Exhibit 6

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UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
Charlotte Division

In re:	:	Case No. 10-BK-31607
GARLOCK SEALING TECHNOLOGIES, LLC, *et al.*,	:	Chapter 11
Debtors.[1]	:	Jointly Administered

JOINT MOTION OF THE OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS AND THE FUTURE CLAIMANTS REPRESENTATIVE FOR LEAVE TO CONTROL AND PROSECUTE CERTAIN CLAIMS AS ESTATE REPRESENTATIVES

The Official Committee of Asbestos Personal Injury Claimants (the "**ACC**") and Joseph W. Grier, III, in his capacity as the Legal Representative for Future Asbestos Claimants (the "**FCR**," and together with the ACC, the "**Movants**"), hereby move, pursuant to 11 U.S.C. §§ 105(a), 1103(c)(5), 1106, 1107(a), and 1109(b), for entry of an order of this Court designating the ACC and the FCR as co-representatives of the estate of Garlock Sealing Technologies LLC ("**Garlock**"), clothed with the authority of trustees in lieu of the debtors-in-possession, for the purposes of filing and prosecuting for the benefit of Garlock's estate and creditors all claims set forth in the proposed Complaint, which is annexed hereto as **Exhibit A**, or any amendment thereof that the Court may permit.

The grounds supporting this Motion are set forth in detail in the *Memorandum of the Official Committee of Asbestos Personal Injury Claimants and the Future Claimants Representative in Support of Their (I) Motion for Leave to Control and Prosecute Certain*

[1] The Debtors are Garlock Sealing Technologies LLC, Garrison Litigation Management Group, Ltd., and The Anchor Packing Company.

Claims as Estate Representatives, and (II) Motion to Lift Injunction to Permit Such Claims to Proceed (the "**Memorandum**"), which is being filed concurrently with this Motion and is incorporated by reference as if set forth fully herein.

WHEREFORE, for the reasons set forth in the Memorandum, the ACC and the FCR respectfully request that this Court (a) grant this motion in its entirety; (b) enter the proposed order in the form annexed hereto, designating the ACC and the FCR as representatives of Garlock's estate and clothed with the powers of a bankruptcy trustee for purposes of filing and prosecuting a complaint substantially in the form annexed hereto as **Exhibit A**; and (c) grant to the ACC and the FCR such other and further relief as this Court deems just and appropriate.

Dated: April 30, 2012

Respectfully submitted,

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Exhibit 7

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:	:	Chapter 11
PADDOCK ENTERPRISES, LLC,	:	Case No. 20-10028 (LSS)
Debtor.[1]	:	**Re: Docket No. 113**

THE OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS' OPPOSITION TO THE UNITED STATES TRUSTEE'S MOTION TO APPOINT AN EXAMINER

The Official Committee of Asbestos Personal Injury Claimants ("**Committee**" or "**ACC**"), by and through its undersigned counsel, hereby opposes, for the reasons that follow, the *United States Trustee's Motion for an Order Directing the Appointment of an Examiner* (D.I. 113) ("**Motion**") filed by the United States Trustee for Regions 3 and 9 ("**UST**") on February 24, 2020.

PRELIMINARY STATEMENT

The Motion filed by the UST has two parts. The first is the assertion that an examiner should be appointed to examine the so-called Modernization Transaction ("**Restructuring Transaction**"). This request is premature at best and an inappropriate interference with the Committee's role in examining that same transaction. The Committee does not at this time, and may never, need the assistance of an examiner to review the Restructuring Transaction; the Committee is both statutorily authorized to, and has the professionals and resources to, investigate that transaction fully. Indeed, the Committee is the most motivated to do so, and has already commenced that investigation.

[1] The last four digits of the Debtor's federal tax identification number are 0822. The Debtor's mailing address is One Michael Owens Way, Perrysburg, Ohio 43551.

The second is that an examiner should be appointed to investigate the extent to which "the Debtor was paying questionable asbestos claims prior to bankruptcy." This is an inappropriate and unlawful misuse of the Bankruptcy Code's examiner provision, as explained below. The idea that the Debtor will not be vigilant enough in attacking its creditors, who in this case are dying asbestos victims or their survivors, and thus needs an examiner to be appointed to do so, is an absurd position for the UST to take here. Nor does the Court need to appoint an examiner to make plan objections that the government has made itself in other cases.

ARGUMENT

I. THIS COURT HAS THE DISCRETION TO DENY THE MOTION

In support of its Motion, the UST relies principally on 11 U.S.C. § 1104(c)(2) to contend that appointment of an examiner is mandatory. This argument is incorrect for at least two reasons.

A. This Court Has Discretion Over Whether an Investigation Is "Appropriate"

The Code does not, as the UST argues, mandate the appointment of an examiner. Statutes must be construed as a whole and not by cherry-picking individual words. *United States v. Cooper*, 396 F.3d 308, 313 (3d Cir. 2005) ("[W]hen 'interpreting a statute, the court will not look merely to a particular clause in which general words may be used, but will take in connection with it the whole statute. . . .'" (quoting *Kokoszka v. Belford*, 417 U.S. 642, 650 (1974))); *see also Tavarez v. Klingensmith*, 372 F.3d 188, 190 (3d Cir. 2004) (referencing the "cardinal rule that a statute is to be read as a whole, . . . since the meaning of statutory language, plain or not, depends on context" (internal quotation marks omitted) (quoting *King v. St. Vincent's Hosp.*, 502 U.S. 215, 221 (1991))). Although § 1104(c) does include the words "the court shall order the appointment of an examiner," this language must be construed along with the remaining words of that sentence, "to conduct such an investigation of the debtor *as is appropriate*." § 1104(c) (emphasis added).

This interpretation of the statutory language is supported by the legislative history of the statute. The "standards for the appointment of an examiner are the same as those for the appointment of a trustee; the protection must be needed, and the costs and expenses must not be disproportionately high." H.R. REP. NO. 95-595, at 403 (1977), *as reprinted in* 1978 U.S.C.C.A.N. 5963, 6359; *see also In re Table Talk, Inc.*, 22 B.R. 706, 712-13 (Bankr. D. Mass. 1982) ("The legislative history clearly states the standard [for appointing an examiner]: the protection must be needed and the costs must not be disproportionately high.").

Consistent with the statutory language and legislative history, this Court has often reached the conclusion that § 1104(c)(2) does not mandate the appointment of an examiner where such an examination would not be appropriate under the circumstances.[2] *See, e.g., U.S. Bank Nat'l Ass'n v. Wilmington Tr. Co.* (*In re Spansion, Inc.*), 426 B.R. 114, 128 (Bankr. D. Del. 2010) (denying motion to appoint examiner under § 1104(c)(2) because "as is appropriate" language afforded court discretion to deny appointment that would result in waste and delay); *In re SRC Liquidation LLC*, No. 15-10541 (BLS), 2019 Bankr. LEXIS 2851, at *16 (Bankr. D. Del. Sept. 12, 2019) ("[T]his Court will also decline to exercise its equitable authority to appoint an examiner."); Order Denying Motion to Appoint an Examiner with Access to and Authority to Disclose Privileged Materials, *In*

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[2] Delaware bankruptcy judges, among others, have thus rejected the Sixth Circuit's decision to the contrary in *Revco* and its progeny cited by the UST. Courts in other jurisdictions have reached similar conclusions. *See, e.g.*, *In re Residential Capital, LLC*, 474 B.R. 112, 121 (Bankr. S.D.N.Y. 2012) (finding that examiner appointments are not mandated by § 1104(c) even where "fixed debts [are] in excess of $5 million" and should be denied "where the evidence establishes that the protection of an examiner is not needed under the facts and circumstances of the case"); *In re Erickson Ret. Cmtys., LLC*, 425 B.R. 309, 314 (Bankr. N.D. Tex. 2010) (denying examiner motion where the movant, per a subordination agreement, had waived his right to file any action until senior creditors were paid); *In re Rutenberg*, 158 B.R. 230, 233 (Bankr. M.D. Fla. 1993) (refusing to appoint examiner based on the "totality of the factors"); *In re Shelter Res. Corp.*, 35 B.R. 304, 305 (Bankr. N.D. Ohio 1983) ("[T]o slavishly and blindly follow the so-called mandatory dictates of Section 1104[] is needless, costly and non-productive and would impose a grave injustice on all parties herein.").

re Allied Nevada Gold Corp., No. 15-10503 (MFW) (D. Del. Bankr. Sept. 15, 2015) (D.I. 995) (denying appointment of examiner), *appeal dismissed*, *Ad Hoc Committee S'holders v. Allied Nev. Gold Corp.* (*In re Allied Nev. Gold Corp.*), 565 B.R. 75 (D. Del. 2016), *aff'd*, 725 F. App'x 144 (3d Cir. 2018); Hr'g Tr. at 170:16-20, *In re Visteon Corp.*, No. 09-11786 (CSS) (Bankr. D. Del. May 12, 2010) (D.I. 3145) (denying appointment of examiner and noting the "absurd result to find that in every case where the financial criteria is met and a party-in-interest asks, the Court must appoint an examiner"); Hr'g Tr. at 97:9-13, *In re Wash. Mut. Inc.*, No. 08-12229 (MFW) (Bankr. D. Del. May 5, 2010) (D.I. 3699) (holding that, even though debtors owed more than $5 million in fixed debt, court had "discretion to determine what appropriate investigation of the debtor should occur and that, if the Court determines that there's no appropriate investigation that needs to be conducted, the Court has the discretion to deny the appointment of an examiner"); Hr'g Tr. at 76:9-12, *In re Am. Home Mortg. Holdings, Inc.*, No. 07-11047 (CSS) (Bankr. D. Del. Oct. 31, 2007) (D.I. 1997) (rejecting mandatory interpretation of § 1104(c)(2) because financial threshold was only part of inquiry and "the other piece of the puzzle is that there has to be an investigation to perform that's appropriate," and denying motion to appoint examiner); Hr'g Tr. at 23:16-18, 82, *In re SA Telecomm., Inc.*, No. 97-2395 (Bankr. D. Del. Mar. 27, 1999) (holding that "this Court has for years consistently viewed 1104(c)(2) as not being a mandatory provision"). The UST's position simply ignores governing principles of statutory construction, the clear legislative history, and this Court's many prior decisions to the contrary.

B. It Is Not Even Clear That the $5 Million Minimum Threshold Has Been Reached

In addition, Bankruptcy Code section 1104(c)(2) provides for the potential appointment of an examiner only if "the debtor's fixed, liquidated, unsecured debts . . . exceed $5,000,000." The words "fixed, liquidated, unsecured" carry separate meanings. The word *fixed* cannot be read as

a synonym of *liquidated* because that would make the word *fixed* superfluous, and courts should not interpret statutes in such manner. *See Hibbs v. Winn*, 542 U.S. 88, 101 (2004) (stating that a "statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant" (internal quotation marks and citation omitted)); *Disabled in Action of Pa. v. SEPTA*, 539 F.3d 199, 210 (3d Cir. 2008) ("We assume . . . that every word in a statute has meaning and avoid interpreting one part of a statute in a manner that renders another part superfluous.").

For this reason, the bankruptcy court in *In re Dewey & LeBoeuf LLP*, 478 B.R. 627 (Bankr. S.D.N.Y. 2012), interpreted "fixed debt" to mean "[g]enerally, a permanent form of a debt commonly evidenced by a bond or debenture; long-term debt." *Id*. at 637 (alteration in original) (quoting *Black's Law Dictionary* at 463 (9th ed. 2009)). By contrast, the *Dewey & LeBoeuf* court found the term "liquidated debt" to mean a "debt whose amount has been determined by agreement of the parties or by operation of law." *Id*. (quoting *Black's Law Dictionary* at 463). The UST points solely to the settled but unpaid prepetition asbestos claims as the unsecured debt in excess of $5 million. But they do not appear to qualify as "fixed debt" because they are not "a permanent form of a debt commonly evidenced by a bond or debenture," nor are they "long-term debt" such as mortgage debt and bond debt. The UST thus cannot assert that appointment of an examiner is mandatory, as the UST has not demonstrated that the $5 million threshold has been met.

II. THIS COURT SHOULD DENY THE MOTION BECAUSE THE UST'S PROPOSED "INVESTIGATION" IS NEITHER APPROPRIATE NOR IN THE INTEREST OF CREDITORS AND OTHER STAKEHOLDERS

A. The ACC Should Be Permitted to Continue Unimpeded with Its Examination of the Restructuring Transaction

After appointing the ACC, the official creditors' committee in this case, the UST should not be permitted to sideline the ACC in favor of a new actor: an examiner. Section 1103(c) of the

Bankruptcy Code, *inter alia*, expressly empowers the Committee to "investigate the acts, conduct, assets, liabilities, and financial condition of the . . . debtor's business . . . and any other matter relevant to the case or to the formulation of a plan." 11 U.S.C. § 1103(c)(2). Such investigation is thus part of the Committee's express statutory powers and duties and, as noted previously and expanded on below, the Committee has already begun its investigation of the Restructuring Transaction. There is no appropriate basis to interfere with this investigation at this juncture. *See, e.g.*, Hr'g Tr. at 77:2-8, *In re Am. Home Mort. Holdings, Inc.*, No. 07-11047 (CSS) (Bankr. D. Del. Oct. 31, 2007) (D.I. 1997) (noting that because there were already ongoing investigations, the Court did not "think . . . there would be anything to be gained by appointing an examiner"); *In re Table Talk, Inc.*, 22 B.R. at 712 ("I cannot see how it is in the best interests of creditors to place another functionary [examiner] in this case when no one has satisfactorily explained what an examiner could do that present functionaries could not do.").

To be absolutely clear, the Restructuring Transaction, which purportedly separated asbestos and environmental liabilities from the operating assets of the O-I glass business, certainly warrants investigation. But such an investigation should be in the hands of the Committee and the future claimants' representative ("**FCR**"). The Restructuring Transaction transformed the Debtor from a publicly traded Fortune 500 company, earning billions of dollars in annual revenue, into a stripped down subsidiary holding real estate, which is expected to receive net rental income of less than $500,000 a year. *See* Declaration of David J. Gordon, President and Chief Restructuring Office of the Debtor in Support of Chapter 11 Petition and First Day Pleadings, ¶¶ 30-32 (D.I. 2). On this basis alone, the Restructuring Transaction has disadvantaged asbestos creditors, and it bears the hallmarks of a textbook fraudulent transfer. But there is more. The Restructuring Transaction converted the Debtor from the ultimate parent holding company to a sister subsidiary

of the subsidiary, Owens-Illinois Group, Inc., that directly and indirectly holds the operating assets. *See id.* ¶ 22. This has enabled the Debtor's former glass business to bypass the Debtor and upstream cash to the new parent holding company, O-I Glass, Inc., which in turn has embarked on paying tens of millions of dollars in quarterly dividends to the Debtor's (former) public shareholders—the next round of quarterly dividends is scheduled to be paid on March 16, 2020. *See* O-I Glass Inc., Current Report (Form 8-K), Feb. 4, 2020. In other words, the Restructuring Transaction has effected an end-run around this Court's supervisory authority over estate assets and violated the absolute priority rule by allowing payments to shareholders ahead of asbestos creditors. *Cf. In re Telegroup, Inc.*, 281 F.3d 133, 139 (3d Cir. 2002) ("Under the absolute priority rule, 'stockholders seeking to recover their investments cannot be paid before provable creditor claims have been satisfied in full.'" (citation omitted)). Indeed, it is similarly outrageous that the Debtor and its controlling affiliates are using this bankruptcy to attempt to preclude or delay payment of the many liquated asbestos settlements reached immediately before the filing, in an apparent attempt to gain leverage over the asbestos constituency.

The Restructuring Transaction has both clearly prejudiced asbestos claimants and represents an attempted abuse of the Bankruptcy Code. The Committee appropriately believes it not only has the right to pursue an appropriate examination of the Transaction, but also to unwind it and to pursue any other related relief it deems appropriate. An examiner, and the scope of the examination proposed by the UST, would interfere with this important work by the Committee.

The Committee is properly incentivized and equipped to get to the bottom of this prepetition restructuring, and the UST certainly has not supplied a factual basis to the contrary. *See In re Gilman Servs., Inc.*, 46 B.R. 322, 327 (Bankr. D. Mass. 1985) (requiring a "factual basis supporting the need for an *independent* investigation") (emphasis added). Indeed, over the past

few weeks, the Committee has engaged, for this very purpose, professionals who are experienced in investigating and examining prebankruptcy corporate restructurings. For example, on March 3, 2020, the Committee filed its application to employ Winston & Strawn LLP as special litigation counsel to support its investigation of the Restructuring Transaction. The Committee has also engaged FTI Consulting to provide financial analysis for the investigation. In addition, the Committee has already sought and received discovery about this prepetition restructuring from the Debtor and begun analyzing it, including performing legal and factual research regarding the transaction.

Based on discovery and investigations by parties in interest, including creditors' committees, courts have declined to appoint examiners. *See, e.g., Spansion, Inc.,* 426 B.R. at 128 (denying appointment of examiner where "the Creditors Committee and various *ad* hoc committees have vigorously represented the interests of unsecured creditors" and "have had ample opportunity to conduct—and have conducted—extensive discovery, and to investigate the Debtors"); *In re Mechem Fin. of Ohio, Inc.*, 92 B.R. 760, 761 (Bankr. N.D. Ohio 1988) (denying appointment of examiner where, among other things, creditors' committee was supervising debtor's activities, was authorized to perform investigations, and could pursue preference claims); *In re Sletteland*, 260 B.R. 657, 672 (Bankr. S.D.N.Y. 2001) (noting that the appointment of an examiner may be unwarranted where an official committee could appropriately perform the investigation); Hr'g Tr. at 98-99, *In re Wash. Mut. Inc.*, No. 08-12229 (MFW) (Bankr. D. Del. May 5, 2010) (D.I. 3699) (rejecting examiner request based in part on investigations "conducted . . . by the debtor and the creditors' committee"); Hr'g Tr. at 72:19-25, *In re Am. Home Mort. Holdings, Inc.*, No. 07-11047 (CSS) (Bankr. D. Del. Oct. 31, 2007) (D.I. 1997) (denying motion for examiner to investigate debtor's previous loan origination and servicing practices, *inter alia*,

because "we have a Creditors Committee in the case" that is "watching the case very closely, and taking steps . . . in the best interest of creditors"). As in *Spansion, Inc.*, an examiner here "would cause undue cost to the estate, which would be harmful to the Debtor[] and would delay the administration of this chapter 11 case." 426 B.R. at 128.

B. The UST's Proposed Investigation of Alleged "Abuse" in the Tort System Is Both Inappropriate and Irrelevant

In addition to the Restructuring Transaction, the UST seeks an examiner to investigate an alleged "disparity" between what the prepetition Debtor was paying in respect of tort claims and what the Debtor believed it should have been paying. The UST attempts to justify such an investigation by insinuating that this alleged "disparity is due to the payment of invalid or non-meritorious claims by the Debtor" and asserts that the "possibility of abusive claims need[s] to be examined." Motion ¶ 19.[3] Ironically, even the Debtor is not making those allegations at this time, and to the extent it ever attempts to do so in the future, the Committee will be fully prepared to respond. Any argument that the Debtor, and its legion of legal and financial professionals, would need an examiner's help in this regard is ludicrous. Moreover, the idea that it would be appropriate for the UST to appoint an examiner to attack asbestos victims and their survivors is appalling, and should be rejected by this Court.

Indeed, such appointment would also go beyond the clear language of § 1104(c), pursuant to which an examiner can only be ordered to "conduct such an investigation of the debtor as is appropriate, including an investigation of any allegations of fraud, dishonesty, incompetence, misconduct, mismanagement, or irregularity in the management of the affairs of the debtor of or by current or former management of the debtor." That provision says nothing about appointing an

[3] Even taken at face value, these allegations do not establish any wrongdoing.

examiner to investigate creditors, much less former creditors, and under controlling principles of statutory construction, such an expansion of the statutory language is to be avoided.[4]

When considering motions to appoint an examiner, courts place the burden of proof on the movant to demonstrate that the appointment is proper under § 1104(c). *See, e.g.*, Hr'g Tr. at 90-91, *In re Allied Nevada Gold Corp.*, Case No. 15-10503 (MFW) (Bankr. D. Del. Sept. 11, 2015) ("Anybody who files a motion for appointment of an examiner has the burden of establishing that there is a reason for such appointment. It has to be in the interest of creditors and shareholders, and in determining that I also have to consider the cost and delay that would be inherent in the appointment of an examiner."); Hr'g Tr. at 196-97, *In re EV Energy Partners, L.P.*, Case No. 18-10814 (CSS) (Bankr. D. Del. (May 16, 2018) ("[T]here has to be an actual examination that needs to be done, an appropriate inquiry that needs to be pursued and I think the Movant in a motion to appoint an examiner has the burden of proof of establishing something, some reason that it would be helpful to appoint an examiner"); *Dewey & LeBoeuf LLP*, 478 B.R. at 636 ("The moving party has the burden to prove that an examiner should be appointed."); *Mechem Fin. of Ohio, Inc.*, 92 B.R. at 761 ("[T]he U.S. Trustee's application for appointment of an Examiner is denied, the U.S. Trustee having failed to meet his burden of proof that appointment is required or warranted."); *In re Am. Bulk Transp. Co.*, 8 B.R. 337, 341 (Bankr. D. Kan. 1980) ("The principal issue in this matter is whether . . . [the movant] has met its burden of showing that an examiner should be

[4] *See Madar v. U.S. Citizenship & Immigration Servs.*, 918 F.3d 120, 123 (3d Cir. 2019) ("Under the interpretive canon *expressio unius est exclusio alterius*, we presume that '[t]he expression of one thing implies the exclusion of others." (citation omitted) (alteration in original)); *Devon Robotics, LLC v. DeViedma*, 798 F.3d 136, 142-43 (3d Cir. 2015) ("And under the canon of *expressio unius est exclusio alterius* ('the express mention of one thing excludes all others'), Congress's enumeration of several categories of appealable orders, but not orders denying summary judgment, indicates that Congress intended orders denying summary judgment to fall outside the scope of [appealable order under 9 U.S.C.] § 16.").

appointed to investigate the debtor."). Yet, the UST fails to meet this burden, and his proposed investigation into alleged "abuse" is irrelevant here and would inflict substantial unnecessary costs and delay on the estate and its creditors.

The UST's proposed investigation into alleged past claiming "abuse" is irrelevant to what the Debtor seeks to accomplish, which is to resolve current and future asbestos claims under a plan that will provide for an settlement trust and channeling injunction under 11 U.S.C. § 524(g). To obtain such a trust and injunction, several prerequisites set forth in § 524(g) must be satisfied. According to the Third Circuit, these prerequisites "are designed to protect the interests of future claimants whose claims are permanently enjoined. Among these, the plan must be approved by a super-majority of current claimants . . . ." *In re Combustion Eng'g, Inc.*, 391 F.3d 190, 237 (3d Cir. 2004), *as amended* (Feb. 23, 2005). Satisfying these prerequisites, including the supermajority support of current claimants, requires negotiation and, ultimately, consensus. *See In re Thorpe Insulation Co.*, 671 F.3d 1011, 1027 (9th Cir. 2012) ("If . . . [the debtor] did not negotiate with asbestos claimants and their representatives to set a plan that they would support, a successful reorganization would not have been possible."). It is up to those parties—not an examiner—to figure out the extent of the Debtor's current and future asbestos liabilities, which in turn will inform whether the proposed funding of a 524(g) trust is adequate. Granting an examiner broad license to crisscross the country to unearth alleged "abuse" in past asbestos cases will not inform plan negotiations, and will thus prove to be costly and unhelpful.

The Debtor was in the tort system for decades, had sophisticated counsel defending it, and was resolving and paying claims in accordance with the claims handling agreements it had entered into. The suggestion that the Debtor was bamboozled into paying deficient or meritless claims in the tort system is nonsense. The Debtor's current and future asbestos liability is a confirmation

issue that must be resolved between the Debtor on the one hand and the ACC and FCR on the other, not an examiner acting as some nationwide quasi-governmental roving commission expressing pro-defendant policy preferences. Courts have refused appointing examiners where the key issues in question pertain directly to plan confirmation and thus should be resolved by the key stakeholders in the case. *See Spansion, Inc.*, 426 B.R. at 128 (denying appointment of examiner where, *inter alia*, where "the allegations of bad faith against the Debtors' management" provided "a classic confirmation dispute, rather than grounds for an investigation by an examiner"); Hr'g Tr. at 171-73, *In re Visteon Corp.*, No. 09-11786 (CSS) (Bankr. D. Del. May 12, 2010) (D.I. 3145) (concluding that the "case does not need an examiner" where the issues gave rise to "a good old fashioned fight over a debtor that has some value," which should be contested and resolved at confirmation); *see also* Hr'g Tr. at 167:21-168:3, *In re Innkeepers USA Trust*, No. 10-13800 (Bankr. S.D.N.Y. Sept. 30, 2010) (D.I. 546) ("[C]ourts have quite understandably and properly, I believe, pushed back and declined to appoint an examiner to join an otherwise crowded fray, in which the many combatants are well armed and highly motivated.").

The UST asserts that an examiner's investigation of the tort system is necessary to determine "whether additional safeguards would be needed to protect recoveries of persons with valid claims against the Debtor, including in any plan to be proposed or in the operations of any asbestos trust to be created." Motion ¶ 15. What happens in the tort system is also logically separate from what happens under a claims settlement process such as that typically created in asbestos bankruptcies, as further described below. Consequently, supposed conclusions by an examiner about the tort system would be largely or entirely irrelevant.

In addition, any consensual 524(g) plan proposed in this case will be accompanied by proposed trust distribution procedures ("**TDP**") that will govern the resolution and payment of

eligible asbestos claims going forward. Virtually every TDP proposed in an asbestos bankruptcy case includes medical criteria and exposure criteria that claimants must satisfy to receive a settlement offer from the trust. In other words, all TDPs have safeguards built into them to ensure that only eligible claims are paid. And the Third Circuit has made its view clear that "the trusts appear to have fulfilled Congress's expectation that they would serve the interests of both current and future asbestos claimants and corporations saddled with asbestos liability. In particular, observers have noted the trusts' effectiveness in remedying some of the intractable pathologies of asbestos litigation, especially given the continued lack of a viable alternative providing a just and comprehensive resolution." *In re Federal-Mogul Glob. Inc.*, 684 F.3d 355, 362 (3d Cir. 2012).

In any event, if the UST were to determine that any TDP safeguards proposed in this case are inadequate, the UST could make an objection at the disclosure stage or, more appropriately, at confirmation, and this Court could decide that objection then. This has been the process followed in several other cases. For example, in the case of *In re Kaiser Gypsum, Inc.*,[5] before the very court that rendered the *Garlock* estimation opinion, the U.S. Department of Justice[6] objected to the debtors' disclosure statement, arguing, among other things, "[t]he [proposed] Trust Distribution Procedures authorize a black box of confidentiality that could facilitate fraud that is similar to the fraud that this Court recently uncovered in . . . [*Garlock*]."[7] In response, not only did the bankruptcy court overrule the Justice Department's objection, but also clarified its view of

[5] No. 16-31602 (Bankr. W.D.N.C.).

[6] The UST has no jurisdiction in the bankruptcy courts of North Carolina, which instead uses a "Bankruptcy Administrator" to perform the role of the UST. Consequently, the Department of Justice appeared in this case rather than any particular UST office.

[7] United States' Objection to Debtors' Motion for an Order (I) Approving Their Disclosure Statement, (II) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject Proposed Joint Plan of Reorganization and (III) Scheduling a Hearing on Confirmation of Proposed Joint Plan of Reorganization and Approving Related Notice Procedures, at 8-9, *In re Kaiser Gypsum, Inc.*, No. 16-31602 (Bankr. W.D.N.C. Nov. 6, 2018) (D.I. 1299).

the *Garlock* estimation opinion and limited its application.[8] The court first noted that the estimation opinion "was written narrowly, but has been read broadly and it is, admittedly, based on a . . . limited number of instances of suppression of evidence by plaintiffs' firms, only 15 [out of hundreds of thousands]" and that "that case was settled and . . . [the estimation opinion was] never tested on appeal."[9] Moreover, the court questioned any reading of the estimation opinion "as an indictment of the tort system as a whole or a suggestion that all those good people in the state courts need this little bankruptcy court to protect them from fraud."[10]

The UST in *In re Duro Dyne National Corp.*[11] also objected to confirmation of the chapter 11 plan on the ground that the plan and its related asbestos trust documents did not adequately safeguard against alleged potential fraud and abuse. The bankruptcy court summarily rejected those arguments and confirmed the plan over the UST's objection:

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[8] Hr'g Tr. at 51:13-52:6, *In re Kaiser Gypsum, Inc.*, No. 16-31602 (Bankr. W.D.N.C. Sept. 4, 2019).

[9] *Id.* at 51:14-20.

[10] *Id.* at 51:21-24. In yet another case, *In re Sepco Corp.*, the UST objected to the debtor's disclosure statement on the ground that the proposed plan was patently unconfirmable for its "lack of safeguards against fraudulent and abusive claims," again relying on the *Garlock* estimation opinion and academic articles about it to "evidence" such fraud and abuse. *See, e.g.*, Objection of United States Trustee to Motion of Debtor for an Order Approving (I) the Disclosure Statement; (II) the Solicitation and Voting Procedures; (III) Forms of Ballots; (IV) Deadlines and Procedures to File Objections to the Disclosure Statement and the Plan; (V) a Hearing Date to Consider Confirmation of the Plan; and (VI) the Form, Scope, and Manner of Notice of the Plan and Confirmation Hearing, at 3-5, 20, *In re Sepco Corp.*, No. 16-50058 (AMK) (Bankr. N.D. Ohio Aug. 7, 2019) (D.I. 620). The *Sepco* court similarly overruled the UST's objections and approved the disclosure statement. Order, *In re Sepco Corp.*, No. 16-50058 (AMK) (Bankr. N.D. Ohio Dec. 16, 2019) (D.I. 669).

[11] No. 18-27963 (MBK) (Bankr. D.N.J.).

> As an initial matter, this Court observes that the UST's concerns are bottomed on alarms raised in industry studies and academic works. Indeed, apart from the *Garlock* case (which this Court deems to be premised on a different factual scenario and involved unrelated concerns), the UST has not been able to point to any concrete illustrations or to identify any actual harms which have manifested in the extended history of asbestos cases in our bankruptcy courts.[12]

There is no reason for this Court to, in effect, rule on a premature confirmation objection.

To launch now a wide-ranging investigation of the Debtor's asbestos history and experience in the tort system would be inappropriate, would not be conducive to reaching a consensual 524(g) plan, and would impose significant cost and delay. It is thus not in the interests of the Debtor's creditors, equity holder, or other interests in the estate, nor is it surprising, therefore, that no such stakeholders are requesting that such an examiner be appointed. The Motion should be denied.

CONCLUSION

For the reasons stated above, this Court should enter an order denying the UST's Motion and granting such other and further relief as this Court deems just and appropriate.

[Signatures on following page]

[12] Report and Recommendation for Entry of: (A) Findings of Fact and Conclusions of Law with Respect to the Third Amended Plan of Reorganization; and (B) Confirmation Order, para. 138, *In re Duro Dyne Nat'l Corp.*, No. 18-27963 (MBK) (Bankr. D.N.J. July 16, 2019) (D.I. 784-1).

Dated: March 11, 2020

Respectfully submitted,

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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

IN RE:	:	Chapter 11
PADDOCK ENTERPRISES, LLC,	:	Case No. 20-10028 (LSS)
Debtor.[1]	:	

CERTIFICATE OF SERVICE

I, Mark T. Hurford, of Campbell & Levine, LLC, hereby certify that on March 11, 2020, I caused a copy of the foregoing to be served upon the individuals on the attached service list via first class mail and via email, where indicated.

Dated: March 11, 2020

/s/ Mark T. Hurford
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Exhibit 8

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
PADDOCK ENTERPRISES, LLC,[1]	Case No. 20-10028 (LSS)
Debtor.	**Ref. Docket No. 113**

OBJECTION OF FUTURE CLAIMANTS' REPRESENTATIVE TO THE UNITED STATES TRUSTEE'S MOTION FOR AN ORDER DIRECTING THE APPOINTMENT OF AN EXAMINER

James L. Patton, Jr., the proposed legal representative (the "Future Claimants' Representative") for persons who have not yet asserted an asbestos-related personal injury claim against the debtor and debtor-in-possession (the "Debtor") in the above-captioned chapter 11 case (the "Chapter 11 Case") but may in the future assert such a claim (the "Future Claimants"), by and through his undersigned counsel, hereby responds and objects (this "Objection") to the *United States Trustee's Motion for an Order Directing the Appointment of an Examiner* [Docket No. 113] (the "Examiner Motion") as follows:

PRELIMINARY STATEMENT[2]

The Examiner Motion should be denied because the relief requested under section 1104(c) of the Bankruptcy Code is neither mandatory nor appropriate in this case.

The Future Claimants' Representative and the UST-appointed ACC, in accordance with their statutory mandates and fiduciary obligations, have already undertaken the investigation the UST seeks related to the prepetition Corporate Transactions. Appointing an examiner to conduct the same investigation would not only result in increased costs and a fundamental duplication of efforts,

[1] The last four digits of the Debtor's tax identification number are 0822. The Debtor's mailing address is One Michael Owens Way, Perrysburg, Ohio 43551.

[2] Capitalized terms used but not defined in this Preliminary Statement shall have the meanings ascribed to them in the body of this Objection or the Examiner Motion, as applicable.

but would also unnecessarily delay the Plan Process to the detriment of creditors. Because the UST has not alleged that the Future Claimants' Representative and the ACC are incapable of completing the requested investigation, the appointment of an examiner would impose significant delay and additional administrative burden without any discernable benefit.

Moreover, the Examiner Motion fails to account for the fact that the Future Claimants' Representative has a fundamental responsibility under section 524(g) of the Bankruptcy Code to negotiate a chapter 11 plan that is fair and equitable to Future Claimants, and includes appropriate trust distribution procedures, the terms of which will be subject to review by the Court and the UST. To be sure, the UST is well equipped to challenge the plan and trust distribution procedures at the appropriate time if he believes they are inadequate. See, e.g., In re Maremont, Case No. 19-10118 (KJC) (Bankr. D. Del. 2019) [Docket No. 112] (UST objection to plan and trust distribution procedures); In re Duro Dyne National Corp., Case No. 18-27963 (MBK) (Bankr. D. N.J. 2018) [Docket No. 753] (same).

Courts in this jurisdiction have made it clear that the appointment of an examiner is not mandatory, and this Court should exercise its discretion and deny the Examiner Motion, or otherwise adjourn the matter for at least ninety (90) days to provide the Future Claimants' Representative and the ACC the opportunity to continue their ongoing investigations and commence negotiations with the Debtor on the terms of a chapter 11 plan and trust distribution procedures for the benefit of all parties in interest.

BACKGROUND

1. On January 5, 2020 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code").

2. On the Petition Date, the Debtor filed that certain *Declaration of David J. Gordon, President and Chief Restructuring Officers of the Debtor, in Support of Chapter 11 Petition and First Day Pleadings* [Docket No. 2] (the "First Day Declaration"). The First Day Declaration provides that the primary purpose of the Chapter 11 Case is to address and comprehensively resolve the Debtor's legacy asbestos-related liabilities by promptly negotiating and ultimately confirming a plan of reorganization pursuant to sections 524(g) and 1129 of the Bankruptcy Code (the "Plan Process"). First Day Declaration, ¶ 5.

3. The First Day Declaration further provides that, as part of the Debtor's prepetition out-of-court corporate restructuring (the "Corporate Transactions"), the Debtor became party to a support agreement that purportedly guarantees its solvency in the Chapter 11 Case. See First Day Declaration, ¶ 28 and Ex. B.

4. On January 16, 2020, the Office of the United States Trustee for the District of Delaware (the "UST") appointed the official committee of asbestos personal injury claimants (the "ACC") [Docket No. 47].

5. On January 22, 2020, the Debtor submitted to this Court a motion for entry of an order appointing James L. Patton, Jr. as the Future Claimants' Representative in the Chapter 11 Case, effective as of the Petition Date [Docket No. 58] (the "Proposed FCR Appointment").[3]

6. On February 24, 2020, the UST filed the Examiner Motion, seeking the appointment of an examiner pursuant to section 1104(c)(1), or alternatively, section 1104(c)(2) of the Bankruptcy Code.

[3] On March 4, 2020, the UST filed an objection to the Proposed FCR Appointment to allow time for an examination into whether the proposed Future Claimants' Representative had knowledge of the Corporate Transactions (as defined below) [Docket No. 126]. The proposed Future Claimants' Representative and his proposed counsel will file supplemental declarations confirming that neither had any knowledge whatsoever of the Corporate Transactions until publicly disclosed.

ARGUMENT

I. The Appointment of an Examiner Is Not in the Best Interests of Creditors or Other Parties in Interest Under Section 1104(c)(1).

7. The appointment of an examiner is not in the best interest of creditors and other parties in interest in this case for two primary reasons.

8. First, the UST's requested investigation of the Corporate Transactions would merely duplicate the investigation that is already underway by the Debtor's statutory constituents,[4] saddling the Debtor's estate with unnecessary administrative expense and delaying the Plan Process in a case where time is of the essence given the advanced age of many creditors. To suggest, at this early stage of the case, that an examiner is needed to investigate potentially fraudulent conveyances, which claims are subject to a two-year statute of limitations,[5] would needlessly usurp the rights of existing estate fiduciaries, imposing both strategic and economic costs on all respective constituencies without any corresponding benefit. Indeed, the Examiner Motion ignores the reality that the Future Claimants' Representative and the ACC are among the parties (not including an examiner) who would be responsible for pursuing any such avoidance claims to the extent necessary and appropriate.

9. Second, the Examiner Motion fails to account for the fact that the Future Claimants Representative has a duty to protect the interests of Future Claimants, as well as a seasoned ability to evaluate and negotiate appropriately tailored trust distribution procedures. An examination of the Debtor's past payment practices will not advance this case at all. The UST's

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[4] See 11 U.S.C. §§ 524(g)(4)(B)(i) (requiring appointment of a legal representative for the purpose of protecting the rights of persons that might assert demand for payment from a trust created pursuant to a channeling injunction); 11 U.S.C. § 1103(c)(2) (providing that a statutorily appointed committee may investigate the acts, conduct, assets, liabilities, and financial condition of the debtor, the operation of the debtor's business and the desirability of the continuation of such business, and any other matters relevant to the case or to the formulation of a plan).

[5] 11 U.S.C. § 546.

well-worn narrative about the Garlock decision is misplaced and does not support the UST's allegation of ubiquitous abusive claims submissions practices. In any event, the Future Claimants' Representative is fully prepared to address any such issues through the negotiated terms of a chapter 11 plan and trust distribution procedures, which will be subject to Court approval on notice to parties in interest, including the UST.

10. Notably, the UST has not alleged that either the Future Claimants' Representative or the ACC is incapable of completing their ongoing investigations or pursuing any resulting causes of action. Absent such allegations, courts have declined to appoint an examiner when the same investigation can be more efficiently undertaken by a committee or other stakeholder. See, e.g., In re Spansion, Inc., 426 B.R. 114, 128 (Bankr. D. Del. 2010) (declining to appoint an examiner based, in part, on a finding that the ad hoc committee of equity security holders, while not an official committee, had been extraordinarily active in the chapter 11 proceeding and had advocated vigorously views of equity); In re Gliatech, Inc., 305 B.R. 832, 836 (Bankr. N.D. Ohio 2004) (denying motion to appoint an examiner where the creditor "can investigate the facts that would support . . . an objection on its own nickel"); In re Sletteland, 260 B.R. 657, 672 (Bankr. S.D.N.Y. 2001) (declining to appoint an examiner and noting that it would be inappropriate to impose the costs of an examiner on the estate where the committee could perform any necessary investigation); In re Bradlees Store, 209 B.R. 36, 39 (Bankr. S.D.N.Y. 1997) (declining to appoint an examiner where such would be "duplicative, needless and wasteful"); In re Shelter Res. Corp., 35 B.R. 304, 305 (Bankr. N.D. Ohio 1983) (denying a request for an examiner when it would "entail undue delay in the administration of this estate and most likely cause the debtor to incur substantial and unnecessary costs and expenses detrimental to the interests of creditors and parties in interest [when] [t]here [was] currently in place a [statutory committee] to carry on . . . an investigation as

may be appropriate."); see also In re Wash. Mut. Inc., No. 08–12229 (MFW) (Bankr. D. Del. May 5, 2010), Hr'g Tr. at 98:12–100:21 [Docket No. 3699] (examiner motion denied where the debtor had been "investigated to death," and where the cost would be high with little ascertainable benefit to parties in the case)).

11. The Future Claimants' Representative and the ACC are well positioned to (i) investigate and pursue causes of action in connection with the Corporate Transactions, and (ii) negotiate appropriate trust distribution procedures to resolve asbestos claims. The estate need not bear the financial burden of a duplicative investigation that brings negotiations between the economic parties to a halt.

12. Indeed, the cases on which the UST relies are cases in which an economic party sought appointment of an examiner. No such request has been made here. See In re Caesars Entm't Op. Co., Inc., Case No. 15-00145 (ABG) (Bankr. N.D. Ill.) (debtors *and* official committee sought examiner appointment to investigate prepetition transactions that were the subject of pending litigation); In re Dynegy Holdings, LLC, Case No. 11-38111 (CGM) (Bankr. S.D.N.Y.) (indenture trustee for bondholders moved for appointment of an examiner to investigate Debtor's prepetition sale of its profitable coal-fired power plants, valued at $1.25 billion, to its parent company made in exchange for an illiquid, unsecured, highly unusual financial instrument called an "undertaking").

II. Appointment of an Examiner Under Section 1104(c)(2) is not Mandatory or Appropriate in the Chapter 11 Case.

13. The appointment of an examiner under section 1104(c)(2) of the Bankruptcy Code is not mandatory simply because certain financial criteria are met.[6] Rather, the appointment of an examiner must still be appropriate under the facts and circumstances of the case. To hold otherwise would require the appointment of an examiner in nearly every case filed in this district,

[6] The UST has not established that the Debtor's fixed, liquidated liabilities exceed $5 million.

without regard to whether such appointment is reasonable or necessary. As set forth above, appointment of an examiner is not reasonable or necessary here.

14. The UST, however, relying on non-controlling case law,[7] asserts that the appointment of an examiner under section 1104(c)(2) is mandatory in this case because "it is highly likely that the Debtor's liquidated portion of the Debtor's unsecured liabilities (particularly in the form of liquidated but unpaid tort settlements) exceed $5 million, especially given the Debtor's representation that its total liabilities range from $100 million to $500 million." Examiner Motion, p. 13.

15. The UST is wrong in asserting that section 1104(c)(2) eliminates this Court's discretion to determine the appropriateness of examiner appointment. Such contention is both inconsistent with the language of the statute and with prior rulings of this Court.

16. By its very terms, section 1104(c)(2) calls for the appointment of an examiner, after "notice and a hearing," only "to conduct such an investigation of the debtor *as is appropriate*" into matters such as "fraud, dishonesty, incompetence, misconduct, mismanagement or irregularity" by the present or former management of the debtor. See 11 U.S.C. § 1104(c)(2) (emphasis added).

17. Moreover, this Court already addressed this specific issue in Spansion and declined to appoint an examiner, despite the fact that the statutory debt threshold of section 1104(c)(2) was met. See 426 B.R. 114. In his written opinion, Judge Carey held that the record did not provide sufficient evidence of conduct that would make an investigation of the Debtors "appropriate" and that the allegations of bad faith against the Debtors' management for rejecting a rights offering was a "classic confirmation dispute," rather than grounds for an investigation by a third party. Id. at 128. The Court expressly "[found] no sound purpose in appointing an examiner,

[7] See Examiner Motion, p.13 (citing Morgenstern v. Revco D.S., Inc. (In re Revco D.S., Inc.), 898 F.2d 498 (6th Cir. 1990)).

only to significantly limit the examiner's role where there exists insufficient basis for an investigation[,]" and stated that, "to appoint an examiner with no meaningful duties strikes me as a wasteful exercise, a result that could not have been intended by Congress." Id. at 127.

III. Should the Court Decide, in Its Discretion, to Appoint an Examiner, It Should Exercise Its Unquestionable Discretion to Define an "Appropriate" Role, as well as the Timing and Duration, for the Examiner Under the Specific Facts and Circumstances of This Case.

18. The Future Claimants' Representative submits that the UST has failed to demonstrate that the appointment of an examiner "is in the best interests of such debtor's creditors, any security holders, and other interests of the estate" as required by section 1104(c)(1) of the Bankruptcy Code or that such appointment is mandatory or otherwise appropriate under section 1104(c)(2) of the Bankruptcy Code.

19. The Examiner Motion should be denied, or, at a minimum, adjourned for a period of no less than ninety (90) days to provide the Future Claimants' Representative and the ACC an opportunity to continue their investigations and commence negotiations with the Debtor. If there is an economic deal to be had that pays creditors in full and includes adequate funding for Future Claimants, then the Court and all parties in interest, including the UST, will have an opportunity to review such resolution in the form of a plan and trust distribution procedures.

20. If, however, that the Court is inclined to grant the relief requested in the Examiner Motion, the Future Claimants' Representative reserves any and all rights and arguments with respect to issues related to the examiner's duties and authority, including, but not limited to the scope, budget, timing and duration of the appointment.

CONCLUSION

WHEREFORE, the Future Claimants' Representative respectfully requests that the Court enter an Order denying the Examiner Motion, or alternatively, adjourning the hearing on the Examiner Motion for a period of at least ninety (90) days, and granting such other and further relief as the Court deems just and proper.

Dated: March 11, 2020

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Proposed Counsel to the Proposed Future Claimants' Representative

Exhibit 9

Laureen M. Ryan Rebuttal Report, dated February 26, 2021

Filed Provisionally Under Seal Per Agreed Protective Order Governing Confidential Information

Exhibit 10

Minutes of Boards of Managers of Aldrich Pump LLC and Murray Boiler LLC for the meetings held on May 15, 2020, May 22, 2020, May 29, 2020, and June 5, 2020

Filed Provisionally Under Seal Per Agreed Protective Order Governing Confidential Information

Exhibit 11

Future Claimants' Representative's Closing Presentation

In re DBMP LLC

Case Number: 20-30080

March 3, 2021

The Debtor Does Not Need a Preliminary Injunction to Reorganize

Numerous cases have confirmed a plan without a preliminary injunction

- Maremont Corp. (2019)
- Duro Dyne National Corp., et al., (2018)
- Sepco Corporation (2016)
- Budd Company (2014)
- Reichhold Holdings, Inc. (2014)
- Metex Mfg. Corp. (2012)
- Plant Insulation Co. (2009)
- Durabla Manufacturing Co. (2009)
- Thorpe Insulation Co. (2007)
- API, Inc. (2005)
- JT Thorpe, Inc. (2004)
- C.E. Thurston (2003)
- Congoleum Corp. (2003)
- Muralo Co. (2003)
- Plibrico Co. (2002)
- Atra Group, Inc. (2002)
- USG Corp. (2001)
- Federal Mogul (2001)
- Swan Transportation Co. (2001)
- Owens Corning Corp./Fireboard (2000)
- Armstrong World Industries (2000)