

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

In re:

ALDRICH PUMP LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 20-30608 (JCW)

**MOTION OF THE OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY
CLAIMANTS TO CONTINUE HEARING ON THE JOINT MOTION OF THE
DEBTORS AND THE FUTURE CLAIMANTS' REPRESENTATIVE FOR AN ORDER
(I) ESTABLISHING A BAR DATE FOR CERTAIN KNOWN ASBESTOS CLAIMS, (II)
APPROVING PROOF OF CLAIM FORM, (III) APPROVING PERSONAL INJURY
QUESTIONNAIRE, (IV) APPROVING NOTICE TO CLAIMANTS, AND (V)
GRANTING RELATED RELIEF**

The Official Committee of Asbestos Personal Injury Claimants (the “Committee”) hereby moves this court (the “Motion”) to continue the hearing to consider the *Joint Motion of the Debtors and the Future Claimants' Representative for an Order (I) Establishing a Bar Date for Certain Known Asbestos Claims, (II) Approving Proof of Claim Form, (III) Approving Personal Injury Questionnaire, (IV) Approving Notice to Claimants, and (V) Granting Related Relief* [Docket No. 471] (the “Bar Date/PIQ Motion”) currently set for hearing on January 28, 2021 at 9:30 a.m. to a hearing date after the Court issues its decision on the Debtors' request for a preliminary injunction. In support of the Motion, the Committee states as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334.

This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of this Motion and this chapter

¹ The Debtors are the following entities (the last four digits of the Debtors' taxpayer identification numbers follow in parentheses): Aldrich Pump LLC (2290) and Murray Boiler LLC (0679). The Debtors' address is 800-E Beaty Street, Davidson, North Carolina 28036.



11 case is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are Section 105 of Title 11 of the United States Code (the “Bankruptcy Code”) and Federal Rules of Bankruptcy Procedure 9006, 9013, and 9014 (the “Bankruptcy Rules”).

BACKGROUND

2. On May 1, 2020, the Debtors’ predecessors each engaged in a series of corporate transactions through the use of a Texas divisive merger statute that created the current Debtor entities.

3. On June 18, 2020 (the “Petition Date”), the Debtors commenced these reorganizations by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code and commenced the adversary proceeding captioned *Aldrich Pump LLC and Murray Boiler LLC v. Those Parties to Actions Listed on Appendix A to Complaint and John and Jane Does 1-1000*, Adv. Pro. No. 20-03041 (the “Adversary Proceeding”).

4. As part of the Adversary Proceeding, the Debtors filed their *Motion for an Order (I) Preliminarily Enjoining Certain Actions Against Non-Debtors, or (II) Declaring that the Automatic Stay Applies to Such Actions, and (III) Granting a Temporary Restraining Order Pending a Final Hearing* [Adv. Proc. Dkt. No. 2] (the “Preliminary Injunction Motion”), seeking to enjoin thousands of the Debtors’ current and future asbestos personal injury victims from bringing or prosecuting state-court actions to recover damages from the Debtors’ many affiliates and insurers.

5. On July 23, 2020, the Court entered the *Agreed Order Regarding Debtors' Request for Extension or Application of the Automatic Stay to Certain Actions Against Non-Debtors* (the “Injunction”) pending an evidentiary hearing on the Preliminary Injunction Motion.

6. On December 14, 2020, the Debtors and Joseph W. Grier, III, as the Future Claimants' Representative ("FCR"), filed the Bar Date/PIQ Motion, including a proposed claim form and questionnaire.

RELIEF REQUESTED

7. A hearing on the Bar Date/PIQ Motion should be continued—and a stay of the related briefing and objection deadlines should be ordered—until after the Court has issued its decision on the Preliminary Injunction Motion. Consistent with the Court's decision in *In re DBMP LLC*, the Court should schedule a status conference following the disposition of the Preliminary Injunction Motion to discuss briefing and discovery schedules regarding the Bar Date/PIQ Motion.

ARGUMENT

8. The focus of this bankruptcy case should be the May 5, 2021 hearing (the "Hearing") on the Preliminary Injunction Motion and the discovery, briefing, and ancillary litigation necessary for each party to present its best arguments to the Court at that hearing. Instead, the Debtors (in conjunction with the FCR) filed the Bar Date/PIQ Motion, a distracting, premature motion that is unnecessary for—and indeed, will not be relevant to—the Court's decision regarding the Preliminary Injunction Motion (or to the development or negotiation of any consensual plan). Neither the Debtors nor the FCR will be adversely impacted by the Court continuing a hearing on the Bar Date/PIQ Motion and deferring the attendant briefing deadlines until after the Hearing.

7. The Bar Date/PIQ Motion should be seen for what it really is—a calculated effort to gain this Court's approval of the Debtors' attempt to conduct unnecessary, unilateral discovery from those individuals impacted the most by the current Injunction. The Bar Date/PIQ Motion is

hypocritical. The very individuals presently denied the right to proceed with their state court litigation to recover damages from the Debtors' corporate affiliates and insurers and denied the right to seek discovery from the Debtors and their corporate affiliates are nevertheless to be subject to discovery that would provide a unilateral advantage to such entities in the event that they return to the tort system and litigation with these same victims. The Debtors (and the FCR) would require that these same individuals file a proof of claim form (or be barred from claiming against any trust created in this allegedly full-pay case) and subsequently provide responses to burdensome discovery (which, incidentally, given the age of the bankruptcy case the Debtors should already possess) that is simply irrelevant to the Preliminary Injunction Motion, the Hearing, or the needs of this case. Indeed, the parties are litigating the Preliminary Injunction Motion, the resolution of which may impact claims asserted against the Debtors.

8. The Debtors are not prejudiced by delaying consideration of the Bar Date/PIQ Motion. While the Debtors and the FCR assert that the Bar Date/PIQ Motion will provide information necessary to negotiate a plan of reorganization, *see* Bar Date/PIQ Motion at 2, that is a false premise. First, the Debtors likely have such information as exists on its pending claims. Undoubtedly, the Debtors analyzed the asbestos claims at the time of the Texas divisive merger. After only 49 days as separate entities, the Debtors sought this Court's protection and have been insulated from litigation by the Injunction. Indeed, with less than nine months having passed since the initial valuation for transfer, the Debtors certainly have a firm grasp on the status of the current claims; this information has not gone stale.

9. Second, the premise that this case could result in a consensual plan is false. This case presents an abuse of bankruptcy process. It is an effort to cap an otherwise uncapped liability by force, and to deliver bankruptcy relief to non-debtors. That the Debtors, their affiliates, and

their insurers do not like the tort system does not make this court an alternative to courts that have been established to determine the issue of the relief to which the claimants are entitled. The Court should not permit a fishing expedition aimed at taking advantage of this case before the Court has determined that the case should proceed at all.

10. Equally importantly, the information will do nothing to aid in the development of a plan. The Debtors have years of litigation history. The discovery sought is not sought to aid in a plan—it is a transparent effort to minimize the pending claims by challenging claims that have not yet been fully readied for trial. And it is an effort to create a foothold in this Court.

11. The Committee respectfully reminds the Court that it was the Debtors that believed that it would not be “doable”—that they could not get the necessary work completed in time—to proceed with a hearing on the Preliminary Injunction Motion in March. *See* Dec. 16, 2020 Hr’g Tr. 12:12-19; *see also id.* 33:13-34:5 (noting that Debtors and non-debtors had the “burden at that point . . . to review the mammoth amount of documents” and that suggesting process “be done in six weeks over two major holidays is . . . not something that’s reasonably going to be able to be done”). The Debtors asserted that they could not proceed with an earlier hearing on the Preliminary Injunction Motion because of the scale of the work required; they cannot now assert that they should be permitted to proceed with the Bar Date/PIQ Motion in advance of the Hearing.

12. The burdensome discovery sought in the Bar Date/PIQ Motion is simply unnecessary.

13. Further, it is evident that the procedures requested in the Bar Date/PIQ Motion are intended to collect information that the Debtors will undoubtedly assert they need to engage in an estimation proceeding (or object to an asbestos claimant’s proofs of claim). *See* Bar Date/PIQ Motion at 2 (asserting that bar date and claim form, with attendant questionnaire, would provide “greater certainty” about asbestos claims). However, these Debtors have not yet requested an

estimation of their asbestos liabilities—and to be clear, the Committee believes that estimation is both unnecessary and inappropriate in a full pay case.

14. For all of these reasons, consideration of the Bar Date/PIQ Motion is premature, and any briefing related to the motion should be continued until after the Hearing.

15. The present cases are nearly identical to *In re DBMP LLC*, and the Debtor's Bar Date/PIQ Motion should be treated the same as DBMP's requested personal information questionnaire and trust discovery motions: the Bar Date/PIQ Motion should be deferred. Similar to *DBMP*, this Court granted a requested TRO at the first-day hearing "with a full understanding that the preliminary injunction's going to require a bit more," noting that the Injunction only sought to "maintain the status quo" until the relevant parties like the Committee and FCR could be appointed and retain representation. Jun. 22, 2020 Hr'g Tr. 134:23-25, 140:16.

16. The Committee is now opposing the Preliminary Injunction Motion and challenging the Injunction. Therefore, as this very Court previously recognized in *DBMP*, the Hearing and a decision on the Preliminary Injunction Motion should be the first order of business in this case. *See In re DBMP LLC*, Case No. 20-03004, Hr'g Tr. 38:2-7 (Bankr. W.D.N.C. Nov. 18, 2020) ("As I said, my first priority is getting that injunction hearing in the can. ... I would encourage everyone to make that your first priority."). A decision on the Preliminary Injunction Motion is necessary before proceeding further with the Bar Date/PIQ Motion. The Hearing is the Committee's priority; it should have been the Debtors' priority.

NOTICE

17. Notice of this Motion has been given to Debtor's counsel, the Bankruptcy Administrator for the Western District of North Carolina, and all parties requesting notice pursuant to Bankruptcy Rule 2002.

WHEREFORE, the Committee respectfully requests entry of an Order granting the relief requested herein and such other and further relief as the Court deems just and proper.

Dated: Charlotte, North Carolina
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