

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

In re

ALDRICH PUMP LLC, *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 20-30608 (LMJ)

(Jointly Administered)

**THE FUTURE ASBESTOS CLAIMANTS' REPRESENTATIVE'S  
REPLY TO THE RESPONSES TO THE MOTION FOR AN ORDER  
COMMENCING THE ESTIMATION TRIAL  
WITH HEARINGS BASED ON TORT SYSTEM VALUES AND  
THE PARTIES' EXPERT REPORTS**

Before the Court is the motion brought by Joseph W. Grier, III, the representative for future asbestos claimants in the above-captioned cases (the “FCR”) for an order directing that the estimation trial be commenced with hearings based on tort system values and the parties’ expert reports (“the “Motion”).<sup>2</sup>

**I. The FCR’s Position**

The FCR argues that granting the Motion could jumpstart these cases, providing for a short, streamlined estimation trial in early 2026, free of the delays and complexities attendant to the Debtors’ legal liability model (including highly charged allegations of evidence suppression). In turn, with the class fiduciaries’ actions aligned with the collective interests of the classes, the Court’s resulting asbestos liability estimate should lead to consensual agreement for a full-pay asbestos trust, funded at values commensurate with the Court’s findings. Such a trust—readily available here given the Debtors’ solvency—best serves the creditors’ collective class interests in

<sup>1</sup> The Debtors are the following entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): Aldrich Pump LLC (2290) and Murray Boiler LLC (0679).

<sup>2</sup> Dkt. 2491.



receiving prompt, fair, and full compensation. A trust also would serve the Debtors' interests in both fairly addressing their asbestos liabilities in one forum and avoiding massive defense costs that do not inure to the benefit of the Debtors or the creditors.

For support, the FCR points to the success of the \$480 million full-pay *Garlock* Trust.<sup>3</sup> Given the similarity of the Debtors' and *Garlock's* asbestos liabilities, the carefully negotiated, court-approved, and successful *Garlock* Trust documents could be re-purposed without delay. The FCR notes that the Debtors' proposed \$545 million trust was derived solely by reference to the Debtors' tort values. Additionally, the parties' experts—the FCR, the Debtors, and the newly constituted Asbestos Creditors' Committee (the “ACC”)—have exchanged their expert reports, all of which contain tort value estimates. In sum, the FCR seeks to avoid years of further delay by using the estimation trial to promptly establish a full-pay trust for the benefit of all valid asbestos creditors, current and future.

## **II. The Support of the Debtors, the Non-Debtors Affiliates, and the ACC**

In what is an encouraging development in these cases, the Debtors and the ACC support the core relief sought by the FCR.<sup>4</sup> The Debtors comment that, “if the FCR is correct, and an initial trial estimating the Debtors' liabilities under [tort values] could foster negotiations, allow

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<sup>3</sup> The Debtors' *Response* notes that the *Garlock* Trust funding reflected a compromise number agreed to by the *Garlock* debtor, the ACC, and the FCR. Dkt 2973, at 13. Indeed, trust funding is invariably reached through compromise between debtors and creditor fiduciaries for any solvent debtor. But what is critical here is that the *Garlock* Trust figure was not calculated by reference to legal liability. Although the *Garlock* Court's ruling was instructive on several points, including, critically, the science of exposure to asbestos fibers from encapsulated products, it was not ultimately dispositive on the key issue of funding. Further, the resulting settlement values offered by the Trust, which have more than doubled, are calculated by the *Garlock* Trust's trustee, relying on the advice of the Trust's claims expert, Ankura, which, in turn, relies on many of the same factors that will be considered at the proposed tort value estimation trial in this case. Such factors include claiming patterns, incidence of disease over time, the different types of disease, occupational exposure, discount rates, inflation rates, etc. Indeed, the FCR is not aware of an asbestos bankruptcy trust where creditor fiduciaries and claimants accepted funding calculated by reference to the legal liability model or where future payments are or were managed by reference to that model.

<sup>4</sup> See Debtors' *Response*, Dkt. 2973; ACC *Response*, Dkt. 2969. The Non-debtor Affiliates filed a *Joinder* to the Debtors' *Response*. Dkt. 2974.

parties to better evaluate the proposed \$545 million Debtors/FCR Plan, and lead the parties to consensual resolution, the Debtors are in favor.”<sup>5</sup> For its part, the ACC notes that “the Committee supports the Motion to the extent it would result in the Debtors complying with such Court-ordered tort value estimation process” and the parallel paths of tort value estimation and mediation “present dual opportunities, and are a sensible and efficient way to move these cases along a hopeful path toward a confirmable section 524(g) plan.”<sup>6</sup>

### **III. The Concerns of the Debtors and the ACC**

Both the Debtors and the ACC raise certain logistical concerns, but none should pose an obstacle to the relief sought in the Motion. The Debtors propose that the Court should first review the initial expert reports in light of the Motion; bifurcate the estimation process into Phases I and II; preserve the Debtors’ ability to advance the legal liability funding model; limit the evidence at trial to the experts’ initial and rebuttal reports; set a schedule for rebuttal reports, depositions, and the trial; and pause all claims file discovery related the model.<sup>7</sup> The ACC focuses on the benefits of mediation and raises various issues that are ancillary to the relief sought in the Motion.<sup>8</sup> As to the Motion itself, the ACC simply proposes that the Debtors should not be permitted to present their evidence suppression theory at the tort value estimation, there should be no expert challenges, and, to the extent the Court decides to order mediation again, that process should not be put on hold.<sup>9</sup>

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<sup>5</sup> Dkt. 2973 at 3.

<sup>6</sup> ACC *Response*, Dkt. 2969 at 2, 10. The ACC’s stated position of moving toward confirmation of a section 524(g) plan is aligned with the collective interests of the class of currently ill claimants, and the individual creditors who now sit on and are making decisions for the ACC should be applauded for adopting this approach.

<sup>7</sup> Dkt 2973 at 3.

<sup>8</sup> The FCR, mindful of the Court’s time, will not respond to all of the ACC’s statements on those various ancillary issues because many of them need not be addressed in the context of a ruling on the Motion.

<sup>9</sup> See ACC’s *Response*, Dkt. 2969 at 10.

#### **IV. Resolution of the Debtors' Concerns**

The FCR agrees with the Debtors that the Court should review the expert reports at the appropriate time but submits that the Court can rule on the Motion without having done so. For the purposes of the Motion, the critical point is not the experts' conclusions but that all three experts are thus prepared to proceed to a tort value estimation trial. Further, the Debtors, the ACC, and the FCR have each signaled their support for the core relief without having to reference the specific contents of the reports. If the Motion is granted, the Court will necessarily see the reports, both the initial and rebuttal reports in the course of the estimation trial.<sup>10</sup>

The Debtors' other concerns are reasonable and readily addressed by making explicit what the Motion implies. Without undermining the relief sought by the FCR or prejudicing any party, the Court could (i) formally bifurcate the estimation process into two phases and (ii) preserve the Debtors' rights to present their legal liability model. No party appears to object to that approach. Moreover, all parties are already on board with limiting the evidence at trial to the experts' reports and testimony, and setting a prompt schedule for rebuttal reports, depositions, and trial. Pausing claims file discovery for the short window before the estimation trial would have the salutary benefit of allowing the parties to focus on the trial and potential paths to a consensual trust. The FCR, however, defers to the ACC and the Debtors on that question, as it is their discovery that is at issue.

#### **V. Resolution of the ACC's Concerns**

As to the limited concerns raised by the ACC, the Motion already specifically seeks to limit the estimation trial to expert extrapolations based on tort values. Granting that relief, which the

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<sup>10</sup> When that time comes, the parties will have the opportunity to address whether the Court should consider the legal liability section of Debtors' initial expert report in the context of a tort-value estimation trial.

Debtors do not oppose, would address the ACC's concern in that regard. As to potential challenges to the experts themselves, the Court cannot rule on those in a vacuum, in advance, and in a blanket fashion. Rather, any such challenges can be addressed on an individual basis as they arise, with the parties retaining all rights afforded to them under the Bankruptcy and Federal Rules governing expert reports and testimony.

On the separate question of the need for a new mediation order, there is nothing to prevent the parties from reviving the Court-ordered but currently stalled mediation to the extent they see value in doing so—no further order is needed as the mediation was never closed and mediators remain in place. If the Court elects to enter an order with respect to the BA's recent second mediation motion, the FCR agrees with the Debtors that the Court (and the BA) should first review the initial expert reports to assess how far apart the parties remain and whether it would be productive to order a new mediation before any estimation trial. On that point, given the history of these cases and their current posture (five-and-one-half years of delay, and no consensual agreement among all parties), logic suggests that a tort-value estimate from this Court, based on expert testimony and a developed record, would materially assist all parties in determining the appropriate funding for a full-pay trust. The parties were ordered to mediation before, without any success. It is reasonable to conclude that an estimation ruling could be the catalyst for a different result. Likewise, if resolution can be achieved in advance of estimation in mediation, the parties should be encouraged in those efforts but only so long as the estimation trial is not delayed or disrupted.<sup>11</sup>

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<sup>11</sup> The professionals for the parties are experts in the field of asbestos bankruptcies and fully aware of the two discrete but weighty issues to be resolved—funding amount and treatment of jury trial opt outs—before an asbestos trust can be created. Given the success of the *Garlock* Trust and the parallel liabilities there is no need to revisit the trust procedures, which were previously approved by many of the same professionals and experts and critically, the *Garlock* Court. Thus, the professionals are certainly capable of resolving these issues without the need for formal mediation if there is a collective willingness to do so. Indeed, that is exactly what happened in *Garlock*.

Finally, in a positive development, since the Motion was filed, the parties have had, and should continue to have, good faith, productive conversations to identify any remaining issues and resolve them if possible.

**VI. Conclusion**

For these reasons and those set forth in the Motion, the FCR respectfully requests that the Court enter an Order granting the Motion incorporating the Court's preferences with respect to the Debtors' and the ACC's logistical concerns.

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Charlotte, North Carolina

Respectfully submitted,

/s/ A. Cotten Wright

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