

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION**

In re:

DBMP LLC,<sup>1</sup>

Debtor.

Chapter 11

Case No. 20-30080 (JCW)

OFFICIAL COMMITTEE OF ASBESTOS  
PERSONAL INJURY CLAIMANTS, and  
SANDER L. ESSERMAN, in his capacity as  
Legal Representative for Future Asbestos  
Claimants,

Plaintiffs,

v.

DBMP LLC and CERTAINTEED LLC,

Defendants.

Adv. Pro. No. 21-03023 (JCW)

OFFICIAL COMMITTEE OF ASBESTOS  
PERSONAL INJURY CLAIMANTS, and  
SANDER L. ESSERMAN, in his capacity as  
Legal Representative for Future Asbestos  
Claimants, each on behalf of the estate of  
DBMP LLC,

Plaintiffs,

v.

CERTAINTEED LLC, CERTAINTEED  
HOLDING CORPORATION, and  
SAINT-GOBAIN CORPORATION,

Defendants.

Adv. Pro. No. 22-03000 (JCW)

<sup>1</sup> The last four digits of the Debtor's taxpayer identification number are 8817. The Debtor's address is 20 Moores Road, Malvern, Pennsylvania 19335.

OFFICIAL COMMITTEE OF ASBESTOS  
PERSONAL INJURY CLAIMANTS, and  
SANDER L. ESSERMAN, in his capacity as  
Legal Representative for Future Asbestos  
Claimants, each on behalf of the estate of  
DBMP LLC,

Plaintiffs,

v.

Adv. Pro. No. 22-03001 (JCW)

COMPAGNIE DE SAINT-GOBAIN S.A.,  
SAINT-GOBAIN CORPORATION,  
SAINT-GOBAIN DELAWARE CORPORATION,  
CERTAINTEED LLC, CERTAINTEED  
HOLDING CORPORATION, JOSEPH BONDI,  
SEAN KNAPP, LAWRENCE RAYBURN,  
MICHAEL STARCZEWSKI, VINCENT  
DINENNA, ROBERT PANARO, DONALD  
MELROY, PIERRE-ANDRÉ DE CHALENDAR,  
BENOIT BAZIN, ANTOINE VIGNIAL, HUBERT  
REICHARDT, DANIEL BIARNEIX, SREEDHAR  
NATARAJAN, GUILLAUME TEXIER, THOMAS  
KINISKY, CAROL GRAY, JOHN SWEENEY,  
ERIC PLACIDET, MARK RAYFIELD, and  
KEITH CAMPBELL,

Defendants.

**DEBTOR'S OBJECTION TO MOTION OF  
THE OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY  
CLAIMANTS AND THE FUTURE CLAIMANTS' REPRESENTATIVE  
TO COMPEL THE U.S. DEFENDANTS TO PRODUCE DOCUMENTS**

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DBMP LLC (the “Debtor” or “DBMP”), the debtor and debtor in possession in the above-captioned chapter 11 case and a defendant in one of the above-captioned Adversary Proceedings, objects to the *Motion of to Compel the U.S. Defendants to Produce Documents* (the “Motion”)<sup>2</sup> filed by the Official Committee of Asbestos Personal Injury Claimants and the Future Claimants’ Representative (together, “Plaintiffs”).<sup>3</sup>

### PRELIMINARY STATEMENT

In the Adversary Proceedings, Rule 34 of the Federal Rules of Civil Procedure (“Rule 34”) governs production of documents within a party’s “possession, custody, or control.” Fed. R. Civ. P. 34(a)(1). Analyzing this Rule 34 requirement as it applies to documents held by a litigant’s non-party affiliates, appellate courts routinely interpret the word “control” to require a “*legal right*” to obtain documents. Absent Fourth Circuit guidance, a number of courts within the circuit—including this one—also have looked to “*practical control*.” No matter which formulation applies, the question of control turns on whether the corporate affiliate may obtain the sought-after documents *on demand*.

The U.S. Defendants have no right—legal or otherwise—to demand email inboxes, data archives, shared drives, or computer hard drives from their ultimate parent, Compagnie de Saint-Gobain S.A. (“CSG”). Instead, to seek and produce in U.S. litigation CSG’s documents, the U.S. Defendants must submit a request to CSG, and CSG has the *sole discretion to grant or deny that request*. The opportunity to “request” is not the ability to “control.” Further, DBMP understands that any request to CSG for its own documents would have to be denied at this time to avoid violating the strict requirements of French and European law.

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<sup>2</sup> Adv. Pro. No. 21-03023, Dkt. 302; Adv. Pro. No. 22-03000, Dkt. 243; Adv. Pro. No. 22 03001, Dkt. 211.

<sup>3</sup> Capitalized terms not otherwise defined herein have the meanings given to them in the Motion. The Debtor is only a party to the Substantive Consolidation Proceeding. This Objection therefore is filed only in the Substantive Consolidation Proceeding.

Plaintiffs’ reliance on the so-called “*DuPont* factors” to prove “control” is misplaced. The record refutes Plaintiffs’ contentions regarding CSG’s supposed involvement in decision-making with respect to the Corporate Restructuring and DBMP’s chapter 11 filing. Plaintiffs cannot explain how things like personnel overlap between CSG and the U.S. Defendants—let alone a common legal interest and common telecommunication network—indicate “control.” They, therefore, resort to redefining Rule 34’s plain language and seek to impose a standard that would subject virtually every foreign corporation with a domestic subsidiary to full American discovery. That is not the law.

And critically, Plaintiffs never reconcile their demands with French and European Union (“E.U.”) regulations, nor do they explain why the subpoena they served directly on CSG—and for which CSG accepted service—is insufficient to obtain whatever documents may be sought from CSG in compliance with that law.<sup>4</sup> It makes no sense for the U.S. Defendants to be charged with playing middleman in Plaintiffs’ attempt to obtain CSG documents via the Hague Evidence Convention and other applicable rules when (a) Plaintiffs can do the same in connection with their subpoena; and (b) in fact, CSG currently is taking steps to respond to the subpoena in compliance with applicable law.

Plaintiffs also fail to confront the fact that the U.S. Defendants already have produced documents authored by or dispatched to CSG personnel that were responsive to Plaintiffs’ discovery requests in the Preliminary Injunction Proceeding (or, if privileged, logged such documents) to the extent those documents were in the files of U.S.-based custodians. Where not

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<sup>4</sup> Although the subpoena to CSG was just issued concurrent with the filing of the Motion, and service was just accepted, CSG had agreed to accept service of such a subpoena back in June 2022. *See Stipulation and Order Regarding Stay* ¶ 8 [Adv. Pro. No. 22-03001, Dkt. 49] (the “June 2022 Stipulation”) (“Each Fiduciary Duty Defendant authorizes his or her undersigned representative to accept service of discovery requests and subpoenas with respect to the Adversary Proceedings, reserving any and all rights to object to any such discovery requests and subpoenas on any ground.”)

produced previously, the U.S. Defendants will produce or log responsive communications among Defendants and CSG located in U.S.-based custodian files in these Adversary Proceedings. Because CSG’s alleged involvement in the Corporate Restructuring and subsequent bankruptcy filing would be best evidenced by communications in the U.S. Defendants’ custody, those are the materials most relevant to Plaintiffs’ requests.

At bottom, Plaintiffs would have this Court radically expand the definition of “control” in order to effect an end-run around foreign laws. This Court should reject that invitation.<sup>5</sup>

## ARGUMENT

### **I. The Documents Plaintiffs Seek from CSG Are Outside the U.S. Defendants’ “Possession, Custody, or Control.”**

#### **A. At Minimum, “Possession, Custody, or Control” Requires the Ability to Obtain Documents on Demand.**

Rule 34 “applies in adversary proceedings,” Fed. R. Bankr. P. 7034, and requires parties to produce documents within their “possession, custody, or control.” Fed. R. Civ. P. 34(a)(1). When interpreting the Federal Rules of Civil Procedure, “courts begin with the text of the provision at issue.” *Bland v. Fairfax Cnty., Va.*, 275 F.R.D. 466, 469 (E.D. Va. 2011). Although Rule 34 was “adopted in 1938,” *Delta Air Lines, Inc. v. Aug.*, 450 U.S. 346, 361 n.24 (1981), the term “control” “has always been in the rule,” 8B Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 2210 (3d ed.), Westlaw (database updated Apr. 2023), and “control” meant in 1938 what it means today: “[P]ower or authority to control; directing or restraining domination; as, under parental *control*.” Webster’s New Int’l Dictionary 580 (2d ed. 1936); *see also, e.g.*, The American Heritage Dictionary 400 (4th ed. 2000) (“To exercise authoritative or dominating influence over; direct.”).

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<sup>5</sup> The Debtor adopts and fully incorporates herein the “Factual Background” section provided in *Non-Debtor Defendants’ Objection to Plaintiffs’ Motion to Compel the Production of Documents of Compagnie de Saint-Gobain* (the “Non-Debtor Defendants’ Brief”) filed contemporaneously herewith.

Most Courts of Appeals that “have addressed the issue” have concluded “[c]ontrol is defined as the *legal* right to obtain documents *upon demand*.” *In re Citric Acid Litig.*, 191 F.3d 1090, 1107 (9th Cir. 1999) (emphasis added). The Fourth Circuit has not expressly addressed the issue.

Nevertheless, some courts within the circuit—including this Court—have stated the term is *not* “limited to a legal right to obtain documents” and instead encompasses the “right, authority, *or practical ability* to obtain the documents from a non-party.” *In re BK Racing, LLC*, 2022 WL 1482403, at \*13 (Bankr. W.D.N.C. May 10, 2022) (Whitley, J.) (citation omitted) (former employee lacked “practical ability” to obtain documents from prior employer, and “certainly ha[d] no legal right to do so”). While the “legal right to obtain documents” indicates *de jure* control over a non-party, the “practical ability” inquiry turns on the *de facto* ability to do the same thing—*i.e.*, the “practical ability to obtain the materials sought *on demand*.” *Suh v. HCA Healthcare Co.*, 2010 WL 11622621, at \*2 (E.D.N.C. June 8, 2010) (citation omitted; emphasis added). So even under a theory of “practical ability,” parties lack “custody or control” absent the capacity to “order [a non-party] to surrender” the material sought. *Chaveriat v. Williams Pipe Line Co.*, 11 F.3d 1420, 1426 (7th Cir. 1993) (citations omitted) (Posner, J.).

Courts determining a subsidiary’s potential “control” over its parent’s documents engage in a “very fact-specific” inquiry and often consider “several factors.” *Playboy Ent. Grp., Inc. v. United States*, 1997 WL 873550, at \*3-4 (D. Del. Dec. 11, 1997) (movant’s “failure to demonstrate that [the opposing party] can access [the sought-after] documents in the ordinary course of business upon demand” showed lack of control). But however the factors are defined, the test must satisfy Rule 34’s plain text. The movant must show that the subsidiary can exert “directing or restraining domination” over the parent’s documents, Webster’s New Int’l Dictionary, *supra*, and thus “order

[the parent] to surrender” whatever material the movant seeks, *Chaveriat*, 11 F.3d at 1426. Those circumstances are absent here.

**B. The Record Confirms that the U.S. Defendants Cannot Obtain the Requested Material on Demand.**

Contrary to Plaintiffs’ misstatement of the law (at 10-11), “[t]he burden of establishing control over the documents sought is on the party seeking production.” 7 James Wm. Moore et al., *Moore’s Federal Practice - Civil* § 34.14 (3d. Ed.), LexisNexis (updated 2024) (citation omitted). Plaintiffs have failed to carry that burden here.

Aside from ignoring that the U.S. Defendants and CSG must follow “EU rules ... with respect to getting [CSG] emails,” Apr. 25, 2024 Transcript of Deposition of Sheri Brutsch (“Brutsch Dep.”) (Exhibit A) 105:23-106:2, and refusing to even try to explain how the U.S. Defendants would do so if forced to comply with their demands,<sup>6</sup> Plaintiffs concede that the U.S. Defendants may receive such documents only “upon request,” Mot. 25. The right to request is not the right to demand. Plaintiffs’ concession dooms their Motion.

The testimony could hardly be clearer. When asked by Plaintiffs’ counsel whether “Saint-Gobain North America [can] obtain emails of an employee of [CSG],” Mr. Thomas Pier, Saint-Gobain North America’s Chief Technology Officer, responded: “No, they cannot, but they can request it” by following a formal process and submitting the request through CSG’s IT department. Apr. 25, 2024 Transcript of Deposition of Thomas Pier (“Pier Dep.”) (Exhibit B) 154:15-21; *see also, e.g., id.* 174:25-175:5 (“Q: Do defendants or IT Services North America have access, either physical or logical, to email accounts of employees of [CSG]? A: No.”).

Once submitted, a request by the U.S. Defendants may be granted only with express authorization from both “the VP [of Compliance] of Saint-Gobain Corp. and the general counsel

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<sup>6</sup> As described below, the U.S. Defendants cannot obtain documents from CSG for production in U.S. litigation without compliance with applicable French and E.U. law.

of the Saint-Gobain Corp,” as well as “the General Counsel [of CSG].” Brutsch Dep. 103:6-104:25; *see also id.* at 110:16-111:6 (confirming process applies “to a potential request for production of emails” in litigation). The U.S. Defendants “cannot access documents or ESI<sup>7</sup> of [CSG] unless specifically granted access[.]” Pier Dep. 178:10-18.

That is not what “control” looks like. And even if employees of the U.S. Defendants and CSG sometimes “exchange[d] documents” over email, Teams, or other online platforms, Mot. 2, the fact remains that the U.S. Defendants “do not have the rights to access the email infrastructure or the emails of ... any Saint-Gobain employee” at a foreign affiliate. Pier Dep. 154:22:155:8. Plaintiffs’ acknowledgment that they “served CSG with a subpoena” (Mot. 5 n.10) further undermines their position, for it is “fairly obvious that a party also need not seek such documents from third parties if compulsory process against the third parties is available to the party seeking the documents.” *Shcherbakovskiy v. Da Capo Al Fine, Ltd.*, 490 F.3d 130, 138 (2d Cir. 2007).

Plaintiffs ignore reality when they contend that despite CSG’s “network firewalls restrict[ing] access among Saint-Gobain sites,” Pier Dep. 173:13-19, the U.S. Defendants, nevertheless, exert “control” over CSG employees’ emails because all CSG employees “are connected to the same global Wide Area Network,” Mot. 24. As Plaintiffs explain, a “Wide Area Network” is just a “telecommunications network that is used to relay data across various locations.” Mot. 3 n.7 (citation omitted). Were this Court connected to the same network as other courts in the Fourth Circuit, for example, that would not automatically provide it with access to (much less “control” over) those courts’ documents—particularly if “network firewalls restrict[ed]” such access. Pier Dep. 173:13-19. Plaintiffs’ argument is tantamount to asserting one employee has the ability to take another’s car simply because they park in the same garage.

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<sup>7</sup> “ESI” refers to electronically stored information.

\* \* \*

It borders absurdity to suggest a subsidiary may exert “control” over *all* of its ultimate parent’s documents simply because some subsidiary employees “exchange[d]” some documents with some parent employees when working together on a project—and control likewise cannot be divined through a shared “Wide Area Network.” Mot. 20-24; *cf. Alexander v. BMW of N. Am., LLC*, 2021 WL 9968198, \*3 (D.S.C. Apr. 13, 2021) (“BMW NA is owned by a company that is owned by BMW AG. Nothing about this relationship suggests that BMW NA has the power to order BMW AG to turn over documents to BMW NA.”). Were Plaintiffs correct, every foreign parent would be subject to full American discovery, potentially in contravention of foreign law, virtually any time a subsidiary faced litigation. No court has so “expand[ed] the definition of control.” *Blecker v. Standard Fire Ins. Co.*, 130 F. Supp.2d 726, 739 (E.D.N.C. 2000). This Court should not be the first.

## II. Plaintiffs Badly Misstate the Record.

Testimony and documents produced to date make clear that (a) the decision to implement the Corporate Restructuring was made by Mark Rayfield, President and CEO the former CertainTeed Corporation (“Old CT”), and not by CSG; and (b) the DBMP Board of Managers decided that DBMP should file for chapter 11.<sup>8</sup> To support the contrary and false assertion that “CSG was ... in ultimate control of” those transactions, Mot. 15-16, Plaintiffs rely on the

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<sup>8</sup> See, e.g., Oct. 7, 2020 Transcript of Deposition of Mark A. Rayfield (“Rayfield Dep.”) (Exhibit C) 103:13-104:4 (“Q: Do you know whether the European parent of Saint-Gobain Corporation had any involvement in formulating Project Horizon? A: No. It was a U.S. Saint-Gobain project. Q: So it was something that the European parent of Saint-Gobain was informed about by the U.S. Saint-Gobain Corp? A: Yes. By U.S., yes. Q: Would the U.S. corp. have needed permission from Saint-Gobain’s European parent to engage in this restructuring? A: No, they would not.”); 211:8-12 (“Q. Do you think that engaging in a corporate restructuring was rational? Did it make business sense? A: I made the decision to do it, so yes.”); 108:2-7 (discussing the decision to undergo the Corporate Restructuring: “Q. Was Mr. Bazin, [who was, at the time, Chief Operating Officer of CSG,] involved in making that decision? A: No. Q. Was anyone from the parent company consulted with regard to that decision? A: No.”); October 9, 2020 Transcript of Deposition of Joseph Bondi (“Bondi Dep.”) (Exhibit D) 238:23-239:2 (“Q: DBMP’s determination to file for Chapter 11 reorganization was made by whom? A: It was made by the board of members of DBMP.”); see also *id.* at 190:11-194:10.

deposition testimony of Amiel Gross, a discharged and disgruntled former employee of the legal department of domestic subsidiary Saint-Gobain Corporation (“SGC”). Mr. Gross gave this testimony after SGC discharged him for violation of company policy and after he had sued the company and several of its officers—a suit Mr. Gross has since unilaterally dismissed with no settlement or other consideration. *See Order Approving Withdrawal and Dismissing Case, Gross v. Saint-Gobain Corp.*, ALJ No.2021-SWD-00001 (Dec. 7, 2022); *see also* Feb. 9, 2023 Hr’g Tr. 11:16-14:14 (discussing same).

This is not the first time Plaintiffs have attempted to rely on Mr. Gross’s discredited testimony for this same argument. They have done so repeatedly in their ongoing, multi-year efforts to challenge the appropriateness of DBMP’s privilege assertions. As such, DBMP previously has supplied this Court with a detailed presentation of the facts showing that Mr. Gross’s testimony is nothing more than biased speculation. That testimony proves only one thing: how much suspicion and inuendo the dismissed lawyer was willing to speak while under oath. DBMP refers the Court to its prior submission,<sup>9</sup> but the upshot is this: SGC passed over Mr. Gross for a hoped-for promotion shortly before the restructuring in October 2019<sup>10</sup>; SGC discharged him for multiple violations of company policy about a year later<sup>11</sup>; and he was not involved in either the Corporate Restructuring or the bankruptcy filing, much less the decisions to pursue either.<sup>12</sup>

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<sup>9</sup> See 20-30080, Dkt. 1071 at 6-15, *Debtor’s Objection to The Official Committee of Asbestos Personal Injury Claimants’ and the Future Claimants’ Representative’s Motion to Compel Discovery Pursuant to the Crime-Fraud Exception and/or Waiver of the Attorney Client Privilege and Work Product Protection* (and supporting exhibits), Sept. 23, 2021.

<sup>10</sup> See June 2, 2021 Transcript of Deposition of Amiel Gross (“Gross Dep.”) (Exhibit E) 92:16-24.

<sup>11</sup> See June 16, 2021 *Declaration of Michael T. Starczewski* Ex. 1 ¶ 4 [Adv. Pro. No. 20-03004, Dkt. 332] (“Starczewski Decl.”).

<sup>12</sup> “Project Horizon” was the name given to the effort to evaluate undertaking (and then implementing) what became the Corporate Restructuring, and Project Horizon meetings occurred for nearly two years leading up to the Corporate Restructuring. But Mr. Gross testifies to attending a part of just one such meeting. And his role in that meeting was only to participate in a discussion of Old CT’s history of asbestos litigation. *See* Gross Dep. 66:19-67:6; 72:18-73:16; 74:22-75:8. Similarly, Mr. Gross attended *none* of the meetings of the Board of Managers of DBMP. *See Notice of Filing of Declarations in Support of the Debtor’s Preliminary Injunction Motion* [Adv. Pro. No. 20-03004, Dkt. 238] (attaching, among other declarations, *Declaration of*

His testimony concerning “approvals” for the Corporate Restructuring and bankruptcy filing lacks foundation of any kind, and is refuted by the sworn statements of officers and representatives of SGC, Old CT, and DBMP—those individuals who actually *were* involved in the restructuring and bankruptcy.<sup>13</sup>

Plaintiffs also point to documents produced during the Preliminary Injunction Proceeding for the proposition that “CSG’s top corporate leaders were members of the Project Horizon team”<sup>14</sup> and “that the CSG executive team participated in critical Project Horizon meetings and discussions concerning the Corporate Restructuring and ensuing bankruptcy.” Mot. 16. To be sure, certain individuals at CSG were updated regarding Project Horizon; it is only customary for a subsidiary to give periodic updates to its ultimate corporate parent about a potential corporate transaction.<sup>15</sup> These documents, as well as testimony from the Preliminary Injunction Proceeding, show only that.<sup>16</sup>

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*Michael T. Starczewski* (“*Starczewski PI Decl.*”) ¶ 26 (identifying meeting minutes, which, in turn, identify attendees); *Starczewski Decl.* ¶ 7 (“Mr. Gross never attended a single meeting of the DBMP Board of Managers and he was not involved in DBMP’s decision to file for bankruptcy.”). *See also* Gross Dep. 120:25-121:10.

<sup>13</sup> *Supra* nn. 8-12.

<sup>14</sup> It is unclear what Plaintiffs mean by the term “Project Horizon team.” Plaintiffs’ Motion cites to DBMP\_BR\_0150977 here, which is an email from SGC’s in-house counsel Craig Smith reminding a working group of individuals who may have communications regarding Project Horizon to maintain confidentiality.

<sup>15</sup> *See* Rayfield Dep. 100:19-101:9; 103:13-104:3 (“Q: Do you know whether the European parent of Saint-Gobain Corporation had any involvement in formulating Project Horizon? A: No. It was a U.S. Saint-Gobain project. Q: So it was something that the European parent of Saint-Gobain was informed about by the U.S. Saint-Gobain Corp? A: Yes. By U.S., yes.”); Bondi Dep. 114:6-116:6; October 1, 2020 Transcript of Deposition of Michael Starczewski (“*Starczewski Dep.*”) (Exhibit F) 197:24-199:23 (“Q: What was [Pierre-Andre de Chalendar, CSG Chairman and CEO]’s role in Project Horizon? A: Similarly, it was to advise him of what the subsidiary in the U.S. was doing.”).

<sup>16</sup> *See* Rayfield Dep. 103:19-22 (Quoted in n. 15); 104:24-105:6 (“Q: How frequently do you provide updates to Mr. Bazin? MR. JONES: About Project Horizon or something else? I’m sorry to interrupt. Q: Generally speaking. A: About once a month.”); 104:5-12 (Q: Would you have thought it was a good idea to let them know it was happening? A: I think in general, I try to be pretty transparent with my bosses. Q: Did you in fact tell your bosses about Project Horizon? A: It would have been part of my normal updates, yes.”); *Starczewski Dep.* 197:24-199:23 (explaining roles of various CSG employees with regard to Project Horizon to “simply keeping the parent company advised as to what was being investigated”).

None of these updates indicates that the U.S. Defendants can somehow “control” CSG’s documents. What’s more, the documents from CSG to which Plaintiffs refer (at Mot. 16 nn. 30-31) show that DBMP already produced in the Preliminary Injunction Proceeding communications among CSG and the U.S. Defendants responsive to Plaintiffs’ discovery requests regarding the Corporate Restructuring and/or DBMP’s chapter 11 filing. Where not produced previously, such communications between CSG and the U.S. Defendants will be produced in these Adversary Proceedings from the ESI of the 26 agreed-upon U.S.-based custodians.<sup>17</sup> In addition to the testimony already provided, communications among CSG and the U.S. Defendants would be the most relevant materials to show the level of CSG’s involvement in Project Horizon and DBMP’s chapter 11 filing.

**III. Plaintiffs’ Remaining Assertions Do Not Remotely Indicate that the U.S. Defendants Can “Control” CSG’s Documents.**

The so-called “*DuPont* factors” are relevant only insofar as they demonstrate a party’s “practical ability to obtain the materials sought on demand.” *Suh*, 2010 WL 11622621, at \*2 (citation omitted). But Plaintiffs’ remaining assertions shed no light on that inquiry and cannot rebut the undisputed fact that the U.S. Defendants are, at most, only able “to request” documents from CSG. Mot. 24.

Start with Plaintiffs’ insistence that “[t]he degree of common personnel and financial relationships among the wholly-owned subsidiaries, the U.S. Defendants, and their parent, CSG ... shows control” over CSG’s employees’ emails. Mot. 15. That “U.S. Defendants have significant common relationships with CSG” (*id.* at 13) would only matter if Plaintiffs could demonstrate those “common relationships” afforded the U.S. Defendants the ability to obtain CSG’s documents “on demand.” But Plaintiffs never even try to make that showing, and instead

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<sup>17</sup> Responsive, privileged communications regarding the Corporate Restructuring and/or DBMP’s chapter 11 filing have been logged in prior discovery and will be logged in these Adversary Proceedings.

treat personnel overlap as a stand-alone inquiry unmoored from Rule 34's text, concluding without more that "courts have found that a subsidiary can control documents in the possession of its parent." *Id.* at 12.

The facts of the cases on which Plaintiffs rely for this proposition are materially distinct. In *Ultra-Mek, Inc. v. Man Wah (USA), Inc.*, for example, the court found the party-defendant was "inextricably intertwined" with non-party "related entities" (e.g., "[b]oth [the president of the defendant corporation's] wife and daughter serve[ed] as executive directors of [the parent corporation], as well as directors of its subsidiaries") such that there was substantial "overlap in decision-making" between the entities, "particularly with respect to th[e] underlying litigation." 318 F.R.D. 309, 314-15 (M.D.N.C. 2016).

Here, however, the record confirms that CSG was not the "decision-making" entity in the Corporate Restructuring or DBMP's subsequent bankruptcy filing, *supra* Part II, and that the ultimate decision whether to turn over CSG documents rests solely with CSG, *see, e.g.*, Pier Dep. 154:15-155:8, 178:5-18; Brutsch Dep. 123:15-17 ("I'm not aware of any documents from [CSG] produced in U.S. litigation."); *supra* Part II.

And the assertion that "[CSG] will benefit from the outcome of th[is] case" (Mot. 17) only highlights the boundlessness of Plaintiffs' theory. It cannot overcome the evidence that the U.S. Defendants may at most *request*—not *demand*—CSG's documents. Even assuming "CSG will benefit if its affiliates prevail in these non-stayed Adversary Proceedings," Mot. 18, the same could be said of virtually *any* corporate parent regarding its subsidiaries' litigation. How an assumed litigation "benefit" to a non-party-parent could show that the litigant-subsidary somehow "controls" the parent's documents is anything but clear. But Plaintiffs never even try to connect

“benefit” to Rule 34’s text.<sup>18</sup> Further, Plaintiffs’ attempt to bolster the argument by claiming CSG was “significant[ly] involve[d] ... in the Corporate restructuring and ensuing bankruptcy” (Mot. 18) fails because it is utterly untrue. *See supra* Part II.

That “CSG is a party to the fiduciary duty proceeding” in no way “favors a finding [that] the U.S. Defendants control” CSG’s emails and other documents, either. Mot. 22. Plaintiffs offer no rationale for why a non-party’s participation in one litigation shows that a party to separate (albeit related) litigation can “control” the non-party’s documents. Although the *DuPont* court included “whether the nonparty has participated in the litigation”—presumably the same litigation—among a grab bag of “[o]ther relevant factors,” *E.I. DuPont de Nemours & Co. v. Kolon Indus., Inc.*, 286 F.R.D. 288, 292 (E.D. Va. 2012), the court neither engaged the inquiry nor explained its significance.

Plaintiffs’ departure from the plain meaning of “control” perhaps reaches its zenith with the claim that the U.S. Defendants can “control” CSG’s emails and other documents because the entities have asserted “a common legal interest ... in resolving the Debtor’s asbestos liability.” Mot. 22; *see also id.* at 18. By Plaintiffs’ reasoning, one entity suddenly gains “control” over the other’s documents merely by virtue of sharing legal objectives or being co-defendants in a case. This would surely come as a surprise to the countless litigants who share no common ownership and are represented by separate counsel, but assert common legal interests in specific litigation. Fortunately, that is not the law.

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<sup>18</sup> *Afros S.P.A. v. Krauss-Maffei Corp.*, 113 F.R.D. 127 (D. Del. 1986), on which Plaintiffs rely (at 18), is not to the contrary. There, the court’s analysis of the potential benefit to the defendant’s non-party affiliate turned, in part, on the fact that adjudication of the underlying litigation “w[ould] necessarily reference acts [the non-party affiliate] performed.” *Id.* at 132. But CSG was hardly involved in the underlying transactions at issue here, *supra* Part II, distinguishing the *Afros* court’s claim of potential “unjust[ness]” in denying access to the affiliate’s documents, 113 F.R.D. at 131.

Plaintiffs’ repeated insinuations that the U.S. Defendants should have requested CSG’s documents fall flat for the reasons described above: Such a request would pose the prospect of violating foreign law. The documents the U.S. Defendants already have produced (and will produce) from U.S.-based custodians—where they do have possession, custody, or control—cover the information Plaintiffs seek. Plaintiffs’ quest for documents held by CSG requires compliance with French and E.U. law and should be pursued by a separate subpoena to the party that has the documents—CSG. Plaintiffs surely recognize this. They served just such a subpoena hours before filing their Motion.<sup>19</sup> And Committee counsel has “an office in Paris” and describes itself as “well positioned to serve as international counsel ... in matters involving extraterritorial discovery [and] French law.” *Application to Employ Winston & Strawn, LLP as Special Litigation and International Counsel, Effective as of March 5, 2020* [20-30080, Dkt. 199].

CSG expressly agreed to “accept service of discovery requests and subpoenas with respect to the Adversary Proceedings” nearly two years ago in June 2022. This only highlights the wastefulness of Plaintiffs’ decision to spend countless hours in meet-and-confers, depositions, and briefing before even attempting to obtain the documents through that proper process.<sup>20</sup> Now that CSG has a subpoena, they are addressing it by taking the steps required by governing law, such as preparing required correspondence to the Strategic Information and Economic Security Service in France.

As with the rest of their theory, Plaintiffs’ remaining assertions lack any limiting principle and do violence to the plain meaning of “control.” Equally detrimental, Plaintiffs’ arguments

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<sup>19</sup> By contrast, Defendants requesting the contents of their own U.S.-based custodians’ Microsoft Exchange data (including active email inboxes) over which they do have “possession, custody, or control” from CSG IT is appropriate and Defendants made such a request to satisfy their discovery obligations in these Adversary Proceedings.

<sup>20</sup> See June 2022 Stipulation ¶ 8.

appear little more than an attempt to circumvent foreign laws by cutting out a straightforward process they could have, and should have, undertaken long ago. This Court should reject that effort.

### CONCLUSION

For all these reasons and those set forth in the Non-Debtor Defendants' Brief, the Court should deny the Motion.

Dated: May 17, 2024  
Charlotte, North Carolina

Respectfully submitted,

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ATTORNEYS FOR DBMP LLC

# **EXHIBIT A**

1 S. Brutsch - Confidential

2 UNITED STATES BANKRUPTCY COURT  
3 WESTERN DISTRICT OF NORTH CAROLINA  
4 CHARLOTTE DIVISION

-----x  
4 In Re: Chapter 11  
5 DBMP LLC, Case No.  
6 Debtor. No. 20-30080(JCW)

-----x  
7 OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS,  
8 and SANDER L. ESSERMAN, In His Capacity as Legal  
9 Representative for Future Asbestos Claimants,

10 Plaintiffs, Adv. Pro. No.  
11 vs. 21-03023(JCW)

12 DBMP LLC and CERTAINTEED LLC,  
13 Defendants.

-----x  
14 OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS,  
15 and SANDER L. ESSERMAN, In His Capacity as Legal  
16 Representative for Future Asbestos Claimants, Each on  
17 Behalf of the Estate of DBMP LLC,

18 Plaintiffs, Adv. Pro. No.  
19 vs. 22-03000(JCW)

20 CERTAINTEED LLC, CERTAINTEED HOLDING CORPORATION, and  
21 SAINT-GOBAIN CORPORATION,

22 Defendants.

-----x  
23 (Caption Continued on the Next Page.)

24 CONFIDENTIAL VIDEOTAPED DEPOSITION OF SHERI BRUTSCH

25 New York, New York

April 25, 2024

Reported by: THOMAS A. FERNICOLA, RPR

JOB NO. 28690

1 S. Brutsch - Confidential

2 -----x  
3 OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS,  
4 on Behalf of the Estate of DBMP LLC,

5 Plaintiff, Adv. Pro. No.  
6 22-03001(JCW)

7 vs.

8 COMPAGNIE DE SAINT-GOBAIN S.A., SAINT-GOBAIN CORPORATION,  
9 SAINT-GOBAIN DELAWARE CORPORATION, CERTAINTEED LLC,  
10 CERTAINTEED HOLDING CORPORATION, JOSEPH BONDI, SEAN KNAPP,  
11 LAWRENCE RAYBURN, MICHAEL STARCZEWSKI, VINCENT DINENNA,  
12 ROBERT PANARO, DONALD MELROY, PIERRE-ANDRÉ DE CHALENDAR,  
13 BENOIT BAZIN, ANTOINE VIGNIAL, HUBERT REICHARDT, DANIEL  
14 BIARNEIX, SREEDHAR NATARAJAN, GUILLAUME TEXIER, THOMAS  
15 KINISKY, CAROL GRAY, JOHN SWEENEY, ERIC PLACIDET, MARK  
16 RAYFIELD, and KEITH CAMPBELL,

17 Defendants.

18 -----x

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April 25, 2024

3:50 p.m.

CONFIDENTIAL VIDEOTAPED DEPOSITION of SHERI  
BRUTSCH, held before Thomas A. Fernicola, a Registered  
Professional Reporter and Notary Public of the State of  
New York.

1 S. Brutsch - Confidential

2 go through a request process and get  
3 authorization.

4 And I'm not aware of that ever  
5 happening.

6 Q Can you describe that request?

7 Is it a form document that  
8 you're referring to?

9 A It is a form.

10 Q What happens with the form once  
11 it is filled out?

12 MS. BLAKE: Objection.

13 A The form is sent to -- my  
14 understanding, it is sent to IT in Paris.

15 In order for that transaction  
16 to be completed, it has to go through an  
17 authorization process of the VP of  
18 compliance and general counsel.

19 Q And the VP of compliance and  
20 general counsel at CSG?

21 A Well, the information that's  
22 being requested is Saint-Gobain  
23 Corporation employee emails.

24 So, yes, the VP of Saint-Gobain  
25 Corp. and the general counsel of

1 S. Brutsch - Confidential

2 Saint-Gobain Corp. would have to  
3 authorize IT in Paris to release those  
4 emails per the request.

5 Q In the scenario -- that, I  
6 follow.

7 In the scenario where we're  
8 talking about making a similar request  
9 for a CSG employee's emails and that form  
10 is submitted, is it CSG who would have to  
11 participate in that authorization  
12 process, as you understand it?

13 MS. GOULD: Objection.

14 Contrary to prior testimony, outside  
15 the scope.

16 If you can answer it, go ahead.

17 A I have never been involved in a  
18 request for Compagnie de Saint-Gobain  
19 emails or documents.

20 There are authorizations in  
21 place, is my understanding as a matter of  
22 process.

23 Individuals who have to  
24 authorize that, I'm sure it's the general  
25 counsel, Antoine Vignial.

1 S. Brutsch - Confidential

2 But that would be my  
3 understanding at this time.

4 Q Is that form that you  
5 referenced to obtain Saint-Gobain  
6 employee emails, does that form have a  
7 name or a number to it?

8 A I don't know the name of the  
9 form.

10 Q But it has a name.  
11 You just may not know it right  
12 now?

13 A I don't know the name of the  
14 form.

15 Q You mentioned that there are  
16 rules concerning this.

17 Are the rules you're talking  
18 about, this procedure that we're  
19 mentioning here?

20 MS. BLAKE: Objection.

21 MS. GOULD: Objection. It's  
22 far outside the scope.

23 A There are rules, EU rules, that  
24 need to be complied with, with respect to  
25 getting Compagnie de Saint-Gobain emails

1 S. Brutsch - Confidential

2 and documents.

3 Q So you're referring to EU rules  
4 or EU guidelines?

5 A EU rules, yes.

6 Q We discussed Topic 4 for a  
7 moment there.

8 What did you do to prepare for  
9 Topic 4 today?

10 A I spoke with Jean-Francois  
11 Phelizon. I spoke with Elodie Davignon.  
12 I spoke with Kyle Kerstner. And Tom  
13 LaBonte in the context of Topic No. 4.

14 Q And, how long did you speak  
15 with Mr. Phelizon about Topic 4?

16 A 25 minutes, half an hour, same  
17 as the others.

18 Q When we talked about  
19 preparation for this deposition  
20 generally, just for clarification, did  
21 you speak with each of the individuals on  
22 your list that is Exhibit 2 for about a  
23 half hour each; is that correct?

24 A Yes, that's correct.

25 Q I, for some reason, was under

1 S. Brutsch - Confidential

2 Go ahead.

3 A Well, in preparation for the  
4 deposition, I had calls with counsel. We  
5 talked about the topics. We talked about  
6 the process.

7 And then calls were scheduled  
8 with 18 individuals.

9 Counsel was on the call and  
10 conducted the call.

11 I asked some questions here and  
12 there, but Gabby or Stacy or Rebekah  
13 conducted the interview of each of the  
14 individuals for half an hour.

15 Q Thank you.

16 I know the question that I  
17 meant to ask you. You were discussing  
18 the protocol for making the request to  
19 Compagnie de Saint-Gobain for access to  
20 emails.

21 To make sure that I understand  
22 that, to the extent that there is a  
23 litigation in the United States where one  
24 of the Saint-Gobain U.S. entities is a  
25 party, in order to respond to a potential

1 S. Brutsch - Confidential  
2 request for production of emails, would  
3 the process be for somebody in the  
4 Saint-Gobain U.S. group to initiate that  
5 request to Compagnie de Saint-Gobain?

6 A Yes.

7 MS. GOULD: I want to object on  
8 two grounds.

9 It misstates the prior  
10 testimony she already gave about the  
11 process.

12 And it's also beyond the scope  
13 of the topics, and she is answering  
14 solely in her personal capacity.

15 A Can you repeat the question,  
16 please?

17 Q I can try.

18 To the extent there's a  
19 litigation in the United States where one  
20 of the Saint-Gobain U.S. entities is a  
21 party, in order to respond to any request  
22 for production of emails, would the  
23 process be for an individual in the  
24 Saint-Gobain U.S. group to initiate the  
25 request for access to those emails from

1 S. Brutsch - Confidential

2 user support.

3 Q What zone is  
4 Compagnie de Saint-Gobain?

5 A ZA as in Apple.

6 Q And the U.S. is ZH?

7 A Correct.

8 Q Ms. Brutsch, are you aware of  
9 any instance where documents of  
10 Compagnie de Saint-Gobain have been  
11 produced in any U.S. regulatory or  
12 litigation proceeding since August of  
13 2021?

14 MS. HARDMAN: No.

15 A No, I'm not aware of any  
16 documents from Compagnie de Saint-Gobain  
17 produced in U.S. litigation.

18 MS. GOULD: Thank you.

19 BY MS. HARDMAN:

20 Q Hi, Ms. Brutsch, I have a few  
21 questions based on some of the questions  
22 you were just asked.

23 And we had just taken a break  
24 partway through your deposition. Did you  
25 speak with your counsel during that

# **EXHIBIT B**

1 T. Pier - Confidential

2 UNITED STATES BANKRUPTCY COURT  
3 WESTERN DISTRICT OF NORTH CAROLINA  
4 CHARLOTTE DIVISION

-----x  
4 In Re: Chapter 11  
5 DBMP LLC, Case No.  
Debtor. No. 20-30080(JCW)

-----x  
6 OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS,  
7 and SANDER L. ESSERMAN, In His Capacity as Legal  
8 Representative for Future Asbestos Claimants,

9 Plaintiffs, Adv. Pro. No.  
21-03023(JCW)

10 vs.

11 DBMP LLC and CERTAINTEED LLC,

12 Defendants.

-----x  
13 OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS,  
14 and SANDER L. ESSERMAN, In His Capacity as Legal  
15 Representative for Future Asbestos Claimants, Each on  
16 Behalf of the Estate of DBMP LLC,

17 Plaintiffs, Adv. Pro. No.  
22-03000(JCW)

18 vs.

19 CERTAINTEED LLC, CERTAINTEED HOLDING CORPORATION, and  
20 SAINT-GOBAIN CORPORATION,

21 Defendants.

-----x  
22 (Caption Continued on the Next Page.)

23 CONFIDENTIAL VIDEOTAPED DEPOSITION OF THOMAS PIER

24 New York, New York

25 April 25, 2024

Reported by: THOMAS A. FERNICOLA, RPR

JOB NO. 28690

1 T. Pier - Confidential

2 -----x  
3 OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS,  
4 on Behalf of the Estate of DBMP LLC,

5 Plaintiff, Adv. Pro. No.  
6 22-03001(JCW)

7 vs.

8 COMPAGNIE DE SAINT-GOBAIN S.A., SAINT-GOBAIN CORPORATION,  
9 SAINT-GOBAIN DELAWARE CORPORATION, CERTAINTEED LLC,  
10 CERTAINTEED HOLDING CORPORATION, JOSEPH BONDI, SEAN KNAPP,  
11 LAWRENCE RAYBURN, MICHAEL STARCZEWSKI, VINCENT DINENNA,  
12 ROBERT PANARO, DONALD MELROY, PIERRE-ANDRÉ DE CHALENDAR,  
13 BENOIT BAZIN, ANTOINE VIGNIAL, HUBERT REICHARDT, DANIEL  
14 BIARNEIX, SREEDHAR NATARAJAN, GUILLAUME TEXIER, THOMAS  
15 KINISKY, CAROL GRAY, JOHN SWEENEY, ERIC PLACIDET, MARK  
16 RAYFIELD, and KEITH CAMPBELL,

17 Defendants.  
18 -----x

19 April 25, 2024

20 10:00 a.m.

21 CONFIDENTIAL VIDEOTAPED DEPOSITION of THOMAS  
22 PIER, held before Thomas A. Fernicola, a Registered  
23 Professional Reporter and Notary Public of the State of  
24 New York.  
25

1 T. Pier - Confidential

2 A As far as I'm aware, it does  
3 not include hard copy documents.

4 Q Are you aware of who might be  
5 in charge of the maintenance of hard copy  
6 documents?

7 MS. GOULD: Objection.

8 A I'm not.

9 Q Does Saint-Gobain North America  
10 have the ability to obtain emails from  
11 Compagnie de Saint-Gobain?

12 MS. BLAKE: Objection to form.

13 A Could you elaborate on what you  
14 mean by "ability"?

15 Q Can they obtain emails -- can  
16 Saint-Gobain North America obtain emails  
17 of an employee of  
18 Compagnie de Saint-Gobain?

19 A No, they cannot, but they can  
20 request it via the process I had  
21 communicated earlier.

22 Q Why can they not obtain it?

23 MS. BLAKE: Objection.

24 A The members of IT Services  
25 North America do not have the rights to

1 T. Pier - Confidential

2 access the email infrastructure or the  
3 emails of individual employees.

4 Q At Compagnie de Saint-Gobain?

5 A Of any Saint-Gobain employee.

6 Q Including employees of

7 Saint-Gobain North America?

8 A Yes.

9 Q So if you needed to make a  
10 request for emails of your own, you would  
11 need to make a request to obtain them, is  
12 that correct, if you did not currently  
13 have access?

14 A Me asking for access to my own  
15 inbox is a little bit of a --

16 Q It's a poor example.

17 A -- an example not appropriate  
18 to the comment.

19 And it's also important to keep  
20 in mind the distinction between the  
21 active inbox and the archive or PST  
22 folder inbox that we talked about  
23 earlier.

24 Q Right.

25 A So I may not have directly

1 T. Pier - Confidential

2 We're back on the record.

3 BY MS. GOULD:

4 Q Good afternoon, Mr. Pier.

5 A Hello.

6 Q I have a few questions for you  
7 just to follow up on some of the  
8 questioning by counsel for plaintiffs.

9 You talked a little bit about  
10 the wide area network.

11 Do you recall that?

12 A Yes.

13 Q Does the wide area network  
14 change the ability of Saint-Gobain North  
15 America employees to access data or  
16 documents of Compagnie de Saint-Gobain?

17 A The rules within the wide area  
18 network firewalls restrict access among  
19 Saint-Gobain sites.

20 Q You testified that  
21 Compagnie de Saint-Gobain IT has the  
22 contractual relationship with Microsoft  
23 with respect to the Microsoft Exchange,  
24 right?

25 A Yes.

1 T. Pier - Confidential

2 Q Who pays for the North America  
3 portion of the contract?

4 A One of the roles of IT Services  
5 North America is to identify the number  
6 of different types of licenses that are  
7 needed, including the license that  
8 provides email.

9 We pay for those and then bill  
10 those costs directly back to the  
11 Saint-Gobain businesses in the U.S. and  
12 Canada.

13 Q So does Paris advance any money  
14 for Saint-Gobain North America's access  
15 to the Microsoft Exchange environment?

16 A No.

17 Q And you understand who the  
18 defendants are in these cases, right?  
19 Ms. Hardman went through that with you  
20 earlier today.

21 There's four entities. There's  
22 Saint-Gobain Corporation, CT LLC, CT  
23 Holding, and DBMP, correct?

24 A That's my understanding, yes.

25 Q Do defendants or IT Services

1 T. Pier - Confidential

2 North America have access, either  
3 physical or logical, to email accounts of  
4 employees of Compagnie de Saint-Gobain?

5 A No.

6 Q Do defendants or IT Services  
7 North America have access, physical or  
8 logical, to archived emails of employees  
9 of Compagnie de Saint-Gobain?

10 MS. HARDMAN: Objection.

11 A Yes, but only if captured as  
12 part of an archived PST file.

13 Q Is that in the instance where  
14 somebody from Compagnie de Saint-Gobain  
15 has sent an email to somebody in  
16 Saint-Gobain North America?

17 Is that what you're referring  
18 to?

19 MS. HARDMAN: Objection.

20 A Referring to the situation  
21 where a Saint-Gobain North America  
22 employee can move or copy an email from  
23 their active inbox to a PST folder.

24 Q Right.

25 I'm asking whether emails of

1 T. Pier - Confidential

2 defendants' backups of hard drives?

3 A In the normal course of  
4 business, no.

5 Q Can Compagnie de Saint-Gobain  
6 access, physically or logically,  
7 defendants' employee mobile phones or  
8 tablets?

9 A No.

10 Q Do you agree that defendants  
11 and the entities within Saint-Gobain  
12 North America, including IT Services  
13 North America, cannot access documents or  
14 ESI of Compagnie de Saint-Gobain unless  
15 specifically granted access, for example,  
16 uploading a document to Teams or  
17 attaching it to an email?

18 A I agree with that statement.

19 Q Sitting here today, Mr. Pier,  
20 are you aware of any instance where U.S.  
21 IT of Saint-Gobain North America has  
22 requested access to email of employees of  
23 Compagnie de Saint-Gobain?

24 A I'm not aware of any.

25 Q So then I'm going to assume you

# EXHIBIT C

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UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

-----)  
)  
In re ) Chapter 11  
)  
DBMP LLC, ) Case No. 20-30080 (JCW)  
)  
Debtor. )  
)  
-----)  
DBMP LLC, )  
)  
Plaintiff, )  
)  
vs. ) Adv. Pro. No. 20-03004 (JCW)  
)  
THOSE PARTIES LISTED )  
ON APPENDIX A TO COMPLAINT )  
and JOHN AND JANE DOES )  
1-1000, et al. )  
)  
Defendants. )  
-----)

\*\*\* C O N F I D E N T I A L \*\*\*

REMOTE VIDEOTAPED DEPOSITION  
OF MARK A. RAYFIELD

Stowe, Vermont

October 7, 2020

Reported by: BONNIE PRUSZYNSKI, RMR, RPR, CLR

JOB NO.184545

1 Confidential - M. Rayfield

2 confidentiality agreement being circulated?

3 A. I would suspect -- no, I don't  
4 recall.

5 Q. You were going to say you suspect  
6 what? Yes, you would have learned about the  
7 project before the NDA was actually  
8 circulated?

9 A. No. I suspect --

10 MR. WYNER: Objection.

11 THE WITNESS: I'm sorry.

12 MR. WYNER: Go ahead.

13 A. I suspect this would be when I  
14 would have learned about it.

15 Q. So, you were the CEO of  
16 Saint-Gobain Corporation and CertainTeed  
17 Corporation at this time; correct?

18 A. I was.

19 Q. The first line of this says, "As  
20 you have been advised, Saint-Gobain  
21 Corporation and CertainTeed Corporation,  
22 collectively the company, are considering a  
23 potential restructuring transaction. Code  
24 name is Project Horizon."

25 Do you see that?

1 Confidential - M. Rayfield

2 A. I do see that.

3 Q. That implies, of course, that  
4 Saint-Gobain Corporation and CertainTeed  
5 Corporation had begun considering that  
6 potential restructuring transaction prior to  
7 this day, March 8, 2019; correct?

8 MR. WYNER: Objection.

9 A. It does.

10 Q. And is it your testimony that as  
11 the CEO, you were kept in the dark about that  
12 potential restructuring transaction until you  
13 got the confi agreement?

14 MR. WYNER: Objection.

15 A. My testimony is I took over the  
16 role in January of 2019.

17 Q. When you took over the role --

18 MR. WYNER: Was your answer done,  
19 Mr. Rayfield?

20 Q. Go ahead. Sorry, Mr. Rayfield. I  
21 didn't realize you were not done.

22 A. There was a chairman of North  
23 America at the time, Tom Kinisky, and there  
24 was a period of transition between his  
25 leadership and my leadership in the region.

1 Confidential - M. Rayfield

2 Horizon?

3 MR. JONES: Object to foundation  
4 and form.

5 MR. WYNER: What's the pending  
6 question?

7 Q. What's the genesis -- what was the  
8 genesis of Project Horizon? I'm assuming it  
9 had a genesis, since it existed.

10 A. Yes. So, the genesis in my  
11 understanding was through Tim Feagans, our  
12 general counsel for CertainTeed Corporation.

13 Q. Do you know whether the European  
14 parent of Saint-Gobain Corporation had any  
15 involvement in formulating Project Horizon?

16 MR. WYNER: Objection.

17 A. No. It was a U.S. Saint-Gobain  
18 project.

19 Q. So, it was something that the  
20 European parent of Saint-Gobain was informed  
21 about by the U.S. Saint-Gobain Corp.?

22 A. Yes. By U.S., yes.

23 Q. Would the U.S. corp. have needed  
24 permission from Saint-Gobain's European  
25 parent to engage in this restructuring

1 Confidential - M. Rayfield

2 transaction?

3 MR. WYNER: Objection.

4 A. No, they would not.

5 Q. Would you have thought it was a  
6 good idea to let them know it was happening?

7 A. I think in general, I try to be  
8 pretty transparent with my bosses.

9 Q. Did you in fact tell your bosses  
10 about Project Horizon?

11 A. It would have been part of my  
12 normal updates, yes.

13 Q. Do you recall when you first told  
14 them about Project Horizon?

15 A. I do not.

16 Q. When you say your bosses, to whom  
17 are you referring?

18 A. At this time I would have been  
19 working for Benoit Bazin.

20 Q. Do you recall how far along Project  
21 Horizon was when you provided Mr. Bazin with  
22 the first update?

23 A. I do not.

24 Q. How frequently do you provide  
25 updates to Mr. Bazin?

1 Confidential - M. Rayfield

2 MR. JONES: About Project Horizon  
3 or something else? I'm sorry to  
4 interrupt.

5 Q. Generally speaking.

6 A. About once a month.

7 Q. So, is it fair to say that by April  
8 of 2019, Saint-Gobain's European parent would  
9 have been apprised of the existence of  
10 Project Horizon, if not earlier?

11 MR. WYNER: Objection.

12 A. I don't recall. It could be fair  
13 to say.

14 Q. You became the CEO in January of  
15 2019, you say.

16 A. I did.

17 Q. And you signed this confidentiality  
18 agreement in March, and you are telling me  
19 that you typically provided updates to  
20 Saint-Gobain once a month in Europe. So, is  
21 it fair to say within a month of signing this  
22 confidentiality agreement, the European  
23 Saint-Gobain Corporation would have been  
24 aware of Project Horizon?

25 MR. WYNER: Objection.

1 Confidential - M. Rayfield

2 Q. Was Mr. Bazin involved in making  
3 that decision?

4 A. No.

5 Q. Was anyone from the parent company  
6 consulted with regard to that decision?

7 A. No.

8 Q. What was Mr. Bazin's reaction to  
9 the decision that ultimately was reached to  
10 engage in the corporate restructuring?

11 A. I don't recall a specific reaction,  
12 but I think he was supportive.

13 Q. Did you explain to Mr. Bazin the  
14 rationale behind the corporate restructuring?

15 A. Any explanation would have been  
16 probably based on attorney feedback, frankly.

17 Q. I'm asking the question, did you  
18 explain to Mr. Bazin the rationale behind the  
19 corporate restructure?

20 A. I explained to Mr. Bazin the broad  
21 project of Horizon, which would have included  
22 the rationale.

23 Q. As well as the rationale behind the  
24 option which was ultimately adopted to  
25 restructure Old CT; correct?

1 Confidential - M. Rayfield

2 I don't know.

3 Q. How about other outside advisors  
4 who were retained in connection with Project  
5 Horizon? Any idea how much Old CT or  
6 Saint-Gobain Corporation paid those folks?

7 A. No.

8 Q. Do you think that engaging in a  
9 corporate restructuring was rational? Did it  
10 make business sense?

11 A. I made the decision to do it, so  
12 yes.

13 Q. How much did it cost Old CT and  
14 Saint-Gobain Corp. to engage in the corporate  
15 restructuring?

16 MR. WYNER: Objection.

17 A. I do not know.

18 Q. So, there were attorneys' fees  
19 involved; right?

20 A. Yes.

21 Q. There were outside advisors' fees;  
22 correct?

23 A. I suspect so.

24 Q. There was the contribution of the  
25 plants in North Carolina and Georgia to DBMP;

# **EXHIBIT D**

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

----- )  
 )  
 6 In re ) Chapter 11  
 )  
 7 DBMP LLC, ) Case No. 20-30080 (JCW)  
 )  
 8 Debtor. )  
 )  
 9 ----- )  
 10 DBMP LLC, )  
 )  
 11 Plaintiff, )  
 )  
 12 vs. ) Adv. Pro. No. 20-03004  
 ) 20-03004 (JCW)  
 13 THOSE PARTIES LISTED )  
 14 ON APPENDIX A TO COMPLAINT )  
 and JOHN AND JANE DOES )  
 1-1000, )  
 )  
 15 Defendants. )  
 ----- )

\* \* \* C O N F I D E N T I A L \* \* \*

REMOTE VIDEOTAPED DEPOSITION OF  
JOSEPH BONDI  
Wayne, Pennsylvania  
October 9, 2020

Reported by: BONNIE PRUSZYNSKI, RMR, RPR, CLR  
JOB NO.184547

1 Confidential - J. Bondi  
2 ability to make contributions, based on that  
3 expertise to the issues that needed to be  
4 considered or the actions that needed to be  
5 identified or taken.

6 Q. From April of 2019, which is around  
7 the time of this letter, through  
8 October 23rd, 2019, how often would you have  
9 meetings or telephone calls regarding Project  
10 Horizon?

11 A. My recollection was initially, you  
12 know, my -- my involvement or engagement was  
13 that -- on that front was more in the order  
14 of maybe every three to four weeks, and then  
15 as we got deeper into the -- my involvement  
16 got deeper and we got deeper into the  
17 project, we were meeting weekly, in, you  
18 know, the August or September time frame.

19 Q. So, what you are saying is your  
20 involvement got deeper around August or  
21 September of 2019?

22 A. My -- that's correct. And the  
23 meeting frequency, which was your question,  
24 increased.

25 Q. For the meetings and calls that you

1 Confidential - J. Bondi  
2 know about, how many people usually attended  
3 those meetings and calls?

4 A. Are you asking me to -- to specify  
5 a number?

6 Q. Yes, approximately.

7 A. Perhaps ten, from an Old CT and at  
8 times Compagnie de Saint-Gobain perspective,  
9 and frequently there was outside counsel  
10 there at the invitation of the project  
11 leadership.

12 Q. Can you tell me at a high level  
13 what the topics were at these meetings or  
14 calls?

15 MR. JONES: At any time?

16 MR. LIESEMER: Yes.

17 A. So, I would generally characterize  
18 them in three buckets or three areas. So,  
19 one would be connected to --

20 MR. JONES: Mr. Bondi, before you  
21 give the categorization, I just don't  
22 want you to share communications that you  
23 had or that committee members had with  
24 counsel, but if you can give general  
25 topics without doing that, that is fine.

1 Confidential - J. Bondi

2 THE WITNESS: Understood.

3 A. So, the three areas would have been  
4 related to the discussion around the options  
5 being considered with Project Horizon, which  
6 I have detailed previously.

7 The second topic would have been  
8 related to -- to updates and issues with  
9 respect to tort litigation associated with  
10 the asbestos liability.

11 And the third, as things  
12 progressed, would have been connected to  
13 updates and other activities associated with  
14 the projects that we previously discussed,  
15 you know, that would have been tied to the  
16 restructuring specifically and the  
17 operational stand up of DBMP and Millwork &  
18 Panel.

19 Q. I believe you told me already that  
20 as far as you know, there was a lawyer in  
21 attendance at all the meetings and calls that  
22 you were involved in. Is that correct?

23 A. That's correct.

24 Q. Do you know the reason why there  
25 was at least one lawyer attending?

1 Confidential - J. Bondi

2 A. Could you repeat the question,  
3 please?

4 Q. Sure.

5 While you were working on Project  
6 Horizon in 2019, did you always understand  
7 that a bankruptcy filing for DBMP would be  
8 the next step after completion of the  
9 corporate restructuring?

10 A. No, I did not.

11 Q. You mentioned options and  
12 optionality. Was a bankruptcy filing always  
13 one of the options?

14 MR. JONES: Object to form, and  
15 foundation.

16 A. As the -- as the board was  
17 established and we proceeded with board  
18 meetings, to really understand both the  
19 historical and current and future context  
20 with respect to the asbestos liability, in my  
21 role as president, I asked our chief legal  
22 officer Mike Starczewski to prepare for  
23 review by the board a list of what our  
24 options were with respect to that legacy  
25 asbestos liability, and as a result of that

1 Confidential - J. Bondi  
2 request, there were reviews conducted and  
3 information prepared to help the board  
4 understand what our options were. I have  
5 named those options as status quo, proceeding  
6 with the bankruptcy, or transfer of  
7 liability.

8 I also asked for information and  
9 discussion around the pros and cons of those  
10 options, the timing related to those options,  
11 so that we would understand, you know, what  
12 our full option set was and what was within  
13 the purview of us as a board in terms of  
14 actions that we could take to -- with respect  
15 to that liability.

16 Q. These review and discussions that  
17 you just mentioned, over what time frame are  
18 you talking about?

19 A. The discussions would have likely  
20 have been taking place in -- in maybe  
21 December, the December time frame. I'm sure  
22 we could look at the specific board minutes  
23 and re- -- and establish some specific  
24 timeline, but really the board was stood up  
25 at the end of October. We used our first

1 Confidential - J. Bondi  
2 initial meetings to -- to really understand  
3 an historical context, current context of the  
4 asbestos liability. We used the initial  
5 meetings to establish some of the operating  
6 parameters associated with DBMP and M&P and  
7 New CT, including things like the financials,  
8 alignment, you know, and understanding around  
9 the initial balance sheet and statement of  
10 cash flows.

11 We then, again, as I stated,  
12 through the request of myself and the other  
13 board members, began to -- you know, to ask  
14 questions and ascertain options. Those  
15 conversations proceeded all the way through  
16 December or January, right up until the time  
17 the decision was made to proceed with the  
18 filing at the end of January.

19 Q. Can you explain to me what you  
20 meant by "operating parameters"?

21 A. So, in terms of the, the -- as we  
22 have established and you understand,  
23 Millwork & Panel is an operating subsidiary  
24 of DBMP, and as a result of that, there is  
25 different elements associated with how -- how

1 Confidential - J. Bondi  
2 we manage cash and how we manage financial  
3 accounts. We -- we at one point addressed a  
4 cash pooling agreement whereby the operating  
5 proceeds of Millwork & Panel would be held  
6 at -- at the DBMP level. We talked about  
7 investment accounts, and we talked about  
8 expenses associated with the asbestos  
9 liability at the DBMP level. We talked about  
10 the need for accessing the funding agreement  
11 from New CT to support the activity.

12 So, it was very broad-based, and  
13 I'm not sure I have covered everything, but  
14 those would be some of the major elements  
15 that would be top of mind.

16 Q. Given all that you have told me  
17 about how much was being spent on indemnity  
18 and defense in asbestos litigation each year,  
19 did you think at the time when these  
20 discussions and review was taking place that  
21 status quo would be the likely option chosen?

22 A. Status quo was an equal option  
23 to -- to all of the others, based on the --  
24 the strength and operating performance of --  
25 of Millwork & Panel, and its contributions to

1 Confidential - J. Bondi  
2 DBMP, backstopped by the funding agreement.  
3 There -- there was certainly the ability to  
4 continue to manage the liability through the  
5 tort system and operate under a status quo.

6 Q. So, at the time you are referring  
7 to, you were -- in terms of likely outcome,  
8 you were giving each of the three options  
9 equal weight?

10 A. That's correct.

11 Q. When did you first learn that a  
12 bankruptcy filing was an option under  
13 consideration?

14 A. I can't say specifically when I  
15 would have understood that bankruptcy was a  
16 potential option that could have been  
17 deployed post restructuring. It likely would  
18 have occurred, you know, through the course  
19 of some of the Project Horizon meetings that  
20 were happening in the late summer, early fall  
21 time frame, as I indicated earlier.

22 Q. In connection with Project Horizon,  
23 did you ever meet with lawyers from the Jones  
24 Day firm?

25 A. Members of the Jones Day law firm

1 Confidential - J. Bondi

2 you anticipating testifying about the pros  
3 and cons specifically at the hearing?

4 MR. JONES: I don't know that the  
5 witness has any anticipation, because, as  
6 you know, the letter is not a tender of  
7 testimony.

8 But please feel free to share if  
9 you have an anticipation.

10 A. I don't have an anticipation, no.

11 Q. How about the pros and cons of the  
12 status quo, is that the same answer regarding  
13 communications with counsel?

14 A. Yes, it would be.

15 Q. And the pros and cons with respect  
16 to the third option, do you have the same  
17 answer with respect to communications with  
18 counsel?

19 A. I have already shared some  
20 perspective on the third option, as to why it  
21 was relegated to a less viable option by the  
22 board.

23 Q. DBMP's determination to file for  
24 Chapter 11 reorganization was made by whom?

25 A. It was made by the board members of

1 Confidential - J. Bondi

2 DBMP.

3 Q. Did Mr. Rayfield have any bearing  
4 on the decision?

5 A. He did not.

6 Q. On the next topic, what do you know  
7 about the role of fairly, wholly and globally  
8 resolving its asbestos liabilities under  
9 524(g) of the Bankruptcy Code?

10 MR. JONES: Object to the form of  
11 the question.

12 A. So, my understanding of that  
13 statement would relate to the establishment  
14 of an asbestos liability trust and the  
15 funding of that trust so that those assets  
16 could be deployed to provide for what's  
17 defined there as fair, full and global  
18 resolution of the asbestos liability.

19 Q. What do you understand the word --  
20 the words "fully resolving" to mean  
21 specifically?

22 MR. JONES: Objection to  
23 foundation.

24 If you have an understanding.

25 A. My understanding is in the

# **EXHIBIT E**

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UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

-----X

In re:  
DBMP LLC,

Debtor.

Chapter 11  
Case No. 20-30080 (JCW)

-----X

DBMP LLC,

Plaintiff,

vs.

THOSE PARTIES LISTED ON APPENDIX A TO  
COMPLAINT and JOHN AND JANE DOES 1-100

Defendants .

Adv. Pro. No. 20-03004 (JCW)

-----X

\*\*\*CONFIDENTIAL\*\*\*

VIDEOTAPED DEPOSITION OF AMIEL GROSS

DATE: June 2, 2021  
TIME: 9:33 a.m.  
PLACE: \*\*\*REMOTE\*\*\*  
BEFORE: Rebecca Schaumloffel, RPR, CCR-NJ  
JOB NO: 194940

1 A. GROSS

2 Q. Were there statements made that --  
3 were there statements made at that meeting  
4 leading you to believe that the French could  
5 decide any day and move forward?

6 A. Yes.

7 Q. And who made those statements?

8 A. Well, let me qualify that a little  
9 bit. It was not necessarily that, you know,  
10 there could be a surprise decision tomorrow.  
11 It was the idea that there was an ongoing  
12 process of socializing the French to this  
13 concept, and US executives, and that in order  
14 to be in a position to execute on that  
15 decision, the bankruptcy narrative needed to  
16 start being put together, because their --  
17 the clock would start, the 90-day clock would  
18 start when that trigger was pulled.

19 Q. What do you mean by "bankruptcy  
20 narrative"?

21 A. The sort of merits of the  
22 bankruptcy in terms of how many cases there  
23 were, how many mesothelioma, how were cases  
24 historically resolved, what resources were  
25 devoted to defending the litigation, what

1 A. GROSS  
2 were the financial impacts of the litigation.  
3 So my understanding was I was there to answer  
4 questions about the underlying experience of  
5 defending asbestos litigation on behalf of  
6 CertainTeed.

7 Q. And did you in fact answer  
8 questions of that nature?

9 A. I did.

10 Q. Was it your understanding leaving  
11 that meeting that a discussion had been made  
12 to move forward with a provisional merger and  
13 a bankruptcy or just that those things were  
14 still being --

15 A. No.

16 Q. Okay.

17 A. No. Still being -- still being  
18 kicked around at the upper echelons.

19 Q. Were you told or did you learn at  
20 that meeting who within the upper echelons  
21 needed to approve a course of action such as  
22 that?

23 MR. JONES: Same objections to  
24 privileged communications.

25 A. To be honest with you, I can't

1 A. GROSS

2 position --

3 MS. ZIEG: This is Sharon Zieg.

4 I also want to remind the Debtor that  
5 in its objection to our 2004 motion to  
6 go forward with this deposition, you  
7 represented on record that Mr. Gross  
8 played no active role in Project  
9 Horizon and was not involved in  
10 planning or implementing the 2019  
11 corporate restructuring. So I'm not  
12 exactly sure how you could be alleging  
13 some sort of privilege at this point  
14 in time.

15 MR. JONES: So my objection  
16 stands and my instruction stands.

17 BY MR. GOLDMAN:

18 Q. Well, let me ask you at this  
19 point, Mr. Gross, whether you personally were  
20 tasked with doing things or taking care of  
21 things after that meeting, as a result of  
22 that meeting?

23 A. Yeah, I was -- first of all, I was  
24 really busy at the time because another case  
25 that I haven't -- we haven't discussed had

A. GROSS

1  
2 come in the door relating to the Grenfell  
3 Tower fire in West London, and I was -- I was  
4 given that case as well, and it was -- it  
5 was -- that was an extremely sensitive high  
6 profile case that was covered globally, and I  
7 was -- my attention was focused a fair amount  
8 on that case during the time of this meeting.  
9 But my -- what -- my understanding, or at  
10 least what I came away with in terms of what  
11 my responsibility was, was to assess as  
12 needed North Carolina bankruptcy counsel with  
13 facts related to CertainTeed asbestos  
14 litigation historically to the extent they  
15 came up. And I understood that those  
16 documents --

17 MR. JONES: Let me interject  
18 that this -- clearly now that the  
19 answer has started, that it would  
20 involve either privileged  
21 communications with North Carolina  
22 counsel or work product, and I would  
23 ask the witness not to share further  
24 what he claims now to have been tasked  
25 with.

1 A. GROSS

2 MS. CHRISTENSEN: I'm not  
3 sure --

4 MS. ZIEG: He used the word  
5 "facts." Facts are not privileged.

6 MS. CHRISTENSEN: Yes. But I  
7 would like to be on record that if he  
8 is going to be instructed to answer,  
9 that I want the Court to instruct my  
10 client to answer any further questions  
11 about what he was told or not told to  
12 do at this meeting.

13 MR. WYNER: I would also ass,  
14 this is outside the scope, Mr.  
15 Goldman, of what the Court allowed,  
16 which is sharply limited to the  
17 authorizations or approvals. The  
18 subject matter of what people did in  
19 Project Horizon is outside of that  
20 scope.

21 MR. GOLDMAN: So I mean --

22 A. Yeah, I mean, look, based on what  
23 the testimony has been thus far, I don't  
24 think anyone is going to get -- I mean, I was  
25 basically going to say that I was, at least

1 A. GROSS  
2 as I understood it, I was on call for the  
3 questions that would come in to assist and  
4 facilitate in the process. I was not sitting  
5 around waiting for the phone to ring, but I  
6 was there to provide assistance in what I  
7 understand to have been the bankruptcy story,  
8 the narrative that was being put together.

9 Q. And did you understand, you used  
10 the phrase a couple of times earlier,  
11 socializing the executives in France. Do you  
12 have an understanding of what was going to be  
13 done to socialize the executives in France?  
14 I'm not asking a legal advice, but just apart  
15 from all that --

16 MR. JONES: I'm going to object  
17 because it would reveal a privileged  
18 and confidential communication, I  
19 don't know how it could otherwise, and  
20 ask the witness not to share what he  
21 was to do or what he understood about  
22 that term that he has used.

23 A. So, look, as I said, you know,  
24 when I started, bankruptcy was not an option,  
25 period. The French wouldn't do it.

1 A. GROSS

2 Based on what I knew and what I had heard and  
3 seen and knowledge of the 90-day waiting  
4 period and the restructuring. So we did  
5 not -- we did not draw a distinction or a  
6 distinction was not drawn. It was nice  
7 working with you, you know, this is what's  
8 happening.

9 Q. And did he tell you at all what he  
10 anticipated his responsibilities were going  
11 to be in connection with his new position?

12 A. Full time.

13 Q. But in terms of functional  
14 responsibilities, what they were going to be?

15 A. We didn't get into that.

16 Q. And you mentioned that you asked  
17 him who was going to be taking his old job?

18 A. Yes.

19 Q. Okay. Were you hoping to get that  
20 job yourself?

21 A. I was, yep.

22 Q. Okay. And who was put in that  
23 position?

24 A. Sherry Brush.

25 Q. And did he give you any reasons

1 A. GROSS  
2 for mid-January, was that said in each of the  
3 two or three discussions you had with Mike?

4 MR. JONES: Let me interject  
5 that whether or not Mr. Gross was  
6 asking for or receiving advice,  
7 Mr. Starczewski may well have been  
8 sharing confidential, privileged  
9 communications. If he was, I do not  
10 know the answer. So I interject and  
11 object and instruct him not to share  
12 what Mr. Gross understood to be  
13 privileged and confidential  
14 communication.

15 A. So these were not conversations.  
16 They were in passing. And the sum and  
17 substance was on track, on schedule, all  
18 clear for mid-January.

19 Q. And what would be your best  
20 estimate of the earliest of these  
21 conversations?

22 A. Probably around the holidays,  
23 Thanksgiving to Christmas, and into the very  
24 beginning of 2020.

25 Q. Did you have any knowledge of --

1 A. GROSS  
2 or do you have any knowledge of the meetings  
3 of the boards of managers of DBMP during that  
4 same time period between October 23rd and  
5 January 23rd?

6 A. I was aware that they -- that they  
7 were -- that they were occurring or  
8 happening. But beyond the general awareness,  
9 I don't have any specific information about  
10 those board meetings.

11 Q. Okay. And are you aware that the  
12 DBMP and CertainTeed have taken the position  
13 that the board of managers of DBMP made an  
14 independent decision to file the bankruptcy  
15 after the divisional merger?

16 A. I am aware of that.

17 Q. Do you have reason to believe  
18 that's untrue?

19 A. Yes.

20 Q. And what is your reason for  
21 believing that?

22 A. The reason for believing that is  
23 that the decision had already been made  
24 prior, with clear directive and instructions,  
25 and the occurrence of independence is not

# **EXHIBIT F**

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

----- )  
 )  
 6 In re ) Chapter 11  
 )  
 7 DBMP LLC, ) Case No. 20-30080 (JCW)  
 )  
 8 Debtor. )  
 )  
 9 ----- )  
 DBMP LLC, )  
 10 )  
 Plaintiff, )  
 11 )  
 vs. ) Adv. Pro. No. 20-03004 (JCW)  
 12 )  
 THOSE PARTIES LISTED )  
 13 ON APPENDIX A TO COMPLAINT )  
 and JOHN AND JANE DOES )  
 14 1-1000, )  
 )  
 15 Defendants. )  
 ----- )

\* \* \* C O N F I D E N T I A L \* \* \*

REMOTE VIDEOTAPED DEPOSITION

OF MICHAEL T. STARCZEWSKI

Malvern, Pennsylvania

October 1, 2020

JOB NO. 184541

Reported by: BONNIE PRUSZYNSKI, RMR, RPR, CLR

1 M. Starczewski  
2 I don't remember by who, again, just to  
3 provide consultation and advice. He was  
4 something of a liaison, if you will, between  
5 the Paris members on the list. He was  
6 also -- years ago, was the head of  
7 Saint-Gobain Corporation in North America,  
8 and in that capacity he did have some  
9 experience with the asbestos litigation, so  
10 he had some historic knowledge on the  
11 company.

12 Q. You mentioned his role was as a  
13 liaison. When you said that, were you  
14 speaking about his role in Project Horizon?

15 A. Yes.

16 Q. Who is Benoit Bazin?

17 A. Benoit, I don't know what his role  
18 was in 20 -- we're in 2019? I think -- in  
19 March of 2019, I believe he was the chief  
20 operations officer for Compagnie de  
21 Saint-Gobain.

22 Q. And do you know what his role was  
23 in Project Horizon?

24 A. Mr. Benoit, to my knowledge, was  
25 involved to provide him with information

1 M. Starczewski  
2 about what the subsidiaries, Saint-Gobain  
3 Corporation and CertainTeed Corporation, were  
4 investigating, just to keep -- keep the  
5 parent company essentially advised.

6 Q. Who was Pierre-Andre de Chalendar?

7 A. He is the CEO and I believe  
8 chairman of the board of directors for  
9 Compagnie de Saint-Gobain.

10 Q. What was his role in Project  
11 Horizon?

12 A. Similarly, it was to advise him of  
13 what the subsidiary in the U.S. was doing.

14 Q. Who is N. Sreedhar?

15 A. Sreedhar is the CFO of Compagnie de  
16 Saint-Gobain.

17 Q. And what was his role in Project  
18 Horizon?

19 A. Largely, again, to keep him advised  
20 of what was going on. In addition, there  
21 were obviously corporate finance issues that  
22 could potentially be implicated in connection  
23 with a restructuring, so, he would be  
24 involved, similar issues as Mr. Placidet.

25 Q. You mentioned Guillaume Texier

1 M. Starczewski

2 before. Who is Mr. Texier?

3 A. Mr. Texier, to my recollection, in  
4 2018 was the chief financial officer of  
5 Compagnie de Saint-Gobain. At some point in  
6 time, I don't know exactly when, his role  
7 changed, and at that point he was no longer  
8 involved.

9 Q. And what was his role on Project  
10 Horizon?

11 A. Again, simply keeping the parent  
12 company advised as to what was being  
13 investigated.

14 Q. Who is -- we mentioned Antoine  
15 Vignial earlier. Who was he?

16 A. He is general counsel,  
17 Saint-Gobain -- Compagnie de Saint-Gobain.

18 Q. What was his role in Project  
19 Horizon?

20 A. Again, it would be advising the  
21 corporate parent on legal issues involved  
22 with Project Horizon, consulting with him on  
23 those legal matters.

24 Q. I would like to show you a calendar  
25 invite for the Project Horizon meeting that