

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

<p>In re DBMP LLC,<sup>1</sup>  Debtor.</p>	<p>Chapter 11 Case No. 20-30080 (JCW)</p>
<p>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.</p>	<p>Adv. Pro. No. 21-03023 (JCW)</p>
<p>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.</p>	<p>Adv. Pro. No. 22-03000 (JCW)</p>

<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, on  
behalf of the estate of DBMP LLC,

Plaintiff,

v.

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.

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

**NON-DEBTOR DEFENDANTS' OBJECTION TO  
PLAINTIFFS' MOTION TO COMPEL THE PRODUCTION OF DOCUMENTS  
OF COMPAGNIE DE SAINT-GOBAIN**

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CertainTeed LLC (“New CT”), CertainTeed Holding Corp. (“CT Holding”) and Saint-Gobain Corp. (“SGC”) (SGC, together with New CT and CT Holding, the “Non-Debtor Defendants”) hereby object to the *Motion of the Official Committee of Asbestos Personal Injury Claimants and The Future Claimants’ Representative To Compel Production of Documents of Compagnie de Saint-Gobain* [Adv. Pro. No. 21-03023, Dkt. 302; Adv. Pro. No. 22-03000, Dkt. 243; Adv. Pro. No. 22-03001, Dkt. 211] (the “Motion”)<sup>2</sup> filed by the Official Committee of Asbestos Personal Injury Claimants and Sander L. Esserman, the legal representative for future asbestos-related personal injury claimants (together, “Plaintiffs”) in the above-captioned adversary proceedings.

### **PRELIMINARY STATEMENT**

1. Since responding to Plaintiffs’ written discovery requests last summer, the Non-Debtor Defendants repeatedly have informed Plaintiffs (in writing and during discovery conferences) that they do not have possession, custody or control (“PCC”) over documents of their ultimate parent company located in Paris, France — Compagnie de Saint-Gobain (“CSG”). The Non-Debtor Defendants repeatedly have made clear that they would not be able to produce emails of CSG employees and other CSG documents requested unless such documents were located in the files of Defendants.<sup>3</sup> Recent deposition testimony corroborates the Non-Debtor Defendants’ long-standing and oft-stated position.

2. Minutes before serving their Motion, Plaintiffs finally served CSG through its U.S. counsel with a subpoena for CSG’s documents. Plaintiffs could have and should have done so long

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<sup>2</sup> Citations to the Motion are indicated with “Mot.” and a corresponding paragraph number herein.

<sup>3</sup> “Defendants” refers to the Non-Debtor Defendants and DBMP LLC (“DBMP” or the “Debtor”).

ago. Given that they are now seeking discovery directly from CSG, this Court need not reach the issues put forth by Plaintiffs in the Motion.

3. Should the Court nevertheless decide to rule on Plaintiffs' Motion, the evidence makes plain that Plaintiffs have fallen far short of their burden. Plaintiffs seek a court order compelling Defendants to obtain documents directly from CSG (which it has no legal basis to do) in order to produce them in the Adversary Proceedings.<sup>4</sup> Plaintiffs do not and cannot claim that CSG documents are in Defendants' "possession" or "custody." Rather, Plaintiffs assert that Defendants somehow have "control" over CSG documents (and thus should be ordered to obtain and produce them). But, in making this argument, Plaintiffs misrepresented both (i) their burden to show "control"; and (ii) the substance of documents and deposition testimony.

4. Plaintiffs' efforts fall flat. Certain salient points are not in dispute: CSG is a separate and distinct legal entity in France; it is the ultimate parent corporation of Defendants separated by another French entity. Defendants cannot access CSG's email accounts or document servers or shared drives. There is no agreement between Defendants and CSG by which Defendants have a legal right to obtain documents. Most notably, Defendants' witnesses testified that *documents from CSG have not been produced in any litigation or regulatory proceeding in the United States*. Simply put, Defendants lack "control" over and have no legal right to documents of CSG.

5. Plaintiffs have not met and cannot meet their burden to demonstrate facts — not inferences — necessary to support their request that this Court order Defendants to obtain and

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<sup>4</sup> "Adversary Proceedings" as used herein, refers to the following proceedings: *Official Committee of Asbestos Personal Injury Claimants, and Sander L. Esserman v. CertainTeed LLC, et al.*, Adv. Pro. No. 22-3000 (JCW) ("Fraudulent Transfer Proceeding") and *Official Committee of Asbestos Personal Injury Claimants v. DBMP LLC, et al.*, Adv. Pro. No. 21-03023 (JCW) ("Substantive Consolidation Proceeding").

produce emails and other documents of CSG. Further, production of CSG documents in this U.S. litigation is subject to French and European Union laws.

## **FACTUAL BACKGROUND**

### **I. When Plaintiffs Sought CSG Documents From Defendants, Defendants Explained Their Inability to Produce Such Documents.**

6. Plaintiffs sought CSG documents from the Non-Debtor Defendants through requests for production (“RFPs”) served in the Adversary Proceedings. On August 11, 2023, the Non-Debtor Defendants (and, separately, the Debtor) served responses and objections to the RFPs. To the extent a particular RFP requested production of CSG’s documents, the Non-Debtor Defendants objected to that request on the grounds that such documents are outside Defendants’ PCC and that there are applicable international data protection laws and blocking statutes including the European Union General Data Protection Regulation (“GDPR”) and French Law No. 78-17, the French Blocking Statute.<sup>5</sup> The Non-Debtor Defendants also made clear that, to the extent non-privileged relevant documents of CSG are in the files of Defendants, including those located through searches of agreed-upon U.S. document custodians and therefore within the Non-Debtor Defendants’ PCC, such documents would be produced.

7. In October 2023, Plaintiffs identified 45 individuals as potential document custodians, nine of whom are current or former employees of CSG in Paris, France (the “French Custodians”).<sup>6</sup> By correspondence dated October 27, 2023 and January 23, 2024, the Non-Debtor Defendants again informed Plaintiffs that they do not have PCC over documents of the French Custodians.<sup>7</sup> Defendants also reminded Plaintiffs that CSG is represented by the law firm Hughes

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<sup>5</sup> Defendant SGC is owned by French company, Societe de Participations Financieres et Industrielles, which is owned by CSG. See Corporate Ownership Statement [Adv. Pro. No. 22-03000, Dkt. 57].

<sup>6</sup> The parties have agreed to 26 U.S.-based document custodians, which do not include the French Custodians.

<sup>7</sup> The October 27 email also stated that the French Custodians are subject to foreign privacy and data transfer laws.

Hubbard & Reed LLP and suggested that Plaintiffs reach out directly to Hughes Hubbard concerning the French Custodians.

8. From December 2023 through February 2024, the Non-Debtor Defendants responded to numerous questions raised by Plaintiffs concerning the French Custodians and Defendants' information technology ("IT") systems and explained the Non-Debtor Defendants' lack of PCC over CSG documents. Among other things, the Non-Debtor Defendants confirmed in writing to Plaintiffs the following facts: (i) that Defendants and SG Shared Services, which "provides and manages all infrastructure in the U.S. and Canada," do not have access to email accounts of CSG employees (Jan. 22, 2024 ltr. at 3); (ii) that U.S. technology professionals "cannot access CSG's email accounts, data systems or other file servers" (Feb. 27, 2024 ltr. at 3); and (iii) "neither SG Shared Services nor any other U.S. entity within Saint-Gobain has access to or the practical ability to obtain emails or instant messages of officers, employees or directors of CSG" or any "document management system that may be used by CSG." *Id.*

9. Despite the Non-Debtor Defendants' representations, Plaintiffs had not attempted to obtain documents directly from CSG until finally serving CSG with a subpoena (through Hughes Hubbard) the morning they filed the Motion.

10. Plaintiffs pressed for and the Court granted their request to take limited depositions of Defendants pursuant to Fed. R. Civ. P. 30(b)(6) on the issue of PCC of French materials. The Court ruled that the relevant starting time frame for purposes of deposition testimony concerning any exchange of documents was August 23, 2021. [Adv. Pro. No. 22-03000, Dkt. 233 ¶ 1].

## **II. The Deposition Testimony Confirmed Defendants Do Not Have Control over CSG Documents.**

11. On April 25, 2024, Defendants proffered Thomas Pier, Chief Technology Officer of Saint-Gobain North America ("SG N.A.") and Sheri Brutsch, Associate General Counsel for

SGC, as corporate representatives of Defendants to testify as to the agreed-upon deposition topics, as limited by the 30(b)(6) Order.

12. Mr. Pier and Ms. Brutsch confirmed the Non-Debtor Defendants' prior representations about the Defendants' lack of "control" over CSG documents. Mr. Pier testified:

- Defendants do not have access to emails of employees of CSG (*see* Transcript of April 25, 2024 30(b)(6) Deposition of Thomas Pier ("Pier Tr."), 154:9-21, 174:20-175:12);<sup>8</sup>
- Defendants (and IT Services N.A.) do not have access to shared drives of CSG, whether on premises or otherwise (Pier Tr. 92:14-17, 176:13-17, 177:9-13);
- Defendants do not have access to hard drives or backups of hard drives of employees of CSG (Pier Tr. 176:18-177:3); and
- he was not aware of: (i) "any examples or situations where a Saint-Gobain North America employee has requested access to a file that's stored outside of the U.S. and Canada." (Pier Tr. 92:25-93:5) or (ii) any instance where U.S. IT has requested access to email of CSG employees or whether any such requests for emails of a CSG employee have been granted (Pier Tr. 178:19-179:7).<sup>9</sup>

13. Ms. Brutsch also confirmed that Defendants lack "control" over CSG documents:

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<sup>8</sup> The excerpts of Mr. Pier's deposition testimony cited herein are attached hereto as Exhibit A.

<sup>9</sup> Mr. Pier's testimony does nothing to bolster Plaintiffs' position, including with respect to the use of Microsoft Teams. Not surprisingly for a global conglomerate with 160,000 employees in 76 countries, Saint-Gobain uses Microsoft Teams, which Mr. Pier explained is "a collaboration space for an approved set of participants to collaborate using the tools available via Microsoft Teams." Pier Tr. 84:11-15. People can communicate with one another through such a site if necessary for their business but they have to "be sent an invitation to join" or can request to join. *Id.* at 87:4-7. Mr. Pier testified that the IT teams in the U.S. and France do collaborate on IT issues, one such example being with respect to "technical standards that are part of the IT infrastructure." *Id.* at 133:2-14. If IT professionals from France and the U.S. are part of a Microsoft Teams environment, "they would be able to share documents via that method." *Id.* at 134:13-25. Mr. Pier never testified that there is any broad sharing of documents generally between Defendants and CSG through the IT professionals' expert teams wherein IT personnel collaborate on a "variety of topics to share information, experiences and talk about... next steps or plans for certain technologies" such as a "migration from Windows 10 to Windows 11." *Id.* at 127:9-128:19. Ms. Brutsch testified with respect to Teams that "some of the people on [the list of 18 individuals with whom she spoke to prepare for deposition] belong to Teams groups in which documents are posted to the Team group for collaboration and editing." Brutsch Tr. 15:3-16:3, 68:21-24. The 18 individuals were, based on her knowledge and experience at SGC, the employees most likely to communicate on a regular basis with CSG in the ordinary course of their jobs, and only "some" of the 18 employees belonged to Teams groups. *Id.* at 38:9-12, 68:15-24. Ms. Brutsch did not testify, as Plaintiffs misleadingly claim, that "U.S. Defendants exchange information in the ordinary course of business with CSG employees" through Teams. Mot. ¶ 6, n.16.

- she is “not aware of any documents from [CSG] produced in U.S. litigation” or regulatory proceedings (*see* Transcript of April 25, 2024 30(b)(6) Deposition of Sheri Brutsch (“Brutsch Tr.”), 123:8-17);<sup>10</sup>
- in her role as an attorney at SGC over the last 12 years, Ms. Brutsch has “never been involved in a request for [CSG] emails or documents” (Brutsch Tr. 104:7-19);
- with respect to obtaining CSG emails, “[t]here are rules, EU rules, that need to be complied with, with respect to getting [CSG] emails and documents” (Brustch Tr. 105:23-106:5); and
- to the extent that a handful of employees of Defendants, in connection with their duties and responsibilities, upload information in certain systems that is sent to CSG, “[t]here’s no exchange of [CSG] data through the systems” and U.S. or North American Saint-Gobain employees have “no visibility into information of Compagnie de Saint-Gobain through these systems” (Brutsch Tr. 116:12-117:11).

14. In light of these facts, there is no question that Defendants do not control CSG’s documents.<sup>11</sup> Thus, for the reasons set forth herein, the Motion should be denied.

### ARGUMENT

#### III. Legal Standard

15. Federal Rule of Civil Procedure 34 provides that a party may request that the opposing party “produce and permit the requesting party . . . to inspect, copy, test, or sample”

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<sup>10</sup> The excerpts of Ms. Brutsch’s testimony cited herein are attached hereto as Exhibit B.

<sup>11</sup> Many of Plaintiffs’ characterizations of witness testimony are simply false. For example, Plaintiffs claim that emails of employees of Defendants and CSG are “exclusively held by CSG’s information technology department.” Mot. ¶ 5. False. Rather, Mr. Pier testified that (i) Druva, a tool used by SG N.A. IT Services, backs up content from personal computers including certain types of emails for SG N.A. employees (Pier Tr. 94:14-19, 98:7-99:11); and (ii) Microsoft Exchange, *not* CSG, holds all active online emails of Defendants and CSG (*id.* at 101:4-20). The IT team in Paris negotiates the contract with Microsoft globally with respect to Microsoft Exchange (even though SG N.A. pays for the North American portion of the contract) so when backup emails are needed of an employee of SG N.A., the Paris IT team retrieves those emails from Microsoft. *Id.* at 149:4-24; 173:20-174:16. Plaintiffs also stated that “at any one time, including today, dozens of CSG employees work in the United States while retaining complete access to the documents of CSG.” Mot. ¶ 5. Not so. Ms. Brutsch testified that the 1-2 secondees from CSG per year maintain their access to CSG’s systems and do not get access to U.S. systems. Brutsch Tr. 83:7-85:20, 89:4-6. Expatriated employees, however, come to the U.S. for a longer term and those employees get a new U.S. laptop and are cut off from their CSG documents (except access to prior email since there is one global @saint-gobain.com email address). *Id.* at 119:2-9-120:25, 1223:-123:7. Thus, *only one or two seconded CSG employees* (not dozens) are in the U.S. with access to their CSG documents on their laptop computers, and no employees of Defendants have such access. *Id.* at 83:18-84:9, 89:4-18.

relevant documents, electronically stored information, and tangible things that are within the party's "possession, custody, or control." Fed. R. Civ. P. 34(a)(1).

16. The Fourth Circuit has not interpreted "control" for purposes of Rule 34. Courts of Appeal outside the Fourth Circuit have defined control to mean either (i) the legal right to obtain the document on demand; or (ii) the practical ability to obtain the document.<sup>12</sup>

17. Within the Fourth Circuit, certain courts have adopted the "legal right" test and rejected the "practical ability" test. *See, e.g., Bleecker v. Standard Fire Ins. Co.*, 130 F. Supp. 2d 726, 739 (E.D.N.C. 2000) (rejecting practical ability test and adopting legal right test); *see also In re: NC Swine Farm Nuisance Litig.*, No. 5:15-CV-00013-BR, 2016 WL 3661266, at \*4 (E.D.N.C. July 1, 2016) (rejecting practical ability test).<sup>13</sup>

18. Moreover, on one critical point, courts within the Fourth Circuit have been consistent: where, as here, "information is readily attainable through a *subpoena duces tecum*, no compelling reason exists to expand the definition of control" under Rule 34 to accommodate the "practical ability" test. *See Bleecker*, 130 F. Supp. 2d at 739 (denying motion to compel and rejecting "ability to obtain" test in determining control); *see also In re: NC Swine Farm Nuisance Litig.*, 2016 WL 3661266, at \*4 (adopting "legal right" test and declining to expand the definition

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<sup>12</sup> Compare *United States v. Int'l Union of Petroleum and Indus. Workers*, 870 F.2d 1450, 1452 (9th Cir. 1989) ("Control is defined as the legal right to obtain documents upon demand."); *Thermal Design, Inc. v. American Society of Heating Refrigerating & Air-Conditioning Engineers, Inc.*, 755 F.3d 832, 838-39 (7th Cir. 2014) (analyzing control under "legal right test"); with *Shcherbakovskiy v. Da Capo Al Fine, Ltd.*, 490 F.3d 130, 138 (2d Cir. 2007) (analyzing "control" as access and the practical ability to possess documents).

<sup>13</sup> *See also Alexander v. BMW of N. Am., LLC*, No. 7:18-CV-03065-JD, 2021 WL 9968198, at \*3 (D.S.C. Apr. 13, 2021) (court declined to "determine which test to apply" and notes that plaintiff did not establish that defendant has legal control over non-party). This Court has on one occasion stated that "[d]ocuments are considered to be under a party's control for discovery purposes when the party has the right, authority, or **practical ability** to obtain the documents from a non-party to the action." *In re BK Racing, LLC*, No. 18-30241, 2022 WL 1482403, at \*13 (Bankr. W.D.N.C. May 10, 2022) (Whitley, J.) (emphasis in original) (citation omitted). In that case, this Court determined that defendant could not obtain emails from a former employer without need for analysis of any factors.

of “control” where the information sought by plaintiffs from defendant’s ultimate parent company could be obtained by a subpoena served on the non-party).

19. In the instant case, Plaintiffs admit that they now have *finally* “served CSG with a subpoena pursuant to Fed. R. Bankr. P. 9016 and Fed. R. Civ. P. 45.” (Mot. ¶ 5 n.10). Thus, this motion is unnecessary. Plaintiffs should seek the documents directly pursuant to their subpoena to CSG. There is no reason for Defendants to be in the middle of these issues.

20. If this Court adjudicates the Motion, it should follow the “legal right” test for control and not adopt the more expansive “practical ability to obtain” test for control — particularly where Plaintiffs have now sought discovery directly from CSG. However, under either standard, Plaintiffs have not met their burden to demonstrate that the Defendants have control over CSG’s documents.

21. Plaintiffs misstate the burden of demonstrating that “control” exists under any standard, which is squarely theirs: the law in this Circuit is clear that “the party seeking production of documents that it contends are in [the other party’s] control[] has the burden of proof on this issue.” *Ultra-Mek, Inc. v. Man Wah (USA), Inc.*, 318 F.R.D. 309, 313 (M.D.N.C. 2016).<sup>14</sup>

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<sup>14</sup> See also *Prodigious Ventures, Inc. v. YBE Hosp. Grp., LLC*, No. 5:14-CV-433-F, 2016 WL 1248806, at \*4 (E.D.N.C. Mar. 25, 2016) (“[T]he party seeking production of documents bears the burden of establishing the opposing party’s control over those documents.”) (internal citations omitted); *Suh v. HCA Healthcare Co.*, No. 7:02-CV-166-F, 2010 WL 11622621, at \*3 (E.D.N.C. June 8, 2010) (same); *Steele Software Sys., Corp. v. DataQuick Info. Sys., Inc.*, 237 F.R.D. 561, 564 (D. Md. 2006) (same). The cases cited by Plaintiffs concerning the “burden in resisting production” (Mot. ¶ 20) are irrelevant because they each involve a motion to compel discovery responses from the opposing party objecting to discovery requests as unduly burdensome or improper and bear no weight as to Plaintiffs’ burden here, which is to establish PCC over the documents in question. See *Wagner v. St. Paul Fire & Marine Ins. Co.*, 238 F.R.D. 418 (N.D.W. Va. 2006); (discussing the burden to show why an interrogatory was improper); *Blankenship v. Fox News Network, LLC*, No. 2:19-CV-00236, 2020 WL 9718873 (S.D.W. Va. Sept. 21, 2020), *objections overruled*, No. 2:19-CV-00236, 2021 WL 2345972 (S.D.W. Va. June 8, 2021) (citing *Wagner* for the same proposition where objecting party asserted the discovery requests were overly burdensome); *Page v. Bragg Cmty., LLC*, No. 5:20-CV-336-D, 2022 WL 17724407 (E.D.N.C. Dec. 15, 2022) (defendant argued the moving party’s discovery requests were unduly burdensome, and the inaccessibility was related to cost, not control).

22. To show that a party has “the legal right to obtain the documents on demand,” Plaintiffs must show that Defendants can “command release of the documents by the person or entity in actual possession.” *Pasley v. Caruso*, No. 10-CV-11805, 2013 WL 2149136, at \*5 (E.D. Mich. May 16, 2013) (quoting *Gen. Env't Sci. Corp. v. Horsfall*, 25 F.3d 1048, n.15 (6th Cir. 1994)). The 30(b)(6) testimony makes clear that Defendants cannot “command” the release of CSG’s documents. *See, e.g.*, Pier Tr. 154:15-21, 174:25-5. Plaintiffs, aware that Defendants have no “legal right” to CSG documents do not directly address this point, effectively conceding it.

23. In determining whether documents in the possession of a non-party corporation may be under the control of a related corporate party, courts within the Fourth Circuit adopting a “practical ability to obtain documents” standard look to a number of factors including: (1) the structure of the party and nonparty corporations (including common ownership), (2) the nonparty corporation’s connection to the transaction at issue in the litigation, (3) whether the two corporate entities exchange documents in the ordinary course of business, (4) the degree that the nonparty corporation will benefit from the outcome of the case, and (5) whether the nonparty corporation has participated in the litigation. *Suh v. HCA Healthcare Co.*, No. 7:02-CV-166-F, 2010 WL 11622621, at \*2 (E.D.N.C. June 8, 2010).<sup>15</sup>

24. Plaintiffs must satisfy their burden of “practical ability” by providing specific facts demonstrating that the factors of control are present. *Steele*, 237 F.R.D. at 565.<sup>16</sup> Speculation and inferences like those offered by Plaintiffs do not suffice:

The Court notes up front that its decision here is not (and cannot) be based on *what might possibly be or what one might assume to be* the

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<sup>15</sup> Plaintiffs refer to so-called “*DuPont* factors” throughout the Motion. *DuPont* was decided by a district court in the Eastern District of Virginia. While other courts in the Fourth Circuit that adopt the “practical ability to obtain” test generally analyze similar factors, *DuPont* is not a standard outside of that court, as Plaintiffs suggest.

<sup>16</sup> *See also Suh*, 2010 WL 11622621, at \*3 (denying motion to compel where “Plaintiffs have failed to come forward with *evidence* of a sufficient corporate affiliation between Defendant and BCH to indicate that Defendant can enforce the production of discovery”) (emphasis added).

relationship between [US defendant] and [its foreign affiliated entity] with regard to the instant litigation. Instead it has to be based on the *current record before the Court, and what that record actually demonstrates*.

*Princeton Digital Image Corp. v. Konami Digital Entm't Inc.* 316 F.R.D. 89, 91 (D. Del. 2016) (denying plaintiff's motion to compel documents from defendant's foreign affiliate where plaintiff failed to establish control over documents sought).

25. Regardless of whether this Court applies the legal right or practical ability test for "control" under Rule 34, ***Plaintiffs have failed to meet their burden of providing evidence*** demonstrating why this Court should take the extraordinary step of forcing a party to attempt to obtain and produce documents from a foreign non-party parent company.<sup>17</sup>

#### **IV. Plaintiffs Have Not Demonstrated That Defendants Have the "Practical Ability" to Obtain Documents From Non-Party CSG**

##### **A. Plaintiffs Fail to Demonstrate that Defendants and Non-Party CSG Share a Sufficiently Close Connection Such That Defendants Have Control Over CSG.**

26. The fact that CSG is Defendants' ultimate and indirect parent is not sufficient to demonstrate that Defendants have control over CSG's documents. *See, e.g., Steele*, 237 F.R.D. at 565 ("Documents in the possession of a nonparty are not automatically subject to discovery under Rule 34 simply because the nonparty has a corporate relationship to a party to the litigation.").

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<sup>17</sup> The cases relied upon by Plaintiffs to show that courts have determined that the party had control over affiliated non-party entities are readily distinguished. *See Ultra-Mek*, 318 F.R.D. at 314-315 (court relied upon on the fact that there was a substantive overlap of business functions between the entities and an inextricably intertwined executive team, neither of which are present here); *Uniden Am. Corp. v. Ericsson, Inc.*, 181 F.R.D. 302, 307 (M.D.N.C. 1998) (party had the practical ability to obtain the documents from an affiliate where (i) the objecting party reported to the general manager and vice president of the affiliate because "of an agreement between [the parties] ordered by the parent"; (ii) the two entities coordinated their sales efforts by splitting up the world market into territories; and (iii) the common parent had the power to force the non-party affiliate to turn over documents to the defendant); *Baby Jogger*, 2013 WL 12092292, at \*3 (E.D. Va. Apr. 25, 2013) (the objecting party had previously successfully demanded production of documents related to the litigation from the non-party and the entities were inextricably linked to the nucleus of the matter at issue, *i.e.*, whether the design of the product constituted infringement); *In re Glob. Power Equip. Grp. Inc.*, 418 B.R. 833, 842-43 (Bankr. D. Del. 2009) (the objecting party had only two employees and there was evidence that the objecting party had appointed its affiliate to act as its agent and attorney-in-fact).

27. Plaintiffs' attempt to meet their burden by claiming that Defendants and CSG have "common leadership and financial relationships" fails.

28. Where the "facts simply demonstrate a typical parent/subsidiary relationship, where the subsidiary performs and implements certain aspects of the overall business . . . in coordination with the parent corporation and secures profits for the parent corporation, as its sole shareholder" a finding of control is not warranted. *Provost v. Kia Motors Am.*, No. CV 05-36-D-M2, 2006 WL 8432836, at \*4 (M.D. La. July 24, 2006) (finding no control where the moving party failed to provide, among other things, evidence demonstrating that all of defendant's board members were also employees of the non-party and that those board members who are also non-party employees had "prominent roles" in the management of the defendant).<sup>18</sup> This point is also made clear by the cases relied upon by Plaintiffs (Mot. ¶ 24).<sup>19</sup>

29. Grasping at straws, Plaintiffs argue there were "common relationships" between Defendants and CSG based on roles held by three individuals, which roles were held years ago for two of the individuals. Mot. ¶ 26. However, these few instances do not support a finding that

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<sup>18</sup> See also *Alexander v. BMW of N. Am., LLC*, No. 7:18-CV-03065-JD, 2021 WL 9968198, at \*2 (D.S.C. Apr. 13, 2021) (denying motion to compel where the defendant and the non-party have no interlocking management; instead, each entity "has its own officers, managers, executives, and employees that manage day-to-day business and other activities of each entity."); *Playboy Entm't Grp., Inc. v. United States*, No. CIV. A. 96-94-JJF, 1997 WL 873550, at \*3-4 (D. Del. Dec. 11, 1997) (plaintiff did not have control over parent company where movants were able to show only that the non-moving party "is the wholly-owned subsidiary of [the non-party company, that] plaintiff's president is an executive vice president of [the non-party company, and that the non-party company's] Chief Executive Officer approves significant decisions regarding the operation of plaintiff's business"); *Princeton Digital*, 316 F.R.D. at 95 (denying motion to compel production of documents held by a non-party foreign affiliate when the plaintiff failed to introduce evidence to show, among other things, that the defendant and the non-party were intertwined beyond being in the same corporate family).

<sup>19</sup> See *Ultra-Mek*, 318 F.R.D. at 314 (defendant subsidiary's President was also the non-party foreign parent's Chairman, Managing Director, and Executive Director; defendant's Treasurer was also the non-party foreign parent's CFO, Secretary, and Executive Director; and an Executive Director of the holding company was a director of the non-party foreign parent); *Est. of Colomb by & Through Colomb v. Nissan N. Am., Inc.*, No. 4:08-CV-76-F(3), 2009 WL 10705311, at \*3 (E.D.N.C. Oct. 2, 2009) (court found there was complete unity of control from the highest echelons of both companies where Director, Chairman of the Board, and President of the defendant subsidiary was also the President, CEO and Chairman of the Board for the non-party parent; a Director of the defendant was also the CEO for the foreign parent; and a Director and Senior Vice President of defendant was the Authorized Representative of that same parent in the United States).

Defendants control CSG's documents. First, Plaintiffs' assertion that Mark Rayfield, an officer of the Defendants, is also a "member of CSG's global Executive Committee" is meaningless<sup>20</sup> — it is hardly surprising or noteworthy that the CEO of SG N.A. serves on a global committee (of 16 people).<sup>21</sup> Thomas Kinisky held essentially the same roles as Mr. Rayfield, but his roles ended in 2020 so they are wholly irrelevant to the current analysis of "control." Finally, Jean Francois Phelizon also provides no support for Plaintiffs' position. Mr. Phelizon was employed by CSG until 2017 when he came to work for SGC (and he remains in the U.S.). Plaintiffs' claim that Mr. Phelizon remained on a committee of CSG in 2017 while working for SGC is irrelevant for the same reasons as Messrs. Rayfield and Kinisky. In any event, Mr. Phelizon had no access to CSG information (other than his own prior emails)<sup>22</sup> when he was working for SGC in the U.S. Brutsch Tr. 117:18-118:14.<sup>23</sup>

30. The 30(b)(6) testimony concerning secondees and expatriated employees likewise provides no support for Plaintiffs' position. Ms. Brutsch testified that there are one or two secondees from CSG to SG N.A. each year who do not stay in the U.S. longer than a year, they maintain their access to CSG's systems and do not get access to U.S. systems. Brutsch Tr. 83:7-85:20, 89:4-6. Expatriated employees, however, come to the U.S. for a longer term (years) and those employees get a new U.S. laptop and are cut off from their CSG documents (except their

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<sup>20</sup> Plaintiffs point to no case law, and the Non-Debtor Defendants have found none, in which a court finds committee membership instructive to the issue of control.

<sup>21</sup> *Universal Registration Document Including the Annual Financial Report and the Integrated Report*, Compagnie de Saint-Gobain S.A. (2023) at 14-15.

<sup>22</sup> Mr. Pier testified "[e]mployees have a single email address independent of their location." Pier Tr. 94:3-4.

<sup>23</sup> Plaintiffs' additional citations provide no support. See *Steele*, 237 F.R.D. at 565 (defendant was "the owner (directly and indirectly), sole shareholder, and president of all [] entities except for [one] whose president and owner [was] his seventy-four (74) year old mother"); *Mt. Hawley Ins. Co. v. Felman Prod., Inc.*, 269 F.R.D. 609, 617 (S.D.W. Va. 2010) (movant provided "exhibits" that "establish that direct control over [defendant's] operations was exercised by the [non-party employees]" which showed that the non-party employees were operating the defendant entity). These cases stand in stark contrast to the three attenuated connections Plaintiffs assert.

own email). *Id.* at 119-120, 122. Out of 15,000 employees in SG N.A., there are approximately 16 to 30 expatriated employees in any given year. Brutsch Tr. 129:9-15. This is far from the “overlap of management and decision-makers” in *Ultra-Mek* to which Plaintiffs cite.<sup>24</sup>

31. Finally, Plaintiffs try to create the requisite connection between Defendants and CSG out of whole cloth by citing to (i) the fact that CSG has consolidated financial statements, which include its subsidiaries Defendants CT LLC and SGC; and (ii) loan documents between CT LLC and a separate entity, Saint-Gobain Finance Corp. (“SG Finance”). Mot. ¶¶ 28-31.

32. Plaintiffs’ sole support for their claim that consolidated financial statements somehow evidence “control” is *Ultra-Mek*, 318 F.R.D. at 314. However, in that case, the consolidated financials of the foreign parent and U.S. subsidiary were in addition to the overlap of corporate officers, discussed in footnotes 17 and 19, *supra*, which demonstrate the unity of the entities and that the subsidiary was not in control of its own financial documents, as the court found that it was essentially a pass through entity for the foreign parent. *Id.* at 314. None of those conditions is present here.<sup>25</sup> Moreover, Plaintiffs never explain — let alone evidence — (as they

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<sup>24</sup> The cases Plaintiffs cite either undercut their position or are inapposite. (Mot. ¶ 28). *See Japan Halon Co. v. Great Lakes Chem. Corp.*, 155 F.R.D. 626, 628 (N.D. Ind. 1993) (court found evidence of “extreme closeness” **where half of plaintiff’s board of directors** were seconded from the foreign non-party parent companies and those “full-time directors” were “charged with primary responsibility for conducting and directing the business activities of [plaintiff]”); *Ultra-Mek, Inc.*, 318 F.R.D. at 315 (court did not analyze the exchange of employees).

<sup>25</sup> Saint-Gobain worldwide has more than 160,000 employees in 76 countries and “designs, manufactures and distributes materials and services for the construction and industrial markets.” *See* <https://www.saint-gobain.com/fr>. In North America, Saint-Gobain has approximately 150 locations and more than 15,000 employees. *See* <https://www.saint-gobain-northamerica.com/company/saint-gobain-north-america>. Defendants have standalone operations; New CT manufactures and sells commercial and residential building products through its various subsidiaries. *See* Declaration of Robert J. Panaro in Support of First Day Pleadings [Case No. 20-30080, Dkt. 24] (“Panaro First Day Decl.”) at ¶ 13. DBMP “oversees the operations of its subsidiary, Millwork & Panel” (“M&P”), which, in turn, “manufactures and sells vinyl siding and polyvinyl chloride (PVC) trim products for the construction market” in its facilities located in North Carolina and Georgia. *Id.* at ¶ 12. CSG has no role in the manufacturing and distribution of products by Defendants; indeed, each company within the organization operates exclusively in the region in which it is based. *See 2023 Integrated Report*, Saint-Gobain (2023) at 14 (“Saint-Gobain’s country-based organization . . . results in close proximity to customers and enhanced results-driven accountability for local teams.”) The 2023 Integrated Report is publicly available at: [https://www.saint-gobain.com/sites/saint-gobain.com/files/media/document/2023%20-%20RI%20%20SAINT-GOBAIN%20-%20VA\\_050424.pdf](https://www.saint-gobain.com/sites/saint-gobain.com/files/media/document/2023%20-%20RI%20%20SAINT-GOBAIN%20-%20VA_050424.pdf). Further,

cannot) how a global public company's mere use of consolidated financial statements in accordance with governing securities and accounting rules evidences that a subsidiary has the practical ability to obtain documents from the parent. The proposition finds no support in the law, facts or common sense.

33. As for loan documents between New CT and SG Finance, they show nothing more than that there are intra-company loans that are well-documented and recorded, consistent with common practice in a large conglomerate. The loan document reflects the terms of the loan, including the interest rate (section 6), and New CT's rights to demand repayment (section 5). Plaintiffs' argument that this loan "is the mechanism through which CertainTeed LLC indirectly provides billions of dollars per year to CSG via 'loans' that are not repaid" (Mot. ¶ 31 n.29) is baseless conjecture, incorrect, and not supported by evidence. Indeed, as with the preparation of consolidated financial statements, Plaintiffs never explain — let alone evidence — (as they cannot) how an ordinary course intercompany transaction evidences that a subsidiary has the practical ability to command documents from its parent. This proposition likewise finds no support in the law or the facts.

34. Plaintiffs have not, and cannot, demonstrate an overlap of common leadership or even an intermingling of directors, officers or employees, or business relations necessary to meet their burden to show that Defendants "control" CSG. This factor weighs in favor of Defendants.

**B. Plaintiffs Fail to Demonstrate That Non-Party CSG Has a Sufficient Connection to the Corporate Restructuring.**

35. Plaintiffs must prove that CSG had more than a tangential involvement in the underlying transaction, but rather that it directed or was intimately involved in the Corporate

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Ms. Brutsch testified that the U.S. controllers do their own accounting through SAP for month-end close to which CSG has no access. Brutsch Tr. 30:15-31:24.

Restructuring.<sup>26</sup> See, e.g., *Shell Glob. Sols. (US) Inc. v. RMS Engr., Inc.*, No. 4:09-CV-3778, 2011 WL 3418396, at \*3-6 (S.D. Tex. Aug. 3, 2011) (denying motion to compel where there was “no indication that [the foreign non-party] was involved in the events underlying the alleged patent infringement” aside from some coordination and document exchange regarding their patent portfolios); see also *Princeton Digital*, 316 F.R.D. at 92 (foreign non-party’s development of the accused products in a patent suit was not sufficient involvement with the underlying transaction). Plaintiffs do not come close to meeting their burden.

36. In citing to *Baby Jogger, LLC v. Britax Child Safety, Inc.*, Plaintiffs omitted key language (Mot. ¶ 21); the court found that the non-party was “*intimately*” involved in the underlying transaction through “*overwhelming*” evidence of involvement in the design and development of the product that was the subject of the litigation. No. 2:12CV452, 2013 WL 12092292, at \*2 (E.D. Va. Apr. 25, 2013) (emphasis added). The instant case could not be more different as Plaintiffs have not met their burden of demonstrating that CSG designed and implemented the Corporate Restructuring.<sup>27</sup> To the contrary, Plaintiffs have consistently argued that the Corporate Restructuring was lawyer driven; those lawyers being Old CT’s internal lawyers

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<sup>26</sup> “Corporate Restructuring” refers to the corporate restructuring of the former CertainTeed Corporation (“Old CT”) completed on October 23, 2019, by which it ceased to exist and two new companies were formed: DBMP and New CT. See Panaro First Day Decl. at ¶¶ 14-23.

<sup>27</sup> The other cases upon which Plaintiffs rely (Mot. ¶ 17 n.33) entail significant involvement of the non-party in the underlying transaction and thus are distinguishable. See *Uniden*, 181 F.R.D. at 307 (Ericsson Mobile formed an agreement to divide the world market, exchanged documents surrounding the transaction and had an interest in the sales in question wherein the plaintiffs were competing with Ericsson Mobile); *Costa v. Kerzner Intern. Resorts, Inc.*, 277 F.R.D. 468, 472 (S.D. Fla. 2011) (the transaction could not be completed without the direct action of the foreign affiliate who distributed the funds imposed and collected by the defendants); *In re Subpoena Duces Tecum to Ingeteam, Inc.*, No. 11-MISC-36, 2011 WL 3608407, at \*1-2 (E.D. Wis. Aug. 16, 2011) (the parties directly “collaborate[d] on the transaction at issue” for manufacture, testing, support and maintenance of the product); *Camden Iron & Metal, Inc. v. Marubeni Am. Corp.*, 138 F.R.D. 438 (D.N.J. 1991) (the “final approval” of the non-party was required to consummate the transaction).

and outside lawyers.<sup>28</sup> Although lawyers were appropriately involved in the planning and execution of the restructuring (along with Old CT's management team), CSG was not.

37. The status updates provided to CSG regarding the potential restructuring reflect that it was Old CT's employees who were leading the Corporate Restructuring. Plaintiffs cite to no evidence demonstrating that CSG itself conceived, designed or implemented the Corporate Restructuring because that is not what happened. *See* Mot. ¶¶ 32-33. The documents Plaintiffs cite show nothing more than CSG personnel scheduling meetings and receiving updates regarding the potential restructuring of the U.S. companies that CSG owned. *Id.* Keeping the ultimate parent company apprised of transactions contemplated by subsidiaries is common practice and good corporate governance. CSG did not drive the transaction, and Plaintiffs have offered no evidence to indicate otherwise. As the evidence actually shows, status meetings on Project Horizon informed "people in Paris of what was the — the status of the project, knowing that obviously *the project was managed locally under the local responsibility.*"<sup>29</sup>

38. Plaintiffs have failed to establish that CSG directed or was intimately involved in the Corporate Restructuring and thus this factor likewise cuts strongly against granting the Motion.

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<sup>28</sup> *See, e.g.*, Adv. Pro. No. 21-03023, Dkt. 1 ¶ 22 (the "Substantive Consolidation Complaint") ("Project Horizon was an attorney-created and implemented strategy to resolve all of CertainTeed's asbestos liabilities without subjecting its business operations or its preferred creditors to the bankruptcy process") (citations omitted).

<sup>29</sup> Transcript of October 14, 2020 Deposition of Eric Placidet, 90:12-15 (emphasis added), attached hereto as Exhibit C. Mr. Rayfield testified that no one from CSG was consulted with regard to the decision to proceed with the Corporate Restructuring. Transcript of October 7, 2020 Deposition of Mark Rayfield, 108:5-7, attached hereto as Exhibit D. While certain board members of CSG were informed about the implementation of the Corporate Restructuring, these board members were not intimately involved and did not collaborate in the design and development of the Corporate Restructuring, nor did they need to approve it. Mr. Starczewski testified that individuals were merely keeping the parent company essentially "advised" of the potential restructuring. Transcript of October 1, 2020 Deposition of Mike Starczewski, 198:4-5; 198:13, attached hereto as Exhibit E. Similarly, CSG was not consulted and did not approve DBMP's bankruptcy filing. DBMP's ultimate decision to file for bankruptcy was not made by CSG, but by DBMP's board. *Id.* at 268:4-22.

**C. Plaintiffs Fail to Demonstrate That Any of the Defendants and Non-Party CSG Exchange Documents in Ordinary Course of Business.**

40. Plaintiffs' claim that Defendants have control of CSG's documents based on a claimed ordinary exchange of documents similarly fails both on the law and the facts.

41. Courts that have found an "exchange of documents in the ordinary course of business" for purposes of "control" under Rule 34 relied heavily on the party and the affiliated non-party entity exchanging documents *with respect to the subject matter of the litigation*.<sup>30</sup> For example, *Baby Jogger*, relied upon by Plaintiffs, involved a patent and trade infringement litigation where the non-party affiliates were heavily involved in the design and development of the product at issue, and shared documents to execute those projects. 2013 WL 12092292, at \*4.<sup>31</sup> The other cases cited by Plaintiffs are similarly focused on an exchange of documents and regular communication between the party and its non-party affiliate *with respect to the subject matter of the litigation*.<sup>32</sup>

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<sup>30</sup> Courts deny motions where such a showing has not been made. See, e.g., *In re Takata Airbag Prod. Liab. Litig.*, No. 15-02599-MD, 2017 WL 8812733, at \*5 (S.D. Fla. Feb. 16, 2017) (denying motion to compel where plaintiffs requested documents related to the development, design and manufacturing of car airbags, and the court determined it did not have adequate proof that the defendant and its non-party affiliate "exchange these types of documents in the ordinary course of business" even though the non-party had previously provided documents to defendant for the limited purpose of responding to the National Highway Traffic Safety Administration); *Shell Global Solutions (US) Inc. v. RMS*, 2011 U.S. Dist. 85120 (S.D. Tex. 2011) (denying motion to compel party to get documents from non-party affiliate where the affiliated entities "exchanged documents and regularly communicated about the global management and content of their patent portfolio. However, there is no evidence that [the affiliated entities] ever coordinated or exchanged documents regarding the underlying preparation and prosecution of patent applications, filings, and/or renewals.").

<sup>31</sup> The Court's granting of the motion to compel documents did not turn on affiliate communications by email on routine matters, as Plaintiffs incorrectly suggest is the standard: "[t]he evidence before the Court clearly demonstrates that [Defendant and its affiliates] all collaborated with each other concerning the design and development of the [product], which included regular and frequent communication, conference calls, project requests and task assignments...[and] exchanging documents concerning the design and development of the [product], revisions to prototypes and sales forecasts." *Baby Jogger*, 2013 WL 12092292 at \*4.

<sup>32</sup> See *Est. of Colomb by & Through Colomb v. Nissan N. Am., Inc.*, 2009 WL 10705311, at \*3 (E.D.N.C. Oct. 2, 2009) (practical ability was established where defendant and non-party affiliates jointly design the cars that are distributed worldwide, do not distinguish between themselves in litigation, and have overlapping boards); *Hampton Hall, LLC v. Chapman Coyle Chapman & Assocs. Architects AIA, Inc.*, 2019 WL 1276073, at \*2-3 (D.S.C. Mar. 20, 2019) (compelling the parent entity to produce documents of a subsidiary, where the two entities managed the same development; but, in the same decision, refusing to compel production of documents of sister entities where there was insufficient evidence of business relations among the parties); *Costa v. Kerzner Int'l Resorts, Inc.*, 277 F.R.D. 468

42. Plaintiffs have no evidence to show that CSG “exchanged documents” with Defendants (as opposed to Old CT sending emails to keep people “informed”) concerning the Corporate Restructuring. Again, as set forth above, this is not surprising given Plaintiffs’ steadfast position that the Corporate Restructuring was a U.S. lawyer-driven strategy. *See supra* ¶ 36.

43. Plaintiffs’ reliance on general use by employees of emails and file sharing platforms such as Microsoft Teams, SharePoint, OneDrive and file transfer protocols (Mot. ¶ 40) is misplaced; it is wholly irrelevant to the standards courts use for this factor, including in the cases Plaintiffs cite. In today’s world, where email and file sharing is common-place, it cannot be the law that one entity could be deemed to “control” the documents of another simply based on run-of-the-mill communications and their use of modern technological methods. If that were the standard, then corporate affiliates would *always* be deemed in control of the documents of each other and no analysis would be necessary.

44. The undisputed evidence is that Defendants do not have the practical ability to obtain or access CSG documents through technological means unless someone from CSG chooses to send to or share with an employee of Defendants a particular document. As set forth above, Mr. Pier testified that *Defendants and IT Services N.A. do not have physical or logical access to (i) emails; (ii) shared drives; (iii) hard drives; (iv) backups of hard drives; or (v) employee mobile phones or tablets of employees of CSG.* Pier Tr. 92:14-17, 154:9-21, 175:2-177:8.<sup>33</sup>

45. Plaintiffs’ entire argument amounts to nothing more than the fact that, in 2024, a global company has some handful of employees who email with employees of the ultimate parent

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(S.D. Fla. 2011) (compelling production of non-party affiliates in litigation seeking recovery of hotel resort fees, where the defendants transferred those fees to the non-party affiliates); *see supra* footnotes 17 and 27 for discussion of *Uniden*, 181 F.R.D. 302 (M.D.N.C. 1998).

<sup>33</sup> *See, e.g.*, Pier Tr. 176:13-17 (“Q: Do defendants or IT Services North America have access, physical or logical, to shared drives within [CSG]? A: We do not”).

company — CSG — in connection with their positions and that Defendants’ employees use modern technology, including Microsoft Teams and OneDrive (a method to share files rather than attaching them to an email). As Ms. Brutsch testified that the number of individuals within Saint-Gobain N.A. who are likely to communicate on a regular basis with CSG (by email or otherwise) was “much less” than 100 employees and she “estimated about 18.”<sup>34</sup> Brutsch Tr. 25:11-26:4.

46. Plaintiffs also point to Defendants’ “report[ing] financial information to CSG” as evidence that they “regularly exchange documents in the ordinary course of business.” Motion ¶ 40. Again, reporting financial information *to* a parent company cannot be evidence of “practical ability to obtain” documents on demand *from* that parent company. There is no “exchange” of such information; Ms. Brutsch testified that Defendants cannot access documents or data of CSG through the financial reporting tools used to provide information to CSG.<sup>35</sup> The information flows only one direction — from the U.S. companies to the ultimate parent.

47. Defendants and CSG did not have any exchange of documents concerning the issues in the underlying case, let alone an exchange sufficient to show that Defendants have control over CSG’s documents. This factor likewise weighs heavily against granting the Motion.

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<sup>34</sup> Further, witness testimony confirmed that access to each of the technologies used by Defendants is limited. Both Mr. Pier and Ms. Brutsch testified that access to a particular workspace in Microsoft Teams is limited to those individuals who are “sent an invitation to join, or they can request, and then have that request either approved or denied.” Pier Tr. 86:23-87:7; *see also id.* at 84:9-20. Ms. Brutsch testified that “Teams groups involve certain permissions” and that “[e]mployees of Saint-Gobain Corp. do use Teams as a means of sharing documents with specific groups of people that are part of that team.” Brutsch Tr. 69:13-14; 71:3-6.

<sup>35</sup> Ms. Brutsch testified that, on a monthly basis, since CSG “has no access to SAP,” the accounting system used in the U.S., the controllers upload the information into a global financial consolidation system called Magnitude. Brutsch Tr. 30:15-31:10. “There’s no exchange of data from CSG...back to Eric [Placidet, SGC CFO] and his controllers in that monthly close process.” *Id.* at 31:11-14; *see also* Brutsch Tr. 116:8-117:11.

**D. Plaintiffs Fail To Demonstrate That Non-Party CSG Will Directly Benefit From the Outcome of The Adversary Proceedings.**

48. Plaintiffs' conclusory argument that CSG has an interest in the outcome of the Adversary Proceedings because it is the ultimate parent company of Defendants is far from sufficient to meet their burden. If it was sufficient simply to claim that a defendant's parent company would benefit financially if that defendant prevailed in a litigation, or that a parent company generally "benefitted," was "interested in the outcome" or "received updates" on the litigation as Plaintiffs' claim, then there would be no need to analyze the "direct benefit" to the non-party as a factor in the parent-subsidary context since that would always be the case. Plaintiffs' argument flies in the face of common sense and legal precedent.

49. Plaintiffs cite *Afros S.P.A. v. Krauss-Maffei Corp.*, on this point but omit key language; the court said: "[i]f a non-party will **directly receive the benefit of an award**, then it is unjust that it can frustrate the discovery process and the complete resolution of the issues by refusing to furnish documents in its possession." 113 F.R.D. 127, 131 (D. Del 1986) (emphasis added) (finding that the non-party would directly benefit from the outcome of the litigation when its sales through the defendant would increase by, *inter alia*, getting rid of a competitor).

50. Indeed, courts have found that a non-party does not receive a significant benefit from the outcome of the litigation — in the context of evaluating issues of "control" — where the movant fails to establish that the non-party is potentially liable for a verdict against the party from whom discovery is sought or otherwise has a financial interest in the case. *See, e.g., Humana Inc. v. Teva Pharm. USA, Inc.*, No. 6:21-CV-72-CEM-DCI, 2023 WL 348855, at \*3 (M.D. Fla. Jan. 20, 2023) (denying motion to compel and finding that plaintiff did not establish that affiliate of

non-party affiliate was “potentially liable for a verdict against [defendant] or otherwise has a financial interest in this case”).<sup>36</sup> That circumstance does not exist here.

51. Plaintiffs have not met their burden to demonstrate a *direct benefit* to CSG from the outcome of the Adversary Proceedings.<sup>37</sup> Plaintiffs’ claim (Mot. ¶ 35) that an assertion of a common legal interest shared by Defendants and CSG is somehow an “acknowledge[ment]” of a “direct benefit” from the outcome of the Adversary Proceedings is nonsensical. The letter from counsel for DBMP cited by Plaintiffs plainly states that “[t]here are financial consequences as there are in most legal matters, but the interests are decidedly legal.” Mot., Exh. E at 2. Again, the “financial consequences” present in every litigation cannot suffice.

52. Plaintiffs claim that CSG’s “financial condition” would “benefit enormously” if “asbestos-related lawsuits and liabilities” were resolved via a chapter 11 plan, rather than ongoing tort litigation, because it is the ultimate parent company (Mot. ¶ 37) is entirely speculative and

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<sup>36</sup> See also *In re Zantac (Ranitidine) Products Liab. Litig.*, No. 20-MD-2924, 2021 WL 1522449, at \*11 (S.D. Fla. Apr. 16, 2021) (“Plaintiffs have not shown that Apotex-Canada could be liable for a verdict against Apotex-US, which further undercuts the idea that Apotex-US controls the records of Apotex-Canada.”). Courts analyzing this factor have denied similar motions to compel where the party seeking documents failed to provide evidence as to the degree of the benefit to the non-party. See, e.g., *Princeton Digital*, 316 F.R.D. at 92 (D. Del. 2016) (plaintiff failed to show that the non-party would “benefit financially from [the defendant’s] U.S.-based use or sale of the accused games,” if successful in the patent litigation defense and if so, “to what degree” it would benefit); *Turning Point USA at Arkansas State U. v. Rhodes*, No. 3:17-CV-00327-JLH-JTR, 2018 WL 11321475, at \*3 (E.D. Ark. Sept. 4, 2018) (in denying motion to compel, court noted that “it is entirely unclear how [the non-party] ‘will benefit from the outcome of this case’”).

<sup>37</sup> The other cases upon which Plaintiffs rely for their conclusory argument are readily distinguishable. See *Hampton Hall, LLC v. Chapman Coyle Chapman & Associates Architects AIA, Inc.*, No. 9:17-CV-1575-RMG, 2019 WL 1276073, at \*1\*2 (D.S.C. Mar. 20, 2019) (defendant sought documents from plaintiff’s “closely related entities,” which the court stressed were “created... to be involved in the development and management of plaintiff” and given the “close corporate structure... ‘likely will be affected by the outcome of this litigation’”); *In re Subpoena Duces Tecum to Ingeteam, Inc.*, No. 11-MISC-36, 2011 WL 3608407, at \*1 (E.D. Wis. Aug. 16, 2011) (court found that both U.S. subsidiary that services, tests and maintains component of wind turbines and foreign parent company that manufactured the component overseas would receive a “benefit from withholding documents” where a poor outcome for the wind turbine manufacturer would reduce the U.S. and foreign parent company sales to the manufacturer); *Japan Halon Ltd.*, 155 F.R.D. at 628-29 (court was “not convinced that because any award would go to [plaintiff], its parent corporations would not benefit directly enough to warrant any production of documents on their behalf” where deposition testimony “evidences extreme closeness” of plaintiff and its parent companies and court found that plaintiff “chose to invoke the jurisdiction of the United States courts [and] is engaged in a species of international hide and seek”).

without evidentiary support.<sup>38</sup> CSG will not be “liable for a verdict” if Plaintiffs prevail in the Adversary Proceedings. Rather, in the Adversary Proceedings, Plaintiffs seek to avoid the Corporate Restructuring and consolidate the bankruptcy estate of DBMP with New CT.<sup>39</sup> Plaintiffs’ view of this litigation is myopic; the Adversary Proceedings are part of a larger bankruptcy proceeding in connection with which the *size of a liability of DBMP* will be determined. Sizing a liability is not the same as deriving a benefit from litigation by defeating an adverse claim. Here, estimating DBMP’s liability will enable the funding of a section 524(g) trust to pay allowed asbestos claims. Such a determination is not a basis to conclude the Non-Debtor Defendants have practical control over CSG’s documents or that they could compel their production. The bankruptcy case is not a win-loss proposition like the litigations referenced in the relevant case law where a “direct benefit” from prevailing in a case means paying a verdict or losing a significant amount of sales. Plaintiffs have failed to meet their burden as to this factor.

**E. Non-Party CSG Has Not “Participated” in the Adversary Proceedings.**

53. CSG has not “participated” in the Fraudulent Transfer Adversary Proceeding or the Substantive Consolidation Adversary Proceeding.

54. Plaintiffs claim this factor is met because CSG “is a party to the fiduciary duty proceeding.” Mot. ¶ 42. Not so. The Fiduciary Duty Proceeding is a separate proceeding that has been stayed in its entirety pending resolution of the Adversary Proceedings.<sup>40</sup> Plaintiffs have not

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<sup>38</sup> Neither the Expert Report of Charles Bates nor the Placidet deposition testimony cited provides any factual support.

<sup>39</sup> See, e.g., Adv. Pro. No. 21-03000, Dkt. 14 ¶ 39 (the “Fraudulent Transfer Amended Complaint”); Substantive Consolidation Complaint ¶ 22 [Adv. Pro. No. 21-03023, Dkt. 1].

<sup>40</sup> Adv. Proc. 22-03001, Dkt. 49 at 2. The parties negotiated and, in June 2022, the court entered a Stipulation and Order (“Stipulation”) that expressly preserved the Fiduciary Duty defendants’ rights to move to dismiss the complaint “including, but not limited to, all defenses relating to jurisdiction.” [Adv. Proc. 22-03001, Dkt. 49 at 4-5.] In addition, the Stipulation specifically provides that it “shall not affect the Parties’ rights to participate with respect to any other motion, contested matter, adversary proceeding or proceeding in the Debtor’s Chapter Case.” *Id.* at 6. Any finding that “participation” is satisfied merely by CSG’s attendance at hearings would adversely affect CSG’s rights under the Stipulation.

and cannot provide any support for their position that CSG simply being named as a defendant in a separate case is evidence of “participation” in these Adversary Proceedings. Nor do the facts that CSG’s counsel attended the 30(b)(6) depositions, which concerned whether there is an exchange of documents with CSG, or “made appearances” at court hearings, without arguing or taking any positions at those hearings, constitute “participation” or demonstrate Defendants’ “control” over CSG’s documents. The mere fact that discovery between Plaintiffs and Defendants in the Fraudulent Transfer Adversary Proceeding or the Substantive Consolidation Adversary Proceeding may apply to CSG does not mean that CSG “participated” in the discovery.<sup>41</sup>

55. Nor is Defendants’ assertion of a “common legal interest” with CSG in connection with documents withheld on grounds of privilege sufficient to demonstrate CSG’s “participation” in the Adversary Proceedings.<sup>42</sup>

56. Even if the Court were to find that CSG has “participated” in the Adversary Proceedings — which it has not — this would not give Defendants any ability to compel CSG to turn over their documents to Defendants.<sup>43</sup>

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<sup>41</sup> Rather, to show a non-party’s “participation” in litigation, Plaintiffs must provide evidence that a non-party has had *actual involvement* in the litigation. *See, e.g., Alimenta (U.S.A.), Inc. v. Anheuser-Busch Companies, Inc.*, 99 F.R.D. 309, 310 (N.D. Ga. 1983) (granting a motion to compel where movant provided undisputed evidence that plaintiff’s non-party corporate affiliate “has been intimately involved in the discovery process of this litigation, including participation in Plaintiff’s answers to interrogatories propounded by Defendant,” among other things); *Afros S.P.A. v. Krauss-Maffei Corp.*, 113 F.R.D. 127, 132 (D. Del. 1986) (finding the fact that “[k]ey decisions regarding this litigation,” which included the “decision to counterclaim, were made by a [non-party] employee with no direct connection to [the defendant]” was relevant to the analysis of control). Plaintiffs have not even attempted to meet this standard.

<sup>42</sup> Plaintiffs’ reference to an earlier footnote with case law cited in support of their argument relating to the purported benefits of litigation to CSG provides no support to this factor; only one of the cases cited mentions this factor, and that case **does not analyze it or apply it**. *See Hampton Hall, LLC v. Chapman Coyle Chapman & Assocs. Architects AIA, Inc.*, No. 9:17-CV-1575-RMG, 2019 WL 1276073, at \*2 (D.S.C. Mar. 20, 2019).

<sup>43</sup> Plaintiffs’ throwaway assertion that “CSG and its affiliates made the ultimate decision for DBMP to file for bankruptcy protection” (Mot. ¶ 43) is contradicted by record evidence (*see supra* ¶ 36, n.28) and, in any event, is irrelevant to any participation in the only litigation which is relevant for this Court’s analysis — the Adversary Proceedings. Plaintiffs’ reliance upon *Japan Halon* is misplaced; the portion of that case Plaintiffs cite has no relevance to any analysis of any “participation in litigation.”

**F. There Are No Agreements Permitting Defendants To Produce CSG's Documents.**

57. Not all district courts in the Fourth Circuit consider whether agreements among the entities “reflect the parties' legal rights or authority to obtain certain documents” as part of the analysis of “control” (Mot. ¶ 44). *See, e.g., Suh*, 2010 WL 11622621, at \*2 (listing five factors that may indicate control). Indeed, neither of the cases cited by Plaintiffs on this point — *Dupont* and *Baby Jogger* — contain any analysis of this factor.

58. Plaintiffs do not claim that there are any actual “agreements” between the entities (as this factor would seem to require on its face). Rather, Plaintiffs argue a potpourri of points (some of which were made earlier in their Motion) that have no relevance to the existence (or lack thereof) of any relevant “agreements.”

59. *First*, Plaintiffs claim that there is a “designated process” through which emails are requested. Mot. ¶ 45. There is no evidence that any Defendant has ever requested or received approval for, accessing emails or documents of CSG.<sup>44</sup> As Ms. Brutsch explained, “there are rules, EU rules, that need to be complied with, with respect to getting Compagnie de Saint-Gobain mails and documents.”<sup>45</sup> Additionally, Plaintiffs’ reference to Mr. Pier’s statement that there is “no notion of French emails or U.S. emails,” (Mot. ¶ 45), has nothing to do with the process for accessing emails. Rather, Mr. Pier was responding to a question from Plaintiffs as to whether a

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<sup>44</sup> *See also* Brutsch Tr. 102:22-103:5 (“[I]f Saint-Gobain Corp. wanted CSG documents or e-mails from a [CSG] employee, they would have to go through a request process and get authorization. And I’m not aware of that ever happening.”). Pier Tr. 178:19-24 (“Q: Sitting here today, Mr. Pier, are you aware of any instance where U.S. IT of Saint-Gobain North America has requested access to email of employees of Compagnie de Saint-Gobain? A: I’m not aware of any. Q: So then I’m going to assume you are also not aware whether any such requests for emails of an employee of [CSG] has been granted? A: I’m not aware of any situations like that.”); *see also id.* at 92:20-5 (Q: Is there never a circumstance where an employee might seek a document located in another country? MS GOULD: Objection. And beyond the scope. A: I don’t know of any examples or situations where a Saint-Gobain North America employee has requested access to a file that’s stored outside of the U.S. and Canada.”).

<sup>45</sup> Brutsch Tr. 105:23-106:2.

French employee who came to the U.S. to work could access their French emails; Mr. Pier explained that employees “have a single email address independent of their location.”<sup>46</sup>

60. *Second*, as stated above in ¶ 30, Plaintiffs’ assertion that “both seconded employees and expatriated employees from CSG maintain access to the documents of CSG while working out of the offices of the U.S. Defendants” (Mot. ¶ 46) is incorrect. Expatriated employees (employees who are in the U.S. longer term) are cut off from their CSG documents (except email given that employees have one email address). Brutsch Tr. 119:14-120:25, 122:16-123:7.

61. *Third*, Plaintiffs misrepresent Mr. Pier’s testimony concerning the “Wide Area Network” to make a false sweeping statement that “U.S. Defendants and CSG are connected to the same global Wide Area Network through which the U.S. Defendants can obtain access to materials uploaded by foreign affiliates based on a ‘business need.’” Mot. ¶ 47. When asked if it was his “understanding that Saint-Gobain North America cannot access anything loaded by a non-North American affiliate to the wide area network,” Mr. Pier answered: “the default implementation of firewall rules prevents access among sites.” Pier Tr. 142:20-143:3.<sup>47</sup>

62. There are simply no agreements in place that permit the Defendants to produce emails and documents of CSG. In addition, Defendants’ witnesses testified that the Defendants cannot access CSG’s documents.

### CONCLUSION

WHEREFORE, for the foregoing reasons, Defendants respectfully request that the Court deny the Motion.

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<sup>46</sup> Pier Tr. 93:17-94:4.

<sup>47</sup> Pier Tr. 143:21-145:11. Plaintiffs make much of Mr. Pier’s testimony that firewalls can be overridden to allow “connectively,” but ignore that the example provided by Mr. Pier of a firewall exception was to facilitate **printing**, not access to documents. *Id.* at 143:9-144:24. Mr. Pier followed up that testimony by confirming he was not aware of a single request to modify the firewall to access documents of Saint-Gobain outside of North America.

Dated: May 17, 2024

Respectfully submitted,

RAYBURN COOPER & DURHAM, P.A.

/s/ John R. Miller, Jr.

John R. Miller, Jr. (N.C. Bar No. 28689)

227 West Trade Street, Suite 1200

Charlotte, North Carolina 28202

Telephone: (704) 334-0891

Facsimile: (704) 377-1897

E-mail: [jmiller@rcdlaw.net](mailto:jmiller@rcdlaw.net)

-and-

Michael H. Goldstein (admitted *pro hac vice*)

Howard S. Steel (admitted *pro hac vice*)

Douglas H. Flaum (admitted *pro hac vice*)

Gabrielle L. Gould (admitted *pro hac vice*)

Stacy Dasaro (admitted *pro hac vice*)

GOODWIN PROCTER LLP

The New York Times Building

620 Eighth Avenue

New York, New York 10018

Telephone: (212) 813-8840

Fax: (212) 409-8404

Email: [mgoldstein@goodwinlaw.com](mailto:mgoldstein@goodwinlaw.com)

[hsteel@goodwinlaw.com](mailto:hsteel@goodwinlaw.com)

[dflaum@goodwinlaw.com](mailto:dflaum@goodwinlaw.com)

[ggould@goodwinlaw.com](mailto:ggould@goodwinlaw.com)

[sdasaro@goodwinlaw.com](mailto:sdasaro@goodwinlaw.com)

*Attorneys for Defendants CertainTeed LLC,  
CertainTeed Holding Corporation and Saint-  
Gobain Corporation*

# Exhibit A

1 T. Pier - Confidential

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

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

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

12 Plaintiffs, Adv. Pro. No.  
13 vs. 21-03023(JCW)

14 DBMP LLC and CERTAINTEED LLC,  
15 Defendants.

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

20 Plaintiffs, Adv. Pro. No.  
21 vs. 22-03000(JCW)

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

24 Defendants.

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

CONFIDENTIAL VIDEOTAPED DEPOSITION OF THOMAS PIER

New York, New York

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 vs. 22-03001(JCW)

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

16 Defendants.  
17 -----x

18 April 25, 2024

19 10:00 a.m.

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

24  
25

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2 structure?

3 MS. BLAKE: Objection.

4 MS. GOULD: Objection to form.

5 A Teams sites owners default to  
6 the employee that created the Teams site.

7 Q Let's take a step back about  
8 what a Teams site is.

9 Can you explain what a Teams  
10 site is?

11 A A Teams site within the  
12 Microsoft Teams product from Microsoft is  
13 a collaboration space for an approved set  
14 of participants to collaborate using the  
15 tools available via Microsoft Teams.

16 Q So a Teams site owner could  
17 invite a group of employees to  
18 participate in that site; is that how  
19 that works?

20 A Yes.

21 Q They can share documents on  
22 this site?

23 A Yes.

24 Q They can communicate with one  
25 another on this site?

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2 broader set of capabilities. So I would  
3 say no, in my understanding, of the use  
4 of the term "administrator."

5 Q You are a Teams site owner of  
6 this particular site, though. What  
7 capabilities do you have relative to the  
8 site?

9 A I can approve requests to add  
10 people to the Teams site.

11 I can also create, what are  
12 called, channels which are a given Teams  
13 site can have one or more channels  
14 associated to it.

15 As an owner, I can create  
16 those.

17 Q Are there any limitations to  
18 creating these Teams sites at  
19 Saint-Gobain North America?

20 MS. GOULD: Objection.

21 A I'm not aware of any  
22 limitations.

23 Q Can employees within the  
24 Saint-Gobain group outside of North  
25 America join one of these Teams sites?

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2 MS. BLAKE: Objection.

3 MS. GOULD: Objection.

4 A They can either be sent an  
5 invitation to join, or they can request,  
6 and then have that request either  
7 approved or denied.

8 Q Are you a member of any  
9 Microsoft Teams sites that have employees  
10 from the Saint-Gobain group outside of  
11 North America on those sites?

12 MS. BLAKE: Objection.

13 MS. GOULD: Objection to form.

14 A Yes.

15 Q Are any of those employees  
16 based in France?

17 MS. BLAKE: Objection.

18 MS. GOULD: Objection.

19 A Yes.

20 Q Are you aware of employees in  
21 Saint-Gobain North America that are  
22 secondees from a French entity?

23 MS. BLAKE: Objection.

24 MS. GOULD: Objection. Beyond  
25 the scope.

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2 MS. GOULD: Objection.

3 A Again, the term "housed" is --  
4 it needs to be more specific.

5 Q I think this time I tried to  
6 say stored because you said it depended  
7 on where it is stored or located.

8 If the document is stored in  
9 France and an employee in Saint-Gobain  
10 North America wishes to access that  
11 document, would they contact the help  
12 desk?

13 MS. GOULD: Objection.

14 A In the normal course of  
15 business, Saint-Gobain North America  
16 employees do not have access to shared  
17 drives located outside of North America.

18 Q That doesn't really answer my  
19 question.

20 Is there never a circumstance  
21 where an employee might seek a document  
22 located in another country?

23 MS. GOULD: Objection. And  
24 beyond the scope.

25 A I don't know of any examples or

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2 situations where a Saint-Gobain North  
3 America employee has requested access to  
4 a file that's stored outside of the U.S.  
5 and Canada.

6 Q If an employee -- we talked  
7 about employees that come from France and  
8 work in the United States.

9 They might contact the help  
10 desk, though, to access their emails; is  
11 that correct?

12 MS. GOULD: Objection. And  
13 beyond the scope.

14 A Could you repeat the question,  
15 please.

16 Q Sure.

17 If an employee of  
18 Saint-Gobain -- excuse me, of  
19 Saint-Gobain group based in France were  
20 to come to the U.S. to work and seeks to  
21 access their French emails, would they  
22 contact the help desk?

23 MS. GOULD: Objection. And  
24 beyond the scope.

25 A Employees within -- there's no

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2 notion of French emails or U.S. emails.

3 Employees have a single email  
4 address independent of their location.

5 Q So there should not be concern  
6 to access that type of email whether  
7 originating in France or originating in  
8 the U.S.?

9 MS. GOULD: Objection.

10 A Correct.

11 Q Are you familiar with the term  
12 "Druva"?

13 A Yes.

14 Q What is Druva?

15 MS. BLAKE: Objection.

16 A Druva is a tool used by  
17 Saint-Gobain North America IT services to  
18 back up content from computers, personal  
19 computers specifically.

20 Q Let's talk about backup drives,  
21 then.

22 Are there other forms of,  
23 forgive me, programs or software that is  
24 used to back up the ESI of Saint-Gobain  
25 North America?

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2 phone than others.

3 So is there any method of  
4 backup at Saint-Gobain North America for  
5 information on mobile phones?

6 A No.

7 Q Druva provides the backup for  
8 information on the computers.

9 Does that include email?

10 A It includes only certain types  
11 of email.

12 Q Can you describe those certain  
13 types?

14 A In general, there are two types  
15 of email.

16 One is what I would call the  
17 active inbox that is associated to a  
18 Microsoft Exchange online server.

19 The employee has the ability  
20 currently to move or copy an email from  
21 that active inbox to an archive location  
22 technically known as a PST file.

23 Q So you've described both an  
24 active inbox and archive.

25 Does Druva maintain both of

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2 those email files, for lack of a better  
3 way of saying it?

4 MS. BLAKE: Objection.

5 MS. GOULD: Objection.

6 A No.

7 Q Which does Druva support?

8 A Druva supports the backup of  
9 PST files if they are stored in a  
10 location on the laptop or desktop that is  
11 backed up by Druva.

12 Q How does one ensure that the  
13 emails are in a location to be backed up  
14 by Druva?

15 MS. BLAKE: Objection.

16 A In most cases, the employee  
17 wouldn't know, but it defaults to a  
18 particular location when you create a PST  
19 folder.

20 Q So you have to create a PST  
21 folder in order for Druva to back it up?

22 MS. BLAKE: Objection.

23 Mischaracterizes testimony.

24 MS. GOULD: Objection.

25 A The PST folder once it exists,

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2 Exchange to retrieve them?

3 MS. BLAKE: Objection.

4 A In general, the backup  
5 capability from Microsoft Exchange online  
6 would be in the instance if there was  
7 some type of failure for the primary  
8 email system to be able to go ahead and  
9 restore it.

10 Q So Microsoft Exchange houses  
11 the active inbox as a backup to the  
12 primary inbox on a person's individual  
13 computer?

14 MS. BLAKE: Objection.

15 MS. GOULD: Objection.

16 A The active inbox is actually  
17 synced between Microsoft Exchange online  
18 and the Microsoft Outlook application  
19 that runs on the employee's laptop or  
20 desktop.

21 Q Beyond Microsoft Exchange or  
22 the employee's personal computer, is  
23 there any other backup of the active  
24 inbox?

25 A Not that I'm aware of.

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2 MS. BLAKE: Objection.

3 A To my understanding, no, they  
4 would contact iManage.

5 Q Okay. We discussed  
6 collaboration with the Paris IT team,  
7 generally speaking, and with respect to  
8 litigation holds.

9 Are there other instances where  
10 Saint-Gobain North America IT team  
11 collaborates with the Paris IT team?

12 MS. GOULD: Objection.

13 A Yes.

14 Q Can you describe those  
15 instances?

16 A There are many instances.

17 I can provide a few examples.

18 Q That would be wonderful.

19 A One example would be what we  
20 call expert teams.

21 An expert team is where we  
22 collaborate on a variety of topics to  
23 share information, experiences, and talk  
24 about, you know, next steps or plans for  
25 certain technologies.

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2 Q Is the expert team you  
3 described comprised of members of the  
4 North American IT team and the Paris IT  
5 team?

6 MS. BLAKE: Objection.

7 A The expert teams can be  
8 comprised of Saint-Gobain employees  
9 from any region where there are IT  
10 professionals.

11 Q Can you give an example of what  
12 an expert team might do?

13 MS. GOULD: Objection.

14 A An expert team might talk about  
15 certain topics and review topics of  
16 interest within that expert team area.

17 For example, on the digital  
18 workplace, we talk about a migration from  
19 Windows 10 to Windows 11.

20 Q And who would be comprised of  
21 that expert team to move from Windows 10  
22 to Windows 11?

23 MS. GOULD: Objection.

24 A Any members of that digital  
25 workplace expert team who participate in

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2 Q I think one of the questions I  
3 asked more globally or generally was, are  
4 there other instances where the Paris IT  
5 team collaborates with the North American  
6 IT team? The expert teams was one of  
7 those examples.

8 Do you have other examples?

9 A Yes.

10 Q Could you share one of those  
11 with us?

12 A One example might include  
13 technical standards that are part of the  
14 IT infrastructure.

15 Q Does the IT infrastructure  
16 technical standards, do they tend to  
17 apply globally?

18 MS. BLAKE: Objection.

19 A In general, the standards are  
20 set within -- with the goal to have them  
21 be implemented globally.

22 Q Are there other examples of  
23 circumstances which the North American IT  
24 team collaborates with the Paris IT team?

25 MS. BLAKE: Objection.

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2 A Yes. There are many in the  
3 day-to-day activities of ITS North  
4 America.

5 Q So is it fair to say that the  
6 Paris IT team and the North American IT  
7 team collaborate daily?

8 MS. GOULD: Objection.

9 MS. BLAKE: Objection.

10 A The frequency is dependent upon  
11 who is participating and the topic being  
12 discussed.

13 Q Does the North American IT team  
14 have the ability to obtain data from the  
15 French IT team?

16 MS. GOULD: Objection.

17 MS. BLAKE: Objection.

18 A It depends upon the method  
19 being used.

20 Q Can you explain that?

21 A If there are French IT members  
22 and ITS North America members who are  
23 part of a Microsoft Teams environment,  
24 they would be able to share documents via  
25 that method.

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2 MS. BLAKE: Objection.

3 MS. GOULD: Objection.

4 A In general, the restrictions  
5 are in place among all Saint-Gobain  
6 sites.

7 Q So is it that Saint-Gobain  
8 North America cannot access any other  
9 site connected to the wide area network  
10 by a non-North America affiliate?

11 MS. GOULD: Objection.

12 A If you can just read that. I  
13 want to make sure I understand that  
14 question.

15 Q Yes.

16 A non-North American affiliate,  
17 another affiliate in Saint-Gobain global  
18 that is not located in North America  
19 connects a site to the wide area network,  
20 is it your understanding that  
21 Saint-Gobain North America cannot access  
22 anything loaded by a non-North American  
23 affiliate to the wide area network?

24 MS. GOULD: Objection.

25 A The default implementation of

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2 the firewall rules prevents access among  
3 sites.

4 Q Are there exceptions to the  
5 default rule?

6 A Yes.

7 Q Can you please explain those  
8 exceptions?

9 A If there is a business  
10 requirement or a business need to share  
11 information across two sites, a firewall  
12 rule that would allow connectivity  
13 between those two sites would be  
14 requested, approved, and implemented.

15 Q Are you aware of that process  
16 being utilized?

17 A In general, I'm aware of  
18 firewall -- changes to firewall rules  
19 being requested, reviewed, and if  
20 approved, implemented.

21 Q Can you give an example of one  
22 and walk me through how it was requested,  
23 when it was requested, and how it was  
24 approved?

25 MS. BLAKE: Objection.

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2 MS. GOULD: Objection.

3 A There are multiple parts there.

4 Let me answer and see if I missed any.

5 For example, if a site is  
6 having issues between being able to print  
7 from an application, the analysis of that  
8 might determine that there is a firewall  
9 rule that's blocking the ability for the  
10 application to talk to the printer.

11 And there would be an  
12 identification of what the specific rule  
13 is. There are ports involved and other  
14 IP addresses that are involved.

15 The team would identify what  
16 they thought that firewall rule change  
17 would need to be.

18 That request would get  
19 submitted to the cybersecurity team.

20 And if, and only if, approved,  
21 would they then make those changes to the  
22 firewall to then enable that flow of  
23 information in my example from the  
24 application to the printer.

25 Q Are you aware of any requests

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2 to modify the firewall to access  
3 documents located in Saint-Gobain global  
4 outside of North America?

5 MS. BLAKE: Objection.

6 MS. GOULD: Objection. And  
7 beyond the scope.

8 A No.

9 Q "No" is your answer?

10 A That is correct. "No" is my  
11 answer.

12 Q Is there any reason to believe  
13 such a request can't be made?

14 MS. GOULD: Objection.

15 A There's no limitation on  
16 requesting a change.

17 Q Has Saint-Gobain North American  
18 IT team ever assisted the Paris team to  
19 produce documents or information as part  
20 of a United States lawsuit?

21 MS. GOULD: Objection to form.

22 A Yes, we have provided guidance.

23 Q Can you describe that guidance?

24 A Because IT Services North  
25 America does not have access to the email

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2 MS. BLAKE: Objection.

3 Mischaracterizes testimony.

4 A Because IT Services North  
5 America does not have access to active  
6 email boxes, we provided guidance to  
7 Saint-Gobain North America legal that  
8 they would need to make those requests to  
9 the IT team in Paris that does have  
10 access to active email inboxes.

11 Q Would that include the active  
12 email inboxes of North American  
13 employees?

14 A Yes.

15 Q I see.

16 Does that mean the Microsoft  
17 Exchange Server is maintained by the  
18 Paris IT team?

19 MS. BLAKE: Objection.

20 MS. GOULD: Objection.

21 A The Paris IT team is the entity  
22 that negotiates the contract with  
23 Microsoft for email capabilities that are  
24 used by Saint-Gobain globally.

25 Q I understand. Okay.

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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

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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.

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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

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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 Compagnie de Saint-Gobain employees,  
3 let's say, that are sent to other  
4 Compagnie de Saint-Gobain employees, in  
5 other words, they're not sent to North  
6 America Saint-Gobain employees, do  
7 defendants or IT Services North America  
8 have access, either physical or logical,  
9 to those kinds of archived emails of  
10 employees of Compagnie de Saint-Gobain?

11 MS. HARDMAN: Objection.

12 A No, we do not.

13 Q Do defendants or IT Services  
14 North America have access, physical or  
15 logical, to shared drives within  
16 Compagnie de Saint-Gobain?

17 A We do not.

18 Q Do defendants or IT Services  
19 North America have access, physical or  
20 logical, to employee hard drives of  
21 employees of Compagnie de Saint-Gobain?

22 A We do not.

23 Q Do defendants or IT Services  
24 North America have access, physical or  
25 logical, to backups of hard drives of

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2 employees of Compagnie de Saint-Gobain?

3 A We do not.

4 Q Do defendants or IT Services  
5 North America have access, physical or  
6 logical, to mobile phones or tablets of  
7 employees of Compagnie de Saint-Gobain?

8 A We do not.

9 Q Can Compagnie de Saint-Gobain  
10 access, physically or logically,  
11 defendants' on-premises shared drives?

12 A In a normal course of business,  
13 they do not.

14 Q Can Compagnie de Saint-Gobain  
15 access, physically or logically,  
16 defendants' iManage files in the normal  
17 course of business?

18 A To my understanding, they do  
19 not have access to iManage.

20 Q Can Compagnie de Saint-Gobain  
21 access, physically or logically,  
22 defendants' employee hard drives?

23 A No.

24 Q Can Compagnie de Saint-Gobain  
25 access, physically or logically,

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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

1 T. Pier - Confidential  
2 also are not aware whether any such  
3 requests for emails of an employee of  
4 Compagnie de Saint-Gobain has been  
5 granted?

6 A I'm not aware of any situations  
7 like that.

8 MS. GOULD: Thank you very  
9 much.

10 BY MS. HARDMAN:

11 Q Mr. Pier, I just have a couple  
12 more questions for you based on a couple  
13 of things you just said.

14 So Ms. Gould asked you a number  
15 of questions related to physical and  
16 logical access.

17 What is logical access?

18 A Logical access would be, for  
19 example, getting access to a server that  
20 may be in a different location than the  
21 person actually accessing it.

22 So they're not physically next  
23 to the server, but they are able to go  
24 ahead and access that server, for  
25 example.

# Exhibit B

1 S. Brutsch - Confidential

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

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

-----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)  
vs.

10 DBMP LLC and CERTAINTEED LLC,  
11 Defendants.

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

15 Plaintiffs, Adv. Pro. No.  
22-03000(JCW)  
16 vs.

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

19 Defendants.

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

21 CONFIDENTIAL VIDEOTAPED DEPOSITION OF SHERI BRUTSCH

22 New York, New York

23 April 25, 2024

24 Reported by: THOMAS A. FERNICOLA, RPR

25 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

19 April 25, 2024

20 3:50 p.m.

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

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2 A Yes, I did.

3 Q Who did you meet with?

4 A I spoke with each one of these  
5 individuals.

6 Q Okay. Thank you.

7 This is a document that I guess  
8 we'll need to admit.

9 Give me a second.

10 MS. GOULD: I have an extra  
11 copy. I'm going to give the witness  
12 back her copy I was going to hand  
13 you.

14 MS. HARDMAN: That would be  
15 great.

16 BY MS. HARDMAN:

17 Q So it looks like you have  
18 communicated with approximately 18  
19 people?

20 A That's correct.

21 (Plaintiffs' Exhibit 2, Notice  
22 of Deposition of DBMP, was marked for  
23 identification, as of this date.)

24 BY MS. HARDMAN:

25 Q I want to say one of which

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2 includes Mr. Starczewski?

3 A Yes.

4 Q We will admit this as  
5 Exhibit 2.

6 Did you review any documents  
7 with any one of these 18 people that you  
8 communicated with?

9 A No, I did not review any  
10 documents, but counsel conducted the  
11 information -- or the call, and the topic  
12 of the discovery was shared with them,  
13 Topic 1 and Topic 4.

14 Q And the counsel you're  
15 referring to?

16 A Was Gabrielle Gould.

17 Q So she joined you for the call  
18 or calls with these 18 individuals?

19 A Yes.

20 Q Was it one call with all 18?

21 A Yes.

22 Q Approximately how long was that  
23 call?

24 A The calls were approximately  
25 half an hour.

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2 business with anyone at the French  
3 parent?

4 MS. BLAKE: Objection.

5 MS. GOULD: Objection.

6 A Employees of Saint-Gobain  
7 receive emails and send emails, if it's  
8 within the scope of their roles and  
9 responsibilities, to individuals in  
10 Compagnie de Saint-Gobain.

11 Q Would it be fair to say more  
12 than 100 employees at Saint-Gobain North  
13 America send or receive information with  
14 the French parent?

15 MS. GOULD: Objection.

16 A I would not agree with that  
17 statement, no.

18 Q What part don't you agree with?

19 A I don't think that a hundred  
20 employees of the  
21 Compagnie de Saint-Gobain corporate LLC  
22 holdings and DBMP send emails to anyone  
23 at Compagnie de Saint-Gobain.

24 Q Would you think it's less?

25 A Yes, much less.

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2 Q Is there a closer number that  
3 you would estimate?

4 A Yes, I would estimate about 18.

5 Q You looked at Exhibit 2 when we  
6 discussed this question?

7 A That's right.

8 Q Would you believe that this  
9 list is compromised of the list of all  
10 employees at Saint-Gobain North America  
11 that communicate with the French parent?

12 MS. GOULD: Objection.

13 This is beyond the scope of her  
14 testimony.

15 Her testimony is not about the  
16 exchange of documents at Saint-Gobain  
17 North America; it's the extent to  
18 which defendants and Saint-Gobain  
19 parent exchanged documents.

20 You're asking her about any  
21 employee who works at North America.

22 MS. HARDMAN: We can walk  
23 through these. That's fine.

24 BY MS. HARDMAN:

25 Q So we're looking at Exhibit 2.

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2 calls and -- concerning reserves and the  
3 context of that call about a PowerPoint  
4 slide.

5 And I said: Is that all of the  
6 communication that Mr. Placidet has with  
7 the French parent?

8 MS. GOULD: Objection again as  
9 to --

10 MS. HARDMAN: Your objection is  
11 noted.

12 MS. GOULD: Okay. You reread  
13 the question, so I'm noting my  
14 objection for the record. Thank you.

15 A In terms of ordinary course of  
16 business, Eric Placidet is in charge of  
17 the controllers for the defendants.

18 And on a monthly basis, those  
19 controllers input information into SAP,  
20 which is the month close, and then that  
21 information is then uploaded into a  
22 system called Magnitude.

23 Q SAP is accounting software, as  
24 you understand it?

25 A Yes.

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2 Although Saint-Gobain Corp --

3 or Compagnie de Saint-Gobain has no

4 access to SAP, the Magnitude system is

5 their global consolidation -- financial

6 consolidation system for financial

7 reporting and for financial statements.

8 So on a monthly basis, the

9 controllers that report to Eric do this

10 upload of information.

11 There's no exchange of data

12 from CSG, Compagnie de Saint-Gobain, back

13 to Eric and his controllers in that

14 monthly close process.

15 Q It is just information loaded

16 from Saint-Gobain North America to the

17 Magnitude program, whether through SAP or

18 otherwise; is that correct?

19 MS. BLAKE: Objection.

20 BY MS. HARDMAN:

21 Q Maybe I misunderstood.

22 A Yes, the information is loaded

23 up into SAP, and then it is -- then it is

24 loaded up into Magnitude.

25 Q With respect to Mr. Placidet,

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2 A So Robert Panaro, during  
3 counsel's call and my call with him, he  
4 described that he reports pension  
5 information to Compagnie de Saint-Gobain  
6 and would create a PowerPoint  
7 presentation for that information that  
8 would be shared with the CSG board.

9 He also participates in a Teams  
10 group called Codiff (ph). And if there  
11 is a document uploaded to that Teams  
12 group, he would have access to that.

13 It's primarily best practices,  
14 shared projects by the directors of  
15 finance for the various regions.  
16 Mr. Panaro will report monthly to  
17 Jean-Dominique, who is the director of  
18 finance for Compagnie de Saint-Gobain on  
19 matters of importance, M&A, large  
20 litigation, DBMP.

21 There are no documents sent  
22 back to him on a monthly basis concerning  
23 these topics.

24 Q Would you like to go over  
25 Gerald Gillette?

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2 instant messaging programs in the  
3 ordinary course of business?

4 MS. GOULD: Same objection.

5 A I think some do use text  
6 messages.

7 Q When you refer to text  
8 messages, do you mean phone text  
9 messages?

10 A Yes, I'm referring to phone  
11 text messages.

12 Q Are you aware of Teams chat  
13 messaging programs?

14 A Yes.

15 Q Do Saint-Gobain North American  
16 employees exchange information in the  
17 ordinary course of business with CSG  
18 employees through chat messaging?

19 MS. GOULD: Objection. Beyond  
20 the scope.

21 A I think that some of the people  
22 on this list belong to Teams groups in  
23 which documents are posted to the Team  
24 group for collaboration and editing.

25 Q Could those documents be posted

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2 by Saint-Gobain North American employees?

3 A They could be, yes.

4 Q Could they also be posted by  
5 CSG employees?

6 A If the CSG employee started the  
7 Team group, yes.

8 Q If a CSG employee is in the  
9 Teams group but would like to upload a  
10 document, is it your understanding they  
11 cannot do so?

12 A You know, I'm not sure.  
13 I know that Teams groups  
14 involve certain permissions.

15 So it's not clear to me,  
16 sitting here today, whether any  
17 particular individual, whether it be  
18 Saint-Gobain or  
19 Compagnie de Saint-Gobain, have  
20 permission to post documents to any  
21 particular Teams group if they're not the  
22 owner of that group.

23 Q Understood. And I won't hold  
24 you to it as a non-tech Team member.

25 Do any of the employees at

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2 answer.

3 A Employees of Saint-Gobain Corp.  
4 do use Teams as a means of sharing  
5 documents with specific groups of people  
6 that are part of that team.

7 In my mind, Teams and  
8 SharePoint is very different from a share  
9 drive.

10 Q What do you understand a share  
11 drive to mean then?

12 A A share drive -- your computer  
13 has to be mapped to that share drive in  
14 order to have access to it.

15 The Teams and SharePoint, it's  
16 a Microsoft application that doesn't rely  
17 on being technically mapped to a share  
18 drive.

19 Q So we can stay on Teams, then,  
20 and SharePoint perhaps.

21 It is your understanding that  
22 CSG employees may access documents and  
23 exchange documents in the ordinary course  
24 of business with Saint-Gobain North  
25 America employees if they are part of the

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2 located on Exhibit 1. If you could take  
3 a look that.

4 And let me know when you've had  
5 a chance to read and review it.

6 A Okay.

7 Q So I'm going to ask you a few  
8 questions about secondees and  
9 Mr. Phelizon.

10 My first question is: Did you  
11 discuss with Mr. Phelizon this topic?

12 A Yes.

13 Q In preparation for the  
14 deposition?

15 A In preparation for the  
16 deposition.

17 Q Okay, great.

18 How many employees from CSG are  
19 currently seconded to Saint-Gobain North  
20 America?

21 MS. GOULD: Objection. Outside  
22 the scope.

23 A It's my understanding that one  
24 to two employees are seconded from France  
25 in a year, in any given year.

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2 Q Are you aware of how many are  
3 currently seconded?

4 MS. GOULD: Objection. Outside  
5 the scope.

6 A Same answer.

7 I believe it was one to two  
8 secondees that are in place in any given  
9 year in the U.S.

10 Q Can you identify the current  
11 secondees?

12 A No.

13 Q How many employees from CSG  
14 have been seconded since August 23, 2021?

15 MS. GOULD: Objection. Asked  
16 and answered.

17 A It's one to two a year.

18 Probably less given -- no, one  
19 to two a year since 2021.

20 That's my understanding.

21 Q You said probably less?

22 A Well, I was thinking of the  
23 pandemic. But you said 2021.

24 So I corrected myself.

25 It's one to two in a year.

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2 Q So we are in 2024.

3 So are we estimating  
4 approximately six secondees since  
5 August 23, 2021?

6 MS. GOULD: Objection.

7 A If there's one to two secondees  
8 in a year, they don't stay longer than a  
9 year.

10 So at any given time there's  
11 one to two.

12 Q So their secondee timeline is  
13 one year?

14 A Yes.

15 Q Is there a policy governing  
16 that length of time?

17 A It's a practice. I wasn't  
18 directed to a policy. It's a practice.

19 One to two secondees stay for  
20 less than 12 months in any given year.

21 Q You said you were directed to a  
22 practice; is that correct?

23 A That's the practice, as I  
24 understand it.

25 Q Who directed you to that

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2 MS. BLAKE: Objection.

3 A They don't.

4 Q They do not obtain access to  
5 the U.S. systems; is that correct?

6 A That's correct.

7 Q Do they maintain their access  
8 to CSG's systems?

9 A Yes.

10 Q If a seconded employee is in  
11 need of a new computer or a new mobile  
12 phone that is issued by CSG, how would  
13 they obtain the replacement?

14 MS. GOULD: Objection. Beyond  
15 the scope.

16 A They would have to go back to  
17 IT at Compagnie de Saint-Gobain for any  
18 new devices.

19 Q Where do the secondees from CSG  
20 work when on secondment to Saint-Gobain  
21 Corporation or its subsidiaries?

22 MS. GOULD: Objection. Beyond  
23 the scope.

24 A I don't know.

25 Q You don't know if they work in

1 S. Brutsch - Confidential  
2 Corporation, they must make a request of  
3 CSG; is that correct?

4 A That's correct.

5 Q Is the same true for documents  
6 or emails of CSG employees?

7 MS. BLAKE: Objection.

8 MS. GOULD: Objection.

9 A I'm not aware of any requests  
10 for Compagnie de Saint-Gobain documents  
11 or emails made by any Saint-Gobain  
12 Corporation or subsidiary.

13 Q I guess I'm not asking if any  
14 have been made.

15 I'm asking about the process to  
16 make sure I understand if the process is  
17 the same.

18 If you were to seek that kind  
19 of information, would it be through the  
20 same formal process?

21 MS. GOULD: Objection.

22 A I believe that, yes, if  
23 Saint-Gobain Corp. wanted CSG documents  
24 or emails from a Compagnie de  
25 Saint-Gobain employee, they would have to

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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

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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 certain global systems used within  
3 Saint-Gobain including Magnitude, What's  
4 Next, PeopleGroup, CapEx Plus and GAIA.

5 Do you remember testifying to  
6 those systems?

7 A Yes.

8 Q Do defendants exchange  
9 documents or information with  
10 Compagnie de Saint-Gobain through these  
11 systems?

12 A There's no exchange of  
13 Compagnie de Saint-Gobain data through  
14 the systems.

15 Saint-Gobain employees upload  
16 information into those systems, which can  
17 only be seen by  
18 Compagnie de Saint-Gobain.

19 They can only see their own  
20 information and no other region.

21 There's no exchange of  
22 documents during this process of closing  
23 the books and uploading information into  
24 these systems, in the ordinary course.

25 Q So is it fair to say that

1 S. Brutsch - Confidential  
2 whether it's the U.S. or North America  
3 region or business unit that's putting  
4 information into these systems, it has no  
5 visibility into information of  
6 Compagnie de Saint-Gobain through these  
7 systems?

8 MS. HARDMAN: Objection.

9 A Yes, that's correct.

10 You can only see North America  
11 information in the system.

12 Q We've talked a little bit about  
13 Jean-Francois Phelizon.

14 You testified earlier that as  
15 of August 2021, he was not a secondee at  
16 SGC, correct?

17 A Correct.

18 Q From August 2021 to the  
19 present, did Mr. Phelizon have the  
20 ability to access, physically or  
21 logically, or to obtain documents and  
22 electronically stored information from  
23 Compagnie de Saint-Gobain, its  
24 management, or its employees in the  
25 ordinary course of business?

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2 A Mr. Phelizon only had access to  
3 his emails.

4 And he had a USB stick of  
5 documents that he brought with him from  
6 France.

7 He did not have access to any  
8 other share drives of  
9 Compagnie de Saint-Gobain during this  
10 period of time.

11 Q Did Mr. Phelizon get a new U.S.  
12 issued laptop when he came to the U.S.  
13 from Compagnie de Saint-Gobain?

14 A Yes.

15 Q Did Mr. Phelizon get a new U.S.  
16 issued mobile phone when he came to the  
17 U.S. from Compagnie de Saint-Gobain?

18 A Yes.

19 Q Do persons seconded from  
20 Compagnie de Saint-Gobain to defendants  
21 or any affiliated U.S. entities bring  
22 their laptop from France and use that for  
23 the duration of their secondment?

24 MS. HARDMAN: Objection.

25 A Yes.

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2 Q Do persons seconded from  
3 Compagnie de Saint-Gobain to defendants  
4 or affiliated U.S. entities have the  
5 ability to access documents on  
6 Saint-Gobain North American shared  
7 servers?

8 MS. HARDMAN: Objection.

9 A No.

10 Q You testified secondees are  
11 employees who are here for less than a  
12 year; is that right?

13 A That's right.

14 Q Are you familiar with the term  
15 "expatriated employee"?

16 A Yes.

17 Q What do you understand that  
18 term to mean?

19 A I understand that an expat, as  
20 they're referred to, comes to this  
21 country for three, maybe four years.

22 They are uploaded into the  
23 PeopleGroup system as if they are a U.S.  
24 employee.

25 They follow the same onboarding

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2 process, execute a confidentiality  
3 agreement.

4 They're issued a U.S. laptop.

5 And if it's part of their job  
6 responsibilities, a U.S. phone.

7 And they are cut off from the  
8 host country, whether they be France or  
9 some other region, their documents. They  
10 only will have access to emails prior to  
11 coming to the U.S.

12 Q So you're saying they maintain  
13 their same Saint-Gobain email regardless  
14 of whether they were in France, or  
15 whether they're here in the U.S.; is that  
16 right?

17 A Yes. There's only one  
18 Saint-Gobain.com email address.

19 Q But other than that, the  
20 expatriate employees are otherwise unable  
21 to access their documents or other ESI  
22 from Compagnie de Saint-Gobain; is that  
23 right?

24 MS. HARDMAN: Objection.

25 A That's right.

1 S. Brutsch - Confidential

2 domain.

3 They have no ability to service  
4 or set up a laptop under a domain from  
5 another country.

6 For example, France is a ZA  
7 domain.

8 Individuals only have one  
9 domain at a time. You can't have dual.  
10 Very unusual.

11 Q Okay. So just so I understand  
12 it. So, then -- I'm sorry, I didn't mean  
13 to interrupt.

14 A I think that's kind of the sum  
15 or substance of what we talked about.

16 Q Just to be clear, is it that  
17 expatriate employees get a new laptop and  
18 have -- and on this new laptop they have  
19 a domain that is ZH. Does Z stand for  
20 zone?

21 A Yes.

22 Q Do they have a laptop that is  
23 set up for Zone H; is that correct?

24 A That's correct. And that would  
25 be done through Kyle Kerstner's team, IT

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

1 S. Brutsch - Confidential

2 18 here considered an expat?

3 A No.

4 Q Are you aware of how many  
5 expats exist at Saint-Gobain Corporation  
6 or its subsidiaries currently?

7 A In any given year, there are 16  
8 to 30 expats in the U.S.

9 Q Do you have any idea how many  
10 expats Saint-Gobain Corporation or its  
11 subsidiaries have had since August 23,  
12 2021?

13 A My understanding is, in any  
14 given year, there are 16 to 30 expats in  
15 the U.S.

16 Q When we discussed the domains,  
17 was that related to the expat setup  
18 process that Ms. Gould was referring to,  
19 the ZH and the ZA domains?

20 A It applies to expats and any  
21 Saint-Gobain employee.

22 Q You indicated both that it was  
23 unusual for an employee to have access to  
24 both ZA or ZH or more than one zone, but  
25 you also said that it's not possible.

1 S. Brutsch - Confidential

2 A It's not possible.

3 Q Why is it not possible?

4 MS. GOULD: Objection.

5 A It's not possible because IT  
6 user support cannot set an employee up on  
7 a ZA domain. They don't support a ZA  
8 domain.

9 Q You also testified with respect  
10 to Magnitude that DBMP and Millwork &  
11 Panel are not included; is that correct?

12 A That's correct.

13 Q I should clarify: In terms of  
14 reporting from Saint-Gobain Corporation  
15 and its affiliates; is that correct?

16 A Correct.

17 Q Do DBMP and Millwork & Panel  
18 provide any reporting to  
19 Compagnie de Saint-Gobain with respect to  
20 the information that would otherwise be  
21 found in Magnitude?

22 MS. BLAKE: Objection. Beyond  
23 the scope.

24 A No.

25 Q So they do not report any of

1 S. Brutsch - Confidential

2 Q So, in theory, he could access  
3 those now?

4 MS. BLAKE: Objection.

5 MS. GOULD: Objection.

6 A Yes.

7 Q Is it your understanding that  
8 Mr. Phelizon's computer is connected to  
9 the ZH domain?

10 A Yes.

11 Q Is it your understanding that  
12 since 2017, it has been connected to the  
13 ZH domain?

14 MS. GOULD: Objection. Beyond  
15 the scope.

16 Go ahead.

17 A Yes.

18 MS. HARDMAN: Anybody else?

19 I see nobody.

20 I think that's all my questions  
21 for you, Ms. Brutsch.

22 Do you have anything else?

23 I'll pause, because I think I  
24 jumped the gun the last time.

25 We can go off the record for a

# Exhibit C

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, )  
-v- ) Adv. Pro. No. 20-03004  
THOSE PARTIES LISTED )  
ON APPENDIX A TO )  
COMPLAINT and JOHN )  
AND JANE DOES 1-100, )  
Defendants. )

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

REMOTE VIDEO-RECORDED DEPOSITION OF ERIC PLACIDET

Wednesday, October 14, 2020

Reported by:

Gail L. Inghram Verbano,

BA, CRR, CLR, RDR, CSR-CA (No. 8635)

Job No. 184979

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October 14, 2020

9:34 a.m.

Remote video-recorded deposition  
of ERIC PLACIDET, held on the above date before  
GAIL INGRAM VERBANO, Notary Public, Registered  
Diplomate Reporter, Certified Realtime Reporter,  
Certified Shorthand Reporter-CA (No. 8635).

1 ERIC PLACIDET

2 MR. WYNER: Objection.

3 You can answer if you understand.

4 THE WITNESS: So my understanding  
5 of the question is, did I -- did I attend  
6 to meeting as part of this scheduling?

7 And the answer is yes.

8 BY MS. HARDMAN:

9 Q. Okay. Do you recall what happened  
10 in this meeting?

11 A. In this meeting, it's -- it was  
12 basically to report -- in fact, to people in  
13 Paris of what was the -- the status of the  
14 project, knowing that obviously the project was  
15 managed locally under the local responsibility.  
16 So here, again, a little bit as the financial  
17 reporting, it's just to -- to report so that  
18 people in Paris know, you know, what -- what we  
19 are doing and how the project is moving.

20 Q. Do you see that it has a weekly  
21 recurrence there at the top?

22 A. Yes.

23 Q. Do you recall having weekly  
24 meetings with this group of people including the  
25 Paris affiliates?

# 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. )  
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 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, et al. )  
 )  
 15 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

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October 7, 2020  
9:39 A.M.

REMOTE VIDEOTAPED DEPOSITION OF  
MARK A. RAYFIELD, held remotely from Stowe,  
Vermont, before Bonnie Pruszynski, a Registered  
Professional Reporter, Registered Merit Reporter,  
Certified Livenote Reporter, and Notary Public of  
the States of New York and Florida.

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?

# Exhibit E

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

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 )  
 6 In re ) Chapter 11  
 )  
 7 DBMP LLC, ) Case No. 20-30080 (JCW)  
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 8 Debtor. )  
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 9 ----- )  
 DBMP LLC, )  
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 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

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October 1, 2020  
9:45 A.M.

REMOTE VIDEOTAPED DEPOSITION OF  
MICHAEL T. STARCZEWSKI, held remotely from  
Malvern, Pennsylvania, before Bonnie Pruszynski, a  
Registered Professional Reporter, Registered Merit  
Reporter, Certified Livenote Reporter, and Notary  
Public of the States of New York and Florida.

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 Do you see that, paragraph five?

3 A. Yes.

4 Q. When did you first learn that DBMP  
5 was planning to file for bankruptcy?

6 A. It was an issue being discussed  
7 with the board of DBMP over several months.  
8 The decision to file the bankruptcy was made  
9 on Oc- -- sorry -- January 22nd of 2020.

10 Q. Who made that decision on  
11 January 22, 2020?

12 A. That was a unanimous decision by  
13 the board of members of DBMP -- board of  
14 managers. Excuse me.

15 Q. Were any other entities besides the  
16 board of managers for DBMP involved in the  
17 decision for DBMP to file for bankruptcy?

18 A. No. Over -- over the time period  
19 from the creation of DBMP until the decision  
20 to file bankruptcy, the board received  
21 information, but no one else was involved in  
22 that decision. That was the board.

23 Q. Do you know how the board came to  
24 the decision to file for bankruptcy?

25 A. Again, I can't speak to the