample. They keep taking Dr. Mullin for task for not
10 calculating that, but how is he supposed to calculate that
11 without the data that they won't give us, which is the entire
12 fundamental basis for how you calculate the level of
13 uncertainty? We don't know because we, they won't give us the
14 data that would allow us to calculate it.

15 Dr. Wyner, on the other hand, while he was happy to
16 calculate it, used numbers that he essentially adopted for his
17 own benefit. They don't have any bearing in any evidence in
18 this case. He chose something that would get him to the
19 outcome he wanted. At least Dr. Mullin was able to admit that
20 without the data we couldn't do that calculation.

21 On, on data breach. We heard, again, about the risks
22 of data breach. If, if the possibility of data breach is the
23 standard by which we determine whether or not subpoenas are
24 gonna be answered, there will be no more subpoenas responded
25 to. Everybody is subject to the potential for a data breach.

1 It hasn't happened to Bates White. It is not a basis to quash
2 or limit the subpoenas that are otherwise valid.

3 A couple of points raised specifically by Verus.
4 First, I'm not gonna argue about how we got back here from New
5 Jersey. Your Honor will remember the back and forth at the
6 March hearing. The e-mails speak for themselves and you can
7 read the e-mails, your Honor, and you can decide for yourself
8 how we got here.

9 Point Verus counsel made, Verus must have Verus
10 employees review this highly confidential information to do the
11 redactions. They cannot possibly allow outsiders to be hired
12 at our expense to review this highly confidential information
13 except that's exactly what Mr. Eveland wants to do in his work
14 for the ACC in reviewing the PIQs.

15 And if Mr. Evert can put up one of the PIQ, the blank
16 forms, your Honor, that's -- and these are on the docket -- and
17 included there in Part 3, Related Claimant Information, this
18 isn't the claimant themselves. This is nonclaimants that are
19 related parties and guess what information you see in that box
20 that's gonna be filled out in the PIQ forms, Name, Address,
21 Social Security Number, all the very PII that Mr. Eveland says
22 he can't possibly allow anybody outside of Verus to review,
23 except when it suits him to do so, except when he wants to do
24 it for his work for the ACC which, by the way, guess who's
25 paying for that work as well? Us. The entire notion that

1 Verus cannot hire someone from the outside to do this at our
2 expense is completely unsupported and completely contradicted
3 by their own papers.

4 Last point, your Honor, is Rule 45(d), going back to
5 Mr. Guerke's argument at the very beginning. Our obligation as
6 the subpoenaing party is to minimize the burden. That's
7 exactly what we did, your Honor. We could have issued the
8 Bestwall subpoenas. We could have sought the PII and today, we
9 may very well have all of it. Bestwall does. They have
10 everything. We didn't do that. We heard them and in fact,
11 DBMP heard them in front of your Honor when arguing the
12 subpoena motions there and they put in the procedure which we
13 adopted in this case to allow the Trust Parties to redact the
14 information. Now they use the fact that we've limited what we
15 looked for, the fact that we're not looking for PII, the fact
16 that we've given them this ability to redact the PII, they use
17 it against us. They say it's a burden, even though we're gonna
18 pay for it, and they say the subpoenas should be limited as a
19 result.

20 The burdensome nature of what has gone on here, Judge,
21 is not our subpoenas under Rule 45. We did everything we could
22 to minimize that. What's gone on here is the ceaseless
23 litigation to fight this, the ceaseless litigation to refuse to
24 give us anything, the refusal to ever meet and confer with us
25 in the first place, your Honor, after we issued the subpoenas.

1 They didn't, they didn't come to us and say, "Hey, is there a
2 way we can narrow this?" All they did was file motions to
3 quash. They don't want us to have this information. It
4 doesn't have to do with burden. The Verus, the entire Verus
5 PIQ notion completely undermines this. They don't want us to
6 have this data because of the relevance it had in Garlock and
7 the relevance they're worried in so many ways it may have here.

8 Your Honor, we ask that you grant our subpoenas in
9 full, you order compliance in full with the subpoenas as
10 stated.

11 And we thank you.

12 THE COURT: All right.

13 Mr. Guy.

14 MR. GUY: Thank you, your Honor.

15 Your Honor, I noticed that I was a little ahead of
16 myself in some of the papers we filed recently, I think on the
17 motion to dismiss, and I had said, well, DBMP has filed a
18 motion to dismiss for lack of subject matter jurisdiction, the
19 Committee, but I was wrong. They haven't done that and I'm
20 trying to think, well, why haven't they done that and maybe the
21 only difference is they have the Trust Data and that confers
22 subject matter jurisdiction in the Court.

23 Your Honor, we work with Verus a lot. They handle the
24 Garlock data and they do a really good job and they are highly
25 competent, very professional, very capable, and I have no doubt

1 that they will be able to review this data quickly, pull the
2 data out electronically with AI tools, and protect it. I have
3 no doubt.

4 Your Honor, a lot was said about why these party,
5 parties are fighting so hard and Mr. Hogan said, I think he
6 used the word "dirty laundry." That kinda struck me a little
7 bit. He didn't say, "We don't want our confidential
8 information come out." He said, "We don't want our dirty
9 laundry come out." Enough on that.

10 Ms. Moskovitz [sic] said rightly, "We don't know what
11 happened in these trusts." We don't, we don't know, your
12 Honor. It's confidential. We only know what happens in
13 Garlock, but we do know the data. This is public. The
14 percentages are public and they can't be denied. She mentioned
15 DII, that it went, apparently it went up and then it went down
16 and went up again. That's the data that it shows. There's no
17 more we can say than that. My understanding of DII is they had
18 an initial contribution, then they had another one. We're very
19 happy for DII.

20 But the point is -- and no one has rebutted it -- the
21 vast majority of trusts and the trusts here -- let's just put
22 DII aside for a moment -- they've all reduced their payment
23 percentages. We don't know what happened, but we know it
24 happened. We know that in every instance they had highly
25 competent, specialized experts for both sides, the FCR and the

1 ACC, do forecasts and in each instance they got it wrong to the
2 detriment of the futures.

3 And you heard Dr. Mullin talk about this information
4 is helpful to the futures. Well, we know in Garlock it's
5 helpful to the futures. Ms. Moskovitz said, "Well, that's a
6 bad result, that you overpaid." It's never a bad result that
7 you overpaid because you're can always make a stub payment, but
8 you can never get the money back.

9 Ms. Moskovitz also said, "Well, Garlock's only been
10 going on five years." Well, if you look at the posterchild for
11 bad estimates, THAN went from a hundred percent to 30 percent
12 in two years, two years. You heard Dr. Mullin say, "Well, if I
13 only have to predict it a year, I think I'm gonna get it
14 right." It's the 10 years, the 20 years that there's a chance
15 of getting it wrong. Well, they got it wrong in two years.
16 Clearly, something is amiss. I don't know what it is, but I do
17 know what is helping in Garlock. So that's why we want as much
18 data here.

19 Same thing with Lummus, hundred percent to 10 percent
20 in three years. How can you get it so wrong?

21 Your Honor, what was lost in a lot of the discussion
22 is that we are talking about encapsulated products and that
23 makes a huge difference. If we're talking about Paddock,
24 Paddock's a "Big Dusty." Its insulation, you walk by it. It's
25 in public buildings, hospitals, all over the place. You don't

1 need to show that you worked on that product. If you can show
2 that you were a insulator, as Dr. Mullin said, then, yeah,
3 you've got a, you're right up there. You've got the top claim,
4 but you could also be "I worked in a factory and the insulation
5 was there and I have mesothelioma." That's a viable, provable
6 claim. But when you have an encapsulated product, like a
7 gasket, as the Court found, Judge Hodges found, you have to
8 abrade it. You have to cut it. You have to break it and
9 there's only so many people who do those kinds of jobs. Those
10 are the Tier 1 claimants. Those are the people who should get
11 the maximum recovery and understanding how many people are
12 gonna be in those different tiers of occupations is heavily
13 critical by looking at the broad population data that
14 Dr. Mullin talked about, which is the census data and then
15 looking at the data from the Trusts of people who are making
16 claims. That gives us more information.

17 We're not interested in trying to prove evidence
18 suppression. We want to have a trust so that we have that data
19 so the trustee can have the benefit of it and they can use it.
20 And, and it was said earlier, well, this wasn't all about the
21 TDPs. We're looking always ahead to the TDPs. That, that's
22 exactly what we're looking to. We don't want to negotiate any
23 of this at the end. We wanna have all the information so that
24 we can give it to the trustee, just as we did in Garlock, and
25 say to the trustee, "You fix the values for a hundred percent

1 payment percentage using all the information that's available
2 to you." And, and that's exactly what Mr. Sifford did and
3 that's exactly why it's working.

4 Thank you, your Honor.

5 THE COURT: Thank you.

6 This is the point in the proceeding where I say no
7 premium in being the last speaker. But Mr. Davis [sic], got
8 something else?

9 MR. WRIGHT: I do, your Honor. And I apologize for
10 not taking you up on that premium.

11 To the extent Mr. Guy is speculating as to the reason
12 why the DBMP Committee has not filed a motion to dismiss, I,
13 I'm not gonna discuss it. I'm gonna say it's improper
14 speculation. And honestly, your Honor, I wouldn't interrupt
15 him, but I would ask that you strike that from his closing.

16 THE COURT: Well, it's not evidence. I'm not gonna
17 react to -- I'm trying to keep the cases safe, separate from
18 one another at the moment. So let's --

19 MR. GUY: It was an attempt at humor, your Honor.

20 THE COURT: Right.

21 MR. GUY: Maybe misplaced, but it was an attempt.

22 THE COURT: Okay. Are we done?

23 (No response)

24 THE COURT: I am tempted to try to give you a ruling
25 now, but the day is late and I am tired, if you are not.

1 I'm -- having contributed to some of the confusion earlier in
2 announcing a ruling, I don't wanna add to it now, given all
3 that has had to be done. On the other hand, I really hate to
4 wait a month to announce a ruling for this.

5 Is there an available time in a couple weeks where I
6 could get my thoughts together and give them to you by Zoom or
7 telephonic hearing? Y'all know --

8 MR. EVERT: Your Honor, I'm sure we can come up
9 with --

10 THE COURT: Well, I've got a, a couple of suggestions.
11 And if the clerk will backstop me and the law clerk as
12 well because we had talked to some parties about using some of
13 these dates.

14 The 14th, 15th of this month would, would be the ones
15 I had in mind. Are y'all showing anything there?

16 Ms. Cooke, we had e-mailed some parties and offered
17 dates, but I don't think the 14th was accepted.

18 (Pause)

19 THE COURT: I would assume these would be brief.
20 We'll send the --

21 MR. ERENS: Would they be at 9:30, the standard time
22 your Honor?

23 THE COURT: Well, that remains to be seen.
24 Are those good?

25 MS. COOKE: Yes.

1 THE COURT: Okay. I'll try to -- right now, I'm open
2 all day and I would envision an announcement that probably
3 wouldn't take more than about 15 minutes, so.

4 MR. GUY: That works for us, your Honor, the morning.

5 THE COURT: Anyone got problems on those days?

6 MR. WRIGHT: Your Honor, if, if we do it by Teams,
7 there's no problem from the Committee.

8 THE COURT: Okay.

9 Well, why don't we, then, say, let's make it the 15th
10 and do it midmorning, 10:30 Eastern, okay?

11 MR. EVERT: We certainly have enough people on our
12 team, your Honor. We can get somebody on the phone at 10:30
13 on --

14 THE COURT: Okay, very good. Well, if not, CM-ECF
15 will have the recording available the next day, so.

16 Anything else?

17 (No response)

18 THE COURT: I appreciate the quality of the
19 presentation. I'm sorry it's taken us this long to get here.
20 Hopefully, we'll be able to make a call and get, get moving
21 again. I do appreciate the effort that you put into this and
22 you've given me, as always, a lot to think about. I'll try to
23 make some sense out of it, so.

24 We'll recess now.

25 Y'all travel safely.

1 (Counsel thank the Court)

2 (Proceedings concluded at 3:45 p.m.)

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CERTIFICATE

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

13 /s/ Janice Russell June 12, 2023

14 Janice Russell, Transcriber Date

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