

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re
ALDRICH PUMP LLC, *et al.*,
Debtors.

Chapter 11
Case No. 20-30608 (JCW)
(Jointly Administered)

THE FUTURE ASBESTOS CLAIMANTS’ REPRESENTATIVE’S RESPONSE TO THE MOTION BY OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS TO QUASH SUBPOENAS SENT TO DEBTORS

Joseph W. Grier, III, the representative for future asbestos claimants in the above-captioned cases (the “FCR”), through counsel, submits this response (the “Response”) to the *Motion by Official Committee of Asbestos Personal Injury Claimants to Quash Subpoenas Sent to Debtors* (the “ACC Motion”) (Dkt. 2157).

The ACC seeks to quash subpoenas served on the *Aldrich/Murray* debtors (the “Debtors”) by DBMP LLC (“DBMP”), which subpoenas seek information from the Debtors’ database of previously paid and/or settled claims. The ACC in *DBMP* is simultaneously seeking to strike the subpoenas in that case.¹

The ACC was appointed to protect the class of present claims held by individuals who have manifested an asbestos disease likely caused by asbestos fibers in the Debtors’ products but who have not been paid. The FCR was similarly appointed to protect the class of future claims, comprised of individuals with prior (or future) exposure who have not yet manifested a disease. All parties agree that the class of future claims dwarves that of the present claims.

¹ *In re DBMP LLC*, Case No. 20-30080, Dkt. 2730 (Bankr. W.D.N.C.) (hereinafter, “DBMP”).



Both the FCR and the ACC act as fiduciaries—owing duties of care and loyalty—to all the creditors they represent—the classes of current and future claimants.² The interests of those classes are best served by prompt confirmation of a plan of reorganization,³ with a fully funded asbestos trust that will pay claims based only on the merits of the claims as measured against known, transparent, fair, and objective metrics.⁴ The ACC in both *Garlock* and *Paddock* agree,

² See e.g., *Westmoreland Hum. Opportunities, Inc. v. Walsh*, 246 F.3d 233, 256 (3d Cir. 2001) (construing 11 U.S.C. § 1103(c) to imply a fiduciary duty on creditor committee members toward their constituents); *In re Fas Mart Convenience Stores, Inc.*, 265 B.R. 427, 432 (Bankr. E.D. Va. 2001) (committee members owe fiduciary duties to “all creditors represented by the committee”); 11 U.S.C. § 1103(c)(3) (providing that the committee may participate in the formulation of the plan and advise those represented by such committee of the committee’s determinations as to any plan formulated); 11 U.S.C. § 1103(c)(5) (providing that the committee may “perform such other services as are in the interest of those represented”). Compare *In re Dow Corning Corp.*, 194 B.R. 121, 135 (Bankr. E.D. Mich. 1996), *rev’d*, 212 B.R. 258 (E.D. Mich. 1997) (“[A]llowing attorneys [as opposed to individual creditors] to serve on committees in . . . [a representative] capacity places them in the unacceptable position of concurrently serving two masters with contrary interests.”); see also, *Kenneth N. Klee & K. John Shaffer, Creditors’ Committees Under Chapter 11 of the Bankruptcy Code*, 44 S.C. L. Rev. 995, 1011 (1993) (“[A] representative or agent may be disqualified from serving on a creditors’ committee due to the agent’s conflicting loyalties to his or her own client’s particular interests and to the constituency of the creditors’ committee as a whole.”); *In re Cyprus Mines Corp.*, Case No. 21-10398 (LSS), Dkt. 302 at 9-10 (Bankr. D. Del. May 18, 2021) (Judge Silverstein, Delaware, challenging the practice of law firms sitting on committees by proxy, making decisions for the members who owe a fiduciary duty to the class of claims, and noting that law firms representing committee members “must be mindful of any positional conflicts they may have and act accordingly and pursuant to all appropriate ethical standards. And, those law firms should be wary that they are not unintentionally taking on fiduciary duties in these mass tort cases to clients other than their own.”); *In re Bestwall LLC*, Case No. 17-31795, Dkt. 2095 ¶ 7 (W.D.N.C. Sept. 23, 2021) (hereinafter “*Bestwall*”) (Judge Beyer noting her concern that Maune Raichle was calling the shots, not its clients: “Sanctioning the Illinois Claimants is particularly troubling to the Court because, as counsel for the Debtor pointed out, while the Court has no direct evidence, it strongly suspects the nine claimants did not direct the effort to contest the Court’s PIQ Order by filing the Illinois Lawsuit. Yet the Court’s hands are tied and it must sanction them, along with the Maune Raichle firm, which likely is the driving force behind the Illinois litigation.”).

³ The FCR has negotiated such a plan with Debtors, which claims’ resolutions procedures will be modeled on those approved in *In re Garlock Sealing Technologies, LLC*, Case No. 20-30609 (Bankr. W.D.N.C.) (hereinafter, “*Garlock*”), which provide claimants with opt-outs to the tort system. See, *Settlement Facility Second Amended and Restated Claims Resolution Procedures* ¶ 9.6, dated April 1, 2021 (enabling a holder of a disputed claim to file a lawsuit in the tort system) available at <http://garlocksettlementfacility.com/assets/uploadedFiles/8eedc7d3-3283-4663-b851-3a929d102e94.pdf>. The proposed funding for the plan in this case is \$545 million, significantly greater than the funding in *Garlock* where similarly situated claims from encapsulated gasket and packing products are paid in full, from a \$480 million trust. It also compares favorably to the fixed funding of \$610 million in *In re Paddock Enters., LLC*, Case No. 20-10028 (LSS), Dkt. 1406 (Bankr. D. Del. May 26, 2022) (hereinafter, “*Paddock*”).

⁴ See e.g., *In re Bestwall LLC*, 71 F.4th 168, 183 (4th Cir. 2023) (noting Section 524(g) of the Bankruptcy Code “promote[s] the equitable, streamlined, and timely resolution of claims in one central place compared to the state tort system, which can and has caused delays in getting payment for legitimate claimants.”); *Garlock*, Case No. 10-31607, Dkt. 5916 at 2 (Counsel for the *Garlock* ACC, declaring the *Garlock* Plan

despite the fact, like here, the debtors in those cases went through a prepetition restructuring and were fully solvent.

The interests of the class of present claims in the Debtors' cases are not served by the ACC objecting to a subpoena seeking information from a database of paid Aldrich/Murray claims.⁵ Paid claimants are not creditors. Moreover, they are otherwise represented by able counsel, many of whom have appeared in the Debtors' cases on multiple occasions. Simply put, this is not the ACC's fight.

Even if the ACC were the proper party to protect the interests of non-creditors, the relief sought should be denied. Two years ago, in the *Bestwall* case, the debtor issued subpoenas seeking substantially the same information from both *DBMP* and *Aldrich/Murray*. Following extensive motion practice and hearings, the ACC's objections in both cases were largely overruled.⁶

“provides funding in a reasonable amount for the resolution” of claims and “in all circumstances, embodies a worthy compromise and a sound basis for resolving these long-running Chapter 11 cases”); *Paddock*, Case No. 20-10028, Dkt. 1406 ¶¶ 88-92, 138, 171 (finding of good faith and fair and equitable trust documents). *See also Order Denying Motions to Dismiss*, entered in this case on December 28, 2023, Dkt. 2047 at 41 (the Court stating: “Even for solvent or non-distressed debtors, it would appear mutually advantageous to employ a trust mechanism to pay the claims of victims who prefer these more expeditious procedures to pursuing their claims in the tort system. Potentially, a plan/trust might offer ‘evergreen’ trust funding by the debtor and its allies to ensure all claims are paid in full. Or an ‘opt out’ right could preserve the right to litigate in the tort system for those claimants who prefer that course. Thus, even for a solvent and ‘non-distressed’ asbestos debtor and its creditors, there may be advantages to be obtained in Chapter 11.”).

⁵ *See, e.g.*, Jan. 26, 2023 Hr’g Tr., at 38:25; 39:1-10, Dkt. 1599 (Counsel for the ACC stating it is motivated to avoid “some very critical determinations about the, the, the way that the plaintiffs and the tort lawyers behaved in the tort system . . . And that is a responsibility that we bear, is to not let that happen again on our watch.”). *See also* Feb. 9, 2023 Hr’g Tr., at 92:22-25, 93:1-6, *DBMP*, Case No. 20-30080, Dkt. 2280 (the Court stating: “it is possible that the Matching Claimants are simply a representation of the tort firms themselves protecting their pecuniary interests” and “someone acknowledged that part of this was the fear that they were going to get tarred with the, with the Garlock brush that, of making nondisclosures.”); *Bestwall*, 71 F.4th at 184 (“It is not clear why Claimant Representatives’ counsel have relentlessly attempted to circumvent the bankruptcy proceeding, but we note that aspirational greater fees that could be awarded to the claimants’ counsel in the state-court proceedings is not a valid reason to object to the processing of the claims in the bankruptcy proceeding.”).

⁶ *See* May 18, 2022 Hr’g Tr. in *Bestwall*, Case No. 17-31795, Dkt. 2586; *see also* May 26, 2022 Hr’g Tr. of joint hearing in *DBMP*, Case No. 20-30080, Dkt. 2586 and *Aldrich Pump.*, Case No. 20-30608, Dkt. 1195.

There is no good reason why this Court should permit issues that it has already decided to be repeatedly relitigated. Indeed, none has been given. Thus, the FCR respectfully suggests that the impacted parties, DBMP and the law firms of the paid *Aldrich/Murray* claimants, cooperate and reach agreement on a consensual order along the lines of that previously entered by the Court and do so in advance of the upcoming hearing on April 17, 2024. If such agreement cannot be reached, the Court should deny the ACC Motion just as it did before.

WHEREFORE, the FCR prays that the Court will enter an Order denying the ACC Motion and granting such further relief as is just and proper.

Dated: April 3, 2024
Charlotte, North Carolina

Respectfully submitted,

/s/ A. Cotten Wright

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