

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

<p>In re DBMP LLC,¹ 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>

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

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

Plaintiffs,

v.

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)

NOTICE OF FILING

PLEASE TAKE NOTICE OF THE FOLLOWING:

DBMP LLC, debtor and debtor in possession in the above-captioned case (the “Debtor”) has filed the *Debtor’s Brief Regarding Protocol for Filing Final Report of Discovery Referee* (the “Brief”)², attached hereto as Exhibit A, in Case No. 20-30080 (AAE) and Adv. Proc. No. 21-03023 (AAE). The relief requested in the Brief includes a request that such relief be granted in Adv. Proc. Nos. 22-03000 (AEE) and 22-03001 (AEE).

² Case No. 20-30080, Dkt. No. 3117; Adv. Pro. No. 21-03023, Dkt. No. 351.

Dated: April 3, 2025
Charlotte, North Carolina

Respectfully submitted,

RAYBURN COOPER & DURHAM, P.A.

/s/ John R. Miller, Jr.

John R. Miller, Jr. (NC 28689)
227 West Trade Street, Suite 1200
Charlotte, North Carolina 28202
Telephone: (704) 334-0891
Facsimile: (704) 377-1897
E-mail: jmiller@rcdlaw.net

Michael H. Goldstein (admitted *pro hac vice*)
Howard S. Steel (admitted *pro hac vice*)
Douglas H. Flaum (admitted *pro hac vice*)
Gabrielle 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
hsteel@goodwinlaw.com
dflaum@goodwinlaw.com
ggould@goodwinlaw.com
sdasaro@goodwinlaw.com

Attorneys for the Non-Debtor Affiliates

EXHIBIT A

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

In re:

DBMP LLC,¹

Debtor.

Chapter 11

Case No. 20-30080 (AAE)

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

Plaintiffs,

v.

DBMP LLC and CERTAINTEED LLC,

Defendants.

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

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

Plaintiffs,

v.

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

Defendants.

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

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

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

Plaintiffs,

v.

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

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

Defendants.

**DEBTOR'S BRIEF REGARDING PROTOCOL
FOR FILING FINAL REPORT OF DISCOVERY REFEREE**

DBMP LLC (the "Debtor" or "DBMP"), the debtor and debtor in possession in the above-captioned chapter 11 case and a defendant in one of the above-captioned Adversary Proceedings, respectfully requests that this Court direct that the final Report and Recommendation (the "Final Report") of the Discovery Referee (the "Referee") be filed in compliance with this Court's express instructions in its order appointing the Referee and in the same way that the

Referee filed his Initial Report and Recommendation—on the public docket and without revealing the content of any assertedly privileged information.²

INTRODUCTION AND BACKGROUND

In August 2021, Plaintiffs moved to compel production of numerous documents protected from production by the attorney-client privilege or attorney work product doctrine.³ DBMP and its non-debtor affiliates objected,⁴ and Judge Whitley denied Plaintiffs' motion without prejudice. *See* Jan. 6, 2022 Hr'g Tr. 28:5-9, 37:20-21. Judge Whitley, however, explained that he had not had the opportunity to conduct any *in camera* review that might be appropriate, and he encouraged the parties to “figure out a mechanism” to deal with their disputes. *Id.* 22:1, 28:2-4.

The parties then agreed to an *in camera* review in which Judge Whitley examined a sample of withheld documents and deposition excerpts. After this review, Judge Whitley explained it would not be “cost effective for the Court” to conduct a comprehensive review of all privileged materials. *See* Oct. 31, 2022 Hr'g Tr. 153:15-23, 155:2-5, 156:9-15. Plaintiffs then proposed that Judge Whitley appoint a referee to draft a report and recommendation on three discrete issues, which report and recommendation the Court would review *de novo* and adopt, reject, or modify after receiving briefing and argument from the parties. *See* Nov. 16, 2022 Hr'g Tr. 41:24-44:12.⁵

² *See Order Appointing Disc. Ref. & Establishing Protocol for Res. of Crime-Fraud/Waiver Mot.*, Dkt. 2290; Adv. Pro. No. 21-3023, Dkt. 200; Adv. Pro. No. 22-3000, Dkt. 171; Adv. Pro. No. 22-3001, Dkt. 145 (“Appointment Order”).

³ *See Pl.'s Mot. to Compel Discovery Pursuant to the Crime-Fraud Exception and/or Waiver of the Attorney Client Privilege and Work Product Protection* [Dkt. 1006].

⁴ *See Debtor's Obj.* [Dkt. 1071] and *Obj. of Certain Teed LLC and Saint-Gobain Corp* [Dkt. 1071]. The holders of the privilege for certain of the documents were certain of DBMP's non-debtor affiliates.

⁵ Judge Whitley explained that the role of any referee would have to be limited because “special masters are not allowed in bankruptcy cases” but noted that a referee or “mediator[.]” would be helpful “unless [the parties are] willing to wait a year while we [that is, the Court and its staff] work through all of [the documents].” Oct. 31, 2022 Hr'g Tr. 154:23-155:16; *see also* Fed. R. Bankr. P. 9031 (“Fed. R. Civ. P. 53 [regarding appointment of masters] does not apply in a bankruptcy case.”); *In re Gordon Props., LLC*, 514 B.R. 449, 462-63 (Bankr. E.D. Va. 2013) (special masters not permitted in bankruptcy cases).

On February 16, 2023, Judge Whitley appointed retired North Carolina state court Judge Forrest D. Bridges as an independent referee to address three discovery disputes: (1) the sufficiency of DBMP’s privilege log; (2) the applicability of the crime-fraud exception to attorney-client privilege; and (3) whether an at-issue waiver of attorney-client privilege had occurred. The Appointment Order directs that the Referee shall address those disputes without “engag[ing] in *ex parte* communications with the Court” and that his reports and recommendations “shall be filed on the docket,” shall be “served on the parties,” and “shall not reveal the content of any assertedly privileged information.” Appointment Order ¶¶ 12, 13.⁶

One year later, on March 4, 2024, the Referee submitted his Initial Report. It complied with the filing and service requirements in the Appointment Order. It was filed on the public docket, served on all parties, and did not reveal any privileged information. The Initial Report, however, addressed only at-issue waiver—and only in the context of identified deposition questions and instructions not to answer on privilege grounds. It did not otherwise address the three referred disputes.⁷ At the request of the Debtor, Judge Whitley determined that the parties should wait to file objections to this and later reports until after the Referee had filed his last report and had addressed all three of the disputes submitted to him. *See* Adv. Pro. No. 21-03023, Dkt. 304; Adv. Pro. No. 22-03000, Dkt. 248; Adv. Pro. No. 22-03001, Dkt. 214.

One year after that, on March 7, 2025, the Referee announced by email to the parties that he had finished his work and that his Final Report was ready to be filed. That work consists of an 80-page Final Report; its Appendix A (120 pages in length), which is a reference guide that lists

⁶ The Appointment Order confirmed that this Court would “retain exclusive jurisdiction over any and all matters arising from or related to the implementation, interpretation, or enforcement of this Order.” ¶ 18.

⁷ The Initial Report also addressed, *sua sponte*, a number of other discovery-related issues that were *not* authorized by the Appointment Order and had never been briefed or argued by the parties.

many but not all documents that the Debtor withheld from production and logged as privileged and the Referee's recommended ruling on each; and 550 pages of additional "detailed notes" about the documents he reviewed and "the basis for each [recommended] ruling," which notes, due to their length, are set out in four Appendices, labeled B-E (the "Notes"). *See* March 7, 2025 Email from Referee to Counsel for Parties (attached as Exhibit A). The Referee anticipated that the parties may have concerns about this work product and sought the parties' input on what protocol should be followed for filing: "Given that we are dealing with matters in which privilege is claimed, I anticipate some concerns about precautions that may need to be taken in the manner in which the filing is made." *Id.*

In a March 10, 2025 video conference with all parties, the Referee confirmed that: The Final Report quotes from assertedly privileged documents; Appendix A does not quote from assertedly privileged documents or otherwise reveal privileged content; and the Notes are replete with assertedly privileged information. The parties shared initial views of how to address these matters and committed to meet and confer further and then to schedule a follow-up conference with the Referee. The parties met and conferred on March 12, 2025, thereafter exchanged written proposals to address the Referee's disclosures, and on March 21, 2025, submitted to the Referee competing proposals. *See* March 21, 2025 Emails from Counsel for Parties to Referee (attached, together, as Exhibit B).

DBMP (joined by the other defendants in the two active adversary proceedings) proposed that the Referee follow the requirements of paragraphs 12 and 13 of the Appointment Order as described above: The Referee should review his Final Report and make revisions required to eliminate assertedly privileged information and then provide the Defendants with 10 days to conduct a pre-filing review to confirm that privileged information was eliminated. *Id.* Then, the

Final Report and its Appendix A should be filed on the docket for all to see and address. *Id.* His hundreds of pages of Notes, rife with privileged content, should neither be filed nor submitted to the Court *in camera* or otherwise. *Id.*

Plaintiffs proposed that the Referee should submit to this Court, *ex parte* for *in camera* review and without amendment, all 750 pages of his writings—the Final Report (without modification), its Appendix A, and the Notes—“along with proposed highlights for where [he] recommends redactions [for privilege] be made.” *Id.* Plaintiffs further proposed that DBMP would then “have 10 days to advise the Court” whether it agreed with those redactions. *Id.* It is unclear whether Plaintiffs argue that only the Final Report and Appendix A, as redacted, should be filed or if they also contend that all 550 pages of the Notes, presumably with myriad redactions, should be filed on the docket, as well. But what is clear is that Plaintiffs believe the Notes should be submitted to and reviewed by this Court.

On March 24, 2025, the parties convened again with the Referee via video conference and discussed their competing proposals. The Referee shared that since the earlier conference, he had stripped from the Final Report quotations from assertedly privileged documents but allowed that “reasonable minds could differ” over whether his second and revised edition of the Final Report eliminated all assertedly privileged content. The Referee then confirmed that his Notes (Appendices B-E) are filled with assertedly privileged information and could not practicably be edited to eliminate privileged content. The Notes, therefore, could not be shared with the Plaintiffs without revealing that content. No agreement on the filing protocol was reached. The Referee,

however, agreed to refrain from filing or submitting his work product until this Court has considered the parties' views and provided further direction.⁸

There are good reasons the Appointment Order requires a public filing and prohibits an *ex parte* submission to the Court. For one, a judge's notes are not reviewable material. They are akin to drafts of opinions or a law clerk's memoranda that are not part of the record. For another, an *ex parte* submission to this Court of the Notes offends due process, the principle of party presentation, and the presumption of public access to judicial opinions. Our system does not permit courts to address and rule on issues in dispute when one or both parties are prohibited from seeing and addressing the analysis that the court is asked to adopt or reject. Neither party could frame or argue the issues fully and the court and the public would be without the benefit of that effort.⁹

The Final Report and its Appendix A, once free of assertedly privileged information, should be filed on the public docket, and no other materials should be filed or submitted by the Referee.

ARGUMENT

I. Submission of the Notes Would Violate the Appointment Order.

Two parts of the Appointment Order prohibit submission of the Referee's Notes: (1) the prohibition on "*ex parte* communications with the Court relating to the matters to be addressed in the Report(s)," ¶ 12; and (2) the requirement that the Report "not reveal the content of any assertedly privileged information," ¶ 13. Sharing the Notes with this Court *in camera* would be a forbidden *ex parte* communication—that is, a communication from which one and perhaps both

⁸ The Debtor sees no need for the Referee to attend the hearing on April 10, 2025. There is no dispute over the form and presence of assertedly privileged content in what he has generated, only if and how to present it to the Court and the parties in compliance with the Appointment Order.

⁹ Under ¶ 16 of the Appointment Order, this Court may review *in camera* the assertedly privileged *documents* themselves. It is only the Referee's sealed *analysis* that would be a prohibited *ex parte* "communication."

parties would be excluded. And, because the Notes unalterably convey privileged information, the Notes cannot be filed publicly or otherwise disclosed to Plaintiffs.

Plaintiffs have suggested that the April 2020 Protective Order—which the Appointment Order references—somehow addresses or ameliorates concerns over the prohibition on *ex parte* communication. This misapprehends the purpose of the Protective Order. The Protective Order governs the marking, production, and use of *confidential* information—not *privileged* information. In compliance with the provisions of the Protective Order, confidential information (trade secrets and other confidential personal and business information) may be produced to all parties (but not disclosed further) and reviewed by the Court under seal. Privileged information is neither marked nor produced in the first place. It is protected from disclosure entirely. And even if the Protective Order’s provisions regarding filings under seal somehow governed, those provisions cannot remedy the fact that not all parties could see all of the content of any sealed filing or submission.

The Appointment Order is clear: The Referee’s Notes cannot be submitted to this Court. To the extent the Notes contain *analysis* critical to the Referee’s recommendations, that analysis may be transferred from the Notes to the Final Report, with adjustments made to ensure that no privileged information is revealed. That would ensure that the Final Report contains only relevant judicially reviewable material, accessible to all parties. The Referee produced just such a recommendation in his first report—this one should be no different.

II. It Would be Improper to Permit Submission of the Notes.

A. The Notes Are Not Judicially Reviewable.

Appellate courts have long recognized that lower court judges’ notes containing “observations and comments” about a case “are not part of the record,” do not “constitute findings of fact,” and are not reviewable “on appeal.” *Deep Sea Tankers v. The Long Branch*, 242 F.2d 433, 434 (2d Cir. 1957) (deceased trial judge’s handwritten notes not reviewable). Parties and

higher courts thus have “no entitlement to review” a magistrate’s, referee’s, or lower-court judge’s “personal notes.” *Datto v. Harrison*, 506 F. App’x 160, 165 (3d Cir. 2012). A reviewing court instead must “decide all questions” based on “the cold record before [it], and without any reference to any notes or memoranda” made by another judge. *Deep Sea Tankers*, 242 F.2d at 434.

In keeping with those principles, courts consistently refuse to consider “internal deliberative documents” created by a judge or arbiter that did not make it into the judge’s “final decision.” *Progress Bulk Carriers v. Am. S.S. Owners Mut. Prot. & Indem. Ass’n, Inc.*, 2014 WL 6749193, at *3 (S.D.N.Y. Nov. 18, 2014) (collecting cases). These documents are “the equivalent of one of the parties to a lawsuit asking that [a] law clerk’s draft of a decision be made part of the record in connection with the filing of objections or an appeal”—a request that “obviously would be absurd.” *Id.*

The Referee’s own description of his volumes of Notes confirms that they are informal work product. They are neither part of the record nor included within the body of the Final Report. Instead, they are “notes,” *Datto*, 506 F. App’x at 165, reflecting the Referee’s internal deliberations, “observations,” and “comments,” *Deep Sea Tankers*, 242 F.2d at 434—none of which are appropriate for judicial review. Their relevance, if any, to the Final Report is unknown to the parties and may not be apparent to this Court, even if the Court were to review them. *Cf. Baxter Int’l, Inc. v. Abbott Lab’ys*, 297 F.3d 544, 548 (7th Cir. 2002) (Easterbrook, J.) (documents should not be made part of record on appeal “when they contribute little to the resolution of the case” and “are too voluminous to justify detailed examination on appeal”). The Notes are not judicially reviewable. That would be true even if the Notes were available to all parties—but they cannot be, which creates additional problems.

B. *Ex Parte* Submission of the Notes Would Offend Due-Process, Party-Presentation, and Public-Access Principles.

The American adversarial system rests on the rule of party presentation: Judges are not to act as inquisitors but instead “rely on the parties to frame the issues for decision.” *United States v. Sineneng-Smith*, 590 U.S. 371, 375 (2020). The prohibition on *ex parte* communications is a “fundamental[]” component of “due process” principles, in general, and of the party-presentation rule, in particular—it guarantees that the judge’s decision-making is based on neutral principles that all parties can consider and, if necessary, challenge on appeal. *RZS Holdings AVV v. PDVSA Petroleo S.A.*, 506 F.3d 350, 356-57 (4th Cir. 2007). Because they “present substantial due process concerns,” *ex parte* communications are “greatly disfavored.” *Id.*

Out of respect for those concerns, appellate courts have emphasized that lower courts *must* “**avoid *ex parte* communications with anyone** associated with the trial, **even [the court’s] own appointed expert.**” *United States v. Craven*, 239 F.3d 91, 102 (1st Cir. 2001) (emphases supplied) (quoting *United States v. Green*, 544 F.2d 138, 146 n. 16 (3d Cir. 1976)). The “appropriate way” for a court to communicate with one of its appointees is either through an “on-the-record conference,” *Green*, 544 F.2d at 146 n. 16, or “written reports, copies of which shall become part of the record and shall be made available to all parties or their attorneys,” *Bradley v. Milliken*, 620 F.2d 1143, 1158 (6th Cir. 1980).

The same is true in bankruptcy. “The prohibition on *ex parte* communications” between bankruptcy judge and a neutral referee—like those between a district court and its special master or magistrate—“is directly related” to the referee’s “adjudicatory role.” *In re Gordon Props., LLC*, 514 B.R. at 462-63. That is because the referee’s adjudicatory role is premised on his own and the bankruptcy judge’s *neutrality*—neutrality that could be questioned if a referee were permitted to supply secret, off-the-record reasons for his decisions. *See RZS Holdings*, 506 F.3d at 356-57.

The parties cannot meaningfully brief objections to the Final Report if it relies on secret reasoning. This is true even if the Notes and their commentary and analysis are kept from only *one* of the parties: DBMP could not explain fully why it objects to *ex parte* analysis that is not available to Plaintiffs because DBMP may have to disclose contents of the Notes to do so. And this Court’s own review necessarily would be impaired by the absence of adversarial briefing on the *ex parte* submission.

Ex parte submission of the Notes also would transgress the public’s “well settled” “right of access” to judicial opinions. *Doe v. Pub. Citizen*, 749 F.3d 246, 265, 270 (4th Cir. 2014). “Any step that withdraws an element of the judicial process from public view makes the ensuing decision look more like a fiat” and is strongly disfavored. *Id.* at 266. That is true “even where all of the litigants support a motion to seal.” *Benedict v. Hankook Tire Co. Ltd.*, 323 F. Supp. 3d 747, 754 (E.D. Va. 2018) (cleaned up). Thus, while there is precedent for redacting judicial opinions in extraordinary cases involving, for example, “risks to national security,” the Fourth Circuit does not permit lower courts to issue “sweeping redactions to [an] *opinion*” or “*analysis*” in ordinary civil cases. *Pub. Citizen*, 749 F.3d at 255, 269-70 (emphases supplied).

CONCLUSION

For these reasons, DBMP respectfully requests that this Court direct the Referee to (1) modify his Final Report and Appendix A to remove any assertedly privileged information, (2) permit Defendants a 10-day pre-filing review period to confirm that they agree that the removal is complete, and, thereafter (3) file his Final Report and its Appendix A on the docket. DBMP further requests that this Court direct the Referee not to file his Notes or submit them to the Court in any other way.

Dated: April 3, 2025
Charlotte, North Carolina

Respectfully submitted,

/s/ Garland S. Cassada

Garland S. Cassada (NC Bar No. 12352)
Richard C. Worf, Jr. (NC Bar No. 37143)
ROBINSON, BRADSHAW & HINSON, P.A.
600 South Tryon Street, Suite 2300
Charlotte, North Carolina 28202
Telephone: (704) 377-2536
Facsimile: (704) 378-4000
E-mail: gcassada@robinsonbradshaw.com
rworf@robinsonbradshaw.com

Gregory M. Gordon (TX Bar No. 08435300)
JONES DAY
2727 North Harwood Street, Suite 500
Dallas, Texas 75201
Telephone: (214) 220-3939
Facsimile: (214) 969-5100
E-mail: gmgordon@jonesday.com
(Admitted *pro hac vice*)

Jeffrey B. Ellman (GA Bar No. 141828)
JONES DAY
1221 Peachtree Street, N.E., Suite 400
Atlanta, Georgia 30361
Telephone: (404) 581-3939
Facsimile: (404) 581-8330
E-mail: jbellman@jonesday.com
(Admitted *pro hac vice*)

ATTORNEYS FOR DBMP LLC

EXHIBIT A

From: Don Bridges <fdonbridges@yahoo.com>
Sent: Friday, March 7, 2025 2:48 PM
To: Ellman, Jeffrey B. <jbellman@jonesday.com>; Carrie Hardman <chardman@winston.com>; David Neier <dneier@winston.com>; Natalie D. Ramsey <nramsey@rc.com>; Davis L. Wright <dwright@rc.com>; Rob Cox <rcox@lawhssm.com>; Kevin Maclay <kmaclay@capdale.com>; Todd Philips <tphillips@capdale.com>; Sharon Zieg <szieg@ycst.com>; Erin E. Edwards <erin.edwards@troutman.com>; Felton E. Parrish <fparrish@ycst.com>; Sean Greecher <sgreecher@ycst.com>; Perez, Isel M. <jperez@jonesday.com>; Gordon, Gregory M. <gmgordon@jonesday.com>; Jones, James M. <jmjones@jonesday.com>; Garland Cassada <gcassada@robinsonbradshaw.com>; Gabrielle L. Gould <ggould@goodwinlaw.com>; Jack Miller <jmiller@rcdlaw.net>; Howard Steel <hsteel@goodwinlaw.com>
Subject: Filing of Final Report

This Message Is From an Untrusted Sender

You have not previously corresponded with this sender.

If you are concerned about the message's content, highlight the email in your inbox and click "Report Suspicious" in the Outlook ribbon -or- contact 6Help.

Report Suspicious

Dear Counsel,

This message is to inform you that I have now completed our work on the Final Report relating to the Order Appointing Discovery Referee in this matter. During the next few days I intend to communicate with the Clerk's office on the details for the submission of the Report and Appendices, which altogether are quite voluminous. The Report itself is not very long, approximately 80 pages, but I have a total of 4 attached Appendices.

Appendix A is a quick reference guide, consisting of a listing of the documents, the recommended ruling on each and a short description of the basis for the recommendation. 120 pages

Appendices B through E and more detailed notes on the documents, the analysis of those documents, the recommended rulings and the basis for each ruling. These four Appendices are approximately 550 pages.

Prior to submitting these documents to the Court, I wanted to advise you of the current status. Given that we are dealing with matters in which privilege is claimed, I anticipate some concerns about precautions that may need to be taken in the manner in which the filing is made.

Please consult with each other and let me know of any procedures that you wish to have followed in this regard. I do not plan to submit these documents before sometime next week, nor do I feel it necessary to follow any specific deadline, other than our mutual desire to complete this process.

I am happy to arrange a Zoom meeting or conference call with some or all of you to address any issues on which you have concerns.

Thank you for your attention in this regard.

Don Bridges

EXHIBIT B

From: Hardman, Carrie <CHardman@winston.com>
Sent: Friday, March 21, 2025 2:24 PM
To: Jones, James M.; Don Bridges; Neier, David; Natalie D. Ramsey; Davis L. Wright; Rob Cox; Kevin Maclay; Todd Philips; Sharon Zieg; Felton E. Parrish; Sean Greecher; Perez, Isel M.; Gordon, Gregory M.; Garland Cassada; Gabrielle L. Gould; Jack Miller; Howard Steel; Ellman, Jeffrey B.
Subject: RE: DBMP: Filing of Final Referee Report

This Message Is From an External Sender

If you are concerned about the message's content, highlight the email in your inbox and click "Report Suspicious" in the Outlook ribbon -or- contact 6Help.

Report Suspicious

Judge Bridges:

As Mr. Jones notes below, the parties did not reach agreement on the protocol for filing your Report. We did agree, however, that each side should share with you its position before our conference on Monday morning. We are happy to discuss the parties' thoughts on the matter on Monday.

In short, it is the Plaintiffs' position that the existing order requires submission of your Final Report, in its original form, for review by the Court. The existing order does not prohibit you from submitting your unredacted report for *in camera* review. Among other things, paragraph 13 of the discovery referee order provides that the submission of the report will comply with the existing Protective Order which contemplates that filings containing confidential information will be redacted with unredacted versions being submitted to the Bankruptcy Court *in camera*.

Accordingly, Plaintiffs propose the following procedure:

Plaintiffs' Proposal

- Plaintiffs do not believe that it is either necessary or appropriate to modify the Final Report, or in any way impair the Bankruptcy Court's review of the Discovery Referee's Final Report in full.
- On or before March 31, 2025, Judge Bridges files the entire Final Report and all Appendices under seal with the unredacted version submitted to the Bankruptcy Court for *in camera* review, along with proposed highlights for where Judge Bridges recommends redactions be made.
- Defendants have 10 days to advise the Court of their proposed redactions to the Final Report and all Appendices.

We look forward to discussing with you further on Monday.

Best,
Carrie

Carrie Hardman

Partner

Winston & Strawn LLP

T: +1 212-294-6700

D: +1 212-294-5391

M: +1 518-424-2876

F: +1 212-294-4700

winston.com

Pronouns: She, Her, Hers



From: Jones, James M. <jmjones@jonesday.com>

Sent: Friday, March 21, 2025 2:02 PM

To: Don Bridges <dbridges@yahoo.com>; Neier, David <DNeier@winston.com>; Natalie D. Ramsey <nramsey@rc.com>; Davis L. Wright <dwright@rc.com>; Rob Cox <rcox@lawhssm.com>; Kevin Maclay <kmaclay@capdale.com>; Todd Philips <tphilips@capdale.com>; Sharon Zieg <szieg@ycst.com>; Felton E. Parrish <fparrish@ycst.com>; Sean Greecher <sgreecher@ycst.com>; Perez, Isel M. <iperez@jonesday.com>; Gordon, Gregory M. <gmgordon@jonesday.com>; Garland Cassada <gcassada@robinsonbradshaw.com>; Gabrielle L. Gould <ggould@goodwinlaw.com>; Jack Miller <jmiller@rcdlaw.net>; Howard Steel <hsteel@goodwinlaw.com>; Ellman, Jeffrey B. <jbellman@jonesday.com>; Hardman, Carrie <CHardman@winston.com>

Subject: DBMP: Filing of Final Referee Report

Judge Bridges: As you may know from a contemporaneous note from Ms. Hardman, the parties did not reach agreement on the protocol for filing your Report. We did agree, however, that each side should share with you its position before our conference on Monday morning.

The position of DBMP and its non-debtor affiliates on the filing of your Report is not materially different than I stated it during our conference of March 10. We respectfully ask that you follow the dictates of the February 16, 2023 Order Appointing Discovery Referee.

1. Paragraph 13 of that Order directs that your Report “shall be filed on the docket” and “served on the parties”; that it shall be subject to the confidentiality strictures of the Protective Order; and that it “shall not reveal the content of any assertedly privileged information.” (Emphasis supplied.)
2. Paragraph 12 of that Order directs that “[t]he Discovery Referee shall not engage in ex parte communications with the Court relating to the matters to be addressed in the Report(s) and Recommendation(s).” (Emphasis supplied.)
3. To follow these dictates, we respectfully ask that you review and adjust the text of your Report and its Appendix A (the list of document-by-document determinations) so that the text of neither of these filings reveals the content of any assertedly privileged information.
4. Counsel for DBMP and its non-debtor affiliates request that they be permitted ten (10) days before the filing of the Report and Appendix A to review them and confirm that DBMP and its non-debtor affiliates agree that no privileged content is revealed. If DBMP or its non-debtor affiliates have concerns about the disclosure of privileged content, they will inform you within those ten days, copying counsel for plaintiffs (without disclosing any privileged content) and suggesting adjustments to avoid the disclosure. If there remains a difference of opinion about privileged content revelation, which difference I would not anticipate, the parties can inform the Court and request its intervention to resolve it.
5. We further request that you neither file on the docket nor submit to the Court, *in camera* or otherwise, your Appendices B through E. As you have informed us, these “detailed notes”

convey privileged content. They, therefore, cannot be shared with plaintiffs, and sharing them with the Court would be an *ex parte* communication—one made without disclosure to all parties. These notes also are not judicially reviewable material. They are akin to the notes, observations, or comments of a lower court or its judicial clerks that are not a part of the record.

Should you, however, determine that it is advisable to proceed other than as prescribed in the Order, we ask that you refrain from making any filing or submission until the parties can address that determination with Judge Edwards.

Thank you for all of your effort and consideration in this matter, and we look forward to discussing this with you and our colleagues on Monday March 24, 2025, at 10:00 a.m.

James M. Jones ([bio](#))
Partner
[JONES DAY® - One Firm WorldwideSM](#)
250 Vesey Street
New York, NY 10281-1047
Office +1.212.326.7838

This e-mail (including any attachments) may contain information that is private, confidential, or protected by attorney-client or other privilege. If you received this e-mail in error, please delete it from your system without copying it and notify sender by reply e-mail, so that our records can be corrected.

The contents of this message may be privileged and confidential. If this message has been received in error, please delete it without reading it. Your receipt of this message is not intended to waive any applicable privilege. Please do not disseminate this message without the permission of the author. Any tax advice contained in this email was not intended to be used, and cannot be used, by you (or any other taxpayer) to avoid penalties under applicable tax laws and regulations.