UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re: City of Detroit, Michigan, Debtor.	Bankruptcy Case No. 13-53846 Honorable Thomas J. Tucker Chapter 9

DEBTOR CITY OF DETROIT'S OBJECTION TO CLAIM 2374

DYKEMA GOSSETT•A PROFESSIONAL LIMITED LIABILITY COMPANY•400 RENAISSANCE CENTER•DETROIT, MICHIGAN 48243

The Debtor, the City of Detroit ("City"), files this objection ("Objection") requesting that the Court enter an order, substantially in the form attached as Exhibit 1, disallowing and expunging the claim identified on Exhibit 6-1 for failing to comply with Federal Bankruptcy Rules of Procedure ("FBRP" or "Rules") 3001 and 2019.

The claim objected to here arises out of pre-petition litigation that is pending in state circuit court. The pending suit has several plaintiffs, and all plaintiffs allege property damage from a purported sewer system overflow event on May 25, 2011. In support of this Objection, the City respectfully states as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this Objection pursuant to 28 U.S.C. §§ 157 and 1334 and Article VII, Section A of the Plan (defined below). This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND FACTS

2. On July 18, 2013 ("Petition Date"), the City filed a petition for relief in this Court, thereby commencing the largest Chapter 9 bankruptcy case in history.

3. On November 21, 2013, this Court issued its *Order, Pursuant to Sections 105, 501, and 503 of the Bankruptcy Code and Bankruptcy Rules 2002 and 3003(c), Establishing Bar Dates for Filing Proofs of Claim and Approving Form and Manner of Notice Thereof* [Doc. No. 1782] ("Bar Date Order"), establishing deadlines to file certain proofs of claim in this case. The Bar Date Order set the deadline to file proofs of claim as February 21, 2014 at 4:00 p.m., Eastern Time ("Bar Date").

4. On December 5, 2013, this Court held that the City was eligible for relief under Chapter 9 of the Bankruptcy Code. *See Order for Relief Under Chapter 9 of the Bankruptcy Code*. [Doc. No. 1946].

5. On February 21, 2014, attorney Ms. Laura Sheets of the law firm Liddle & Dubin, P.C. (formally Macuga, Liddle, & Dubin, P.C.) filed three proofs of claim with this court. [Proof of Claim form, attached as Exhibit 6-1]. Each of these claims named a different lawsuit – each of which was pending in state circuit court – as the creditor. This Objection is for Claim 2374, named

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Abernathy, et. al. v. City of Detroit, Case No. 13-009226-NZ. The City objects to the two other related claims in separate filings.

6. Ms. Sheets signed the proof of claim as the purported authorized agent of the creditors.

7. On October 22, 2014, the City filed the *Eighth Amended Plan of the Adjustment of Debts of the City of Detroit (October 22, 2014)* [Doc. No. 8045] ("Plan").

8. On November 12, 2014, this Court entered an Order confirming the Plan [Doc. No. 8272] ("Confirmation Order").

9. The Plan became effective on December 10, 2014 ("Effective Date").

10. On August 2 and 3, 2016, the City of Detroit sent three Stay Modification Notices – one for each claim – to the Macuga, Liddle, & Dubin, P.C. law firm.

11. On August 10 and 11, 2016, Ms. Sheets refiled the complaint in state circuit court.

12. On November 1, 2016, this Court entered an Order extending the Claims Objection Bar Date through June 7, 2017. [Doc. No. 11654].

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Claim 2374 should be disallowed and expunged because the creditors and their purported agent have failed to adhere to the requirements of Rules 3001 and 2019.

INTRODUCTION

Rule 3001(b) requires that a proof of claim be executed "by the creditor or the creditor's authorized agent." Rule 2019(b) requires that any agent or representative of a group (not composed entirely of affiliates) must file a verified statement listing the information described in Rule 2019(c).

For a proof of claim filed by an entity other than the creditor to be valid, that entity must demonstrate that is was expressly and properly authorized to execute that proof of claim. Rule 3001(b); *See also Manville Forest Prods. Corp. v. Manville Forest Prods. Corp.*, 89 B.R. 358, 376 (Bankr. S.D.N.Y. 1988). No such express authority existed here. That authority must have existed when the proof of claim was filed, or at least have been conferred prior to the passing of the Bar Date. *In re W. R. Grace & Co.*, 316 F. App'x 134, 136 (3d Cir. 2009). The creditors here did not ratify the purported agent's unauthorized actions prior to the Bar Date.

Even if the purported agent is now able to show that the proof of claim was filed with authorization, she is still bound by the requirements of Rule 2019 because she purports to represent multiple creditors in this proceeding. Ms. Sheets

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did not submit the required verified statement. Failing to comply with Rule 2019 is a fatal defect which ought to result in the claim being disallowed and expunged. *Reid v. White Motor Corp.*, 886 F.2d 1462 (6th Cir. 1989).

I. EACH CREDITOR MUST FILE A PROOF OF CLAIM

As a general rule, a creditor must file a proof of claim to be eligible for a share in the bankruptcy estate. 11 USC § 501. In a Chapter 9 bankruptcy case, a proof of claim is deemed filed under section 501 for any claim that appears filed under the debtor's list of creditors, "except a claim that is listed as disputed, contingent, or unliquidated." 11 USC § 925. If the debtor contests the "validity of a claim … in this manner, then the potential claimant must physically file a proof of claim." *In re Dow Corning Corp.*, 211 B.R. 545, 560 (Bankr. E.D. Mich., 1997).

In conjunction with the Bankruptcy Code, the Rules further provide that "[a]ny creditor or equity security holder whose claim or interest is not scheduled or is scheduled as disputed, contingent, or unliquidated shall file a proof of claim or interest within the time prescribed by [this rule]; any creditor who fails to do so shall not be treated as a creditor with respect to such claim for the purposes of voting and distribution." FRBP 3003(c)(2); *see also Pioneer Inv. Servs. v. Brunswick Assocs. Ltd. P'ship.*, 507 U.S. 380, 383; 113 S. Ct. 1489 (1993) ("all

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such creditors are required to file a proof of claim with the bankruptcy court before the deadline, or 'bar date,' established by the court").

If a creditor chooses to not submit a proof of claim, the claim will be disallowed. FRBP 3002(a); *see also Tenn. Student Assistance Corp. v. Hood,* 541 U.S. 440, 447; 124 S. Ct. 1905 (2004) ("If a creditor chooses not to submit a proof of claim, … the creditor will be unable to collect").

With respect to the claims at issue in this Objection, and the companion objections for the two other related claims, roughly two-thirds of the home owners were listed in the debtor's List of Creditors. [First Amended List, Doc. No. 258; Second Amended List, Doc. No. 1059]. Every one of those scheduled creditors was listed as disputed, contingent, and unliquidated. [Doc. No. 1059].

The Rules provide that a "proof of claim shall be executed by the creditor or the creditor's authorized agent." Rule 3001(b). On its face, "this rule does not permit an individual to file a proof of claim" unless it falls into one of those two categories. *In re Associated Cmty. Servs.*, 520 B.R. 650, 652 (Bankr. E.D. Mich., 2014). All of the individual creditors were required to file a proof of claim, either directly, or through a properly authorized agent, if they intended to preserve any alleged claim against the City. They did not do so.

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II. THE PURPORTED AGENT LACKED AUTHORIZATION

The Rules do allow a proof of claim to be executed by someone other than the creditor itself, but that entity must be an "authorized agent." Rule 3001(b). Only one proof of claim was filed in connection with the underlying pending lawsuit at issue in this Objection. That proof was signed and submitted by Ms. Laura Sheets, the attorney representing the creditors in the underlying state court action, who purports to be the creditors' authorized agent. The creditors are unable to show that Ms. Sheets had the necessary authority to file the proof of claim on the creditors' behalf.

A. Authority Is Necessary

A proof of claim that is filed by a purported agent lacking actual authority is "flawed in a similar fashion as one that is filed by a noncreditor." *Kahler v. FirstPlus Fin., Inc. (In re FirstPlus Fin., Inc.),* 248 B.R. 60, 70 (Bankr. N.D. Tex., 2000). Proofs of claim filed by an improper party in this manner are invalid "on their face and [are] not prima facie evidence of anything." *Id.* at 70-71. The importance of Rule 3001 is the requirement that "each individual claimant … must file a proof of claim, or expressly authorize an agent to do so on its behalf." *Manville Forest Prods. Corp. v. Manville Forest Prods. Corp.,* 89 B.R. 358, 376 (Bankr. S.D.N.Y. 1988).

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B. Authority Must Be Explicit

In promulgating the Bankruptcy Rules, the Supreme Court chose to use the term "authorized agent" in Rule 3001(b). The adjective "authorized" signals the Supreme Court's desire that an entity "have express – and not merely implied – permission" to file a proof of claim on another's behalf. *In re N. Bay Gen. Hosp., Inc.*, 404 B.R. 443, 459 (Bankr. S.D. Tex. 2009) (objection to proof of claim sustained and claim denied because purported agent lacked express authority). In *In re W. R. Grace & Co.*, the Third Circuit upheld the bankruptcy court's opinion disallowing and expunging 44 asbestos property damage claims because the law firm that signed the proofs of claim was not *expressly* authorized to do so under Rule 3001(b). *In re W. R. Grace & Co.*, 316 F. App'x 134, 136 (3d Cir. 2009).

In the context of class actions, some courts have allowed an attorney to file a proof of claim on behalf of the class, if that class was previously certified, without any additional documentation of authority. Still, many other courts have held that the authority to represent the class in district court does not authorize that entity to execute a proof of claim without additional express consent do to so. *In re Baldwin-United Corp.*, 52 B.R. 146, (Bankr. S.D. Ohio 1985); *In re Arrow, Inc.*, 75 B.R. 372 (Bankr. S.D. Fla. 1987), *rev'd on other grounds*, *United States v. Arrow Air (In re Arrow Air)*, 101 B.R. 332 (S.D. Fla. 1989). Regardless, that area of case law will not serve as a safety net for the creditors here. The underlying

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pending lawsuit is not a certified class action, the creditors have not sought certification in state court or bankruptcy court, and the time for seeking certification has long since passed.

The creditors are unable to demonstrate that Ms. Sheets was expressly authorized by each creditor to file a proof of claim on their behalf. This deficiency invalidates the proof of claim.

C. Ratification Of Authority Is Ineffective Here

In response to this objection, the creditors may attempt to proffer express consent after the fact, stating that they now authorize Ms. Sheets to have filed the proof of claim. This post hoc ratification would be wholly ineffective in curing the defects that exist.

The Rules specifically allow a creditor to grant an agent authority to file a claim on its behalf, but this does not allow a hopeful agent to file a proof of claim and "subsequently inform the creditor of that fact." *Manville Forest Prods. Corp. v. Manville Forest Prods. Corp.*, 89 B.R. 358, 376 (Bankr. S.D.N.Y. 1988). The Rule is structured such that an agent's actions are valid only insofar as she possessed the appropriate authority at the time when the actions were performed. *See Kahler v FirstPlus Fin, Inc. (In re FirstPlus Fin, Inc.)*, 248 B.R. 60, 70 (Bankr. N.D. Tex., 2000) ("There should be no retroactivity" to agent's authorized status

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under Rule 3001(b) and, "a proof of claim filed by an inappropriate party is so flawed that even amendment is impossible.").

In some instances, creditors have attempted to cure the defects in the proof of claim by extending express authority to and affirmation of the agent's prior conduct. This method of ratification may be effective in some circumstances, but is fruitless here because the Bar Date has already passed. [Doc. No. 1782]. An "intervening bar date vitiates [such attempts] because ratifications are deemed ineffective in the face of an intervening deadline." *In re W. R. Grace & Co.*, 316 F. App'x 134, 136 (3d Cir. 2009) citing *Fed. Elect. Comm'n v. NRA Political Victory Fund*, 513 U.S. 88, 98, 115 S. Ct. 537, 130 L. Ed. 2d 439 (1994) ("It is essential that the party ratifying should be able not only to do that act ratified at the time the act was done, but also at the time the ratification was made.").

III. THE PROOF OF CLAIM DID NOT COMPLY WITH RULE 2019

Even if the creditors were able to present evidence that express authority was conferred by each creditor prior to the Bar Date expiration, there are additional fatal deficiencies with the proof of claim. When an entity purports to be the authorized agent of multiple creditors, it must file a "verified statement" with the court. Rule 2019(b)(1). Based on the subsections relevant to this objection, the verified statement must include:

- The pertinent facts and circumstances concerning the employment of the entity. (c)(1)(B)

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- The name and address of the entity. (c)(2)(A)
- With respect to the entity, the nature and amount of each disclosable economic interest held in relation to the debtor as of the date the entity was employed. (c)(2)(B)
- The name and address of each creditor. (c)(3)(A)
- With respect to each creditor, the nature and amount of each disclosable economic interest held in relation to the debtor as of the date of the verified statement. (c)(3)(B)
- A copy of the instrument authorizing the entity to act on behalf of the creditors. (c)(4)

The City has requested (in discovery in the state court litigation) that the creditors or their purported authorized agent produce these verified statements, if they exist, but there has been no response to those requests. Exhibit 6-2. Failing to comply with the requirements of Rule 2019 is a fatal defect. This Court should reject the proof of claim and disallow the underlying claim. *See Reid v. White Motor Corp.*, 886 F.2d 1462 (6th Cir. 1989); *Manville Forest Prods. Corp. v. Manville Forest Prods. Corp.*, 89 B.R. 358, 376 (Bankr. S.D.N.Y. 1988); *In re Elec. Theatre Rests. Corp.*, 57 B.R. 147, 149 (Bankr. N.D. Ohio 1986).

In *Reid v. White Motor Corp.*, the Sixth Circuit affirmed the district court's rejection of a proof of claim that had been filed on behalf of a group of creditors. 886 F.2d 1462 (6th Cir. 1989). The plaintiff, Patrick Reid, was the attorney for a class of claimants who were all former employees of the debtor, White Motor Corp. ("WMC"). *Id.* at 1463. Prior to WMC's bankruptcy, Reid had initiated a

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suit against WMC, seeking class certification. In 1977, a Michigan circuit court certified the case as a class action (the "*Burch*" class). *Id.* Once the bankruptcy proceeding commenced, Reid, as the purported agent of the *Burch* class, filed a proof of claim seeking severance pay for his clients. *Id.* However, the Sixth Circuit noted that Reid "provided no confirmation of his agency or authority to act on behalf of the members of the *Burch* class in the WMC bankruptcy proceeding." *Id.*

Reid argued that he was the authorized agent of the class and had thereby filed the proof of claim in accordance with Rule 3001(b). *Id.* at 1471. The Sixth Circuit held that, pursuant to Rule 2019, "a purported agent must file a verified statement with the clerk of the bankruptcy court." *Id.*; *see also In re F & C Int'l*, No. 93-11688, 1994 Bankr. LEXIS 274, at *7 (Bankr. S.D. Ohio, Feb. 18, 1994) (disallowing two claims, the court stated, "[u]nder Bankruptcy Rule 3001, a proof of claim may be executed by a creditor's authorized agent. With no evidence of such authorization, however, the claim is invalid."). Reid filed no such statement and the court held that his failure to comply with Rule 2019 was "cause for denial of the proof of claim." *Id.* S*ee also In re North Bay General Hospital, Inc.*, 404 B.R. 443, 458 (Bankr. S.D. Tex. 2009) (agent's failure to comply with bankruptcy rules concerning representation of unsecured creditors in Chapter 11 case was cause for sustaining debtor's objection to proof of claim). The fact that Reid

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merely made a "unilateral assertion of fiduciary status in his proof of claim was insufficient to satisfy the formal requirements of Rule 2019." *Id.*

Reid further argued that his authorization to represent the *Burch* class in the Michigan circuit court extended him the authority as an agent in the bankruptcy proceeding. *Id*. The court rejected this argument, stating the "well-settled" rule that consent to representation "in one piece of litigation is not tantamount to a blanket consent to any litigation the class counsel may wish to pursue." Id. at 1471-72; citing *In re Standard Metals Corp.*, 817 F.2d 625, 631 (10th Cir. 1987), *vacated on other grounds*, 839 F.2d 1383 (10th Cir. 1987); (internal quotes omitted); *see also In re W. R. Grace & Co.*, 316 F. App'x 134, 136 (3rd Cir. 2009) (claim expunged where proof was filed by attorney without authorization, even though attorney represented claimant in underlying state court action); *In re F & C Int'l*, No. 93-11688, 1994 Bankr. LEXIS 274, at *8 (Bankr SD Ohio, Feb. 18, 1994) ("The fact that counsel may be authorized to represent a particular class in District Court litigation does not excuse his failure to comply with Rule 2019.").

The initial burden for establishing agency is on the party claiming to be an agent for several claimants. *In re Ionosphere Clubs*, 101 B.R. 844, 852 (Bankr. S.D.N.Y., 1989) (required filing in Rule 2019(b) places burden on the party claiming agency). The creditors here have made little to no effort toward carrying that burden. The *Reid* court specifically held that it was within the bankruptcy

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court's discretion not to extend the bar date to allow the class members to file individual proofs, even where the creditors relied on the proof of claim filed by their attorney. *Id.* at 1472, n 14. The claim was rejected in *Reid* and should be rejected here for the same reason.

IV. CONCLUSION

The creditors in Claim 2374 have not complied with the necessary procedures for having their alleged claim against the City allowed by this Court. The individual creditors did not file any proof of claim themselves. The entity purporting to be the creditors' authorized agent did not have express authority to act in that capacity, and has made no attempt to demonstrate express authority. Nor did that entity make any effort to comply with the requirements of Rule 2019. These deficiencies in the filing of the proof of claim require that the proof be rejected and the claim disallowed.

The City has provided notice of this Objection at the address set forth by the claimants on its proof of claim. Given the nature of the relief requested, the City respectfully submits that no other or further notice of this Objection need be given.

The City respectfully requests that this Court enter an order, substantially in the form attached as Exhibit 1, granting the relief requested herein and granting the City such other and further relief as the Court may deem just and proper.

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DYKEMA GOSSETT PLLC

Dated: April 19, 2017

By: */s/Kelly R. Houk*

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re: City of Detroit, Michigan, Debtor.	Bankruptcy Case No. 13-53846 Honorable Thomas J. Tucker Chapter 9

EXHIBIT LIST

Exhibit 1 Proposed Order

Exhibit 2 Notice of Objection

Exhibit 3 None

Exhibit 4 Certificate of Service

Exhibit 5 None

Exhibit 6-1 Claim 2374

Exhibit 6-2 State Court Discovery Requests

Exhibit 6-3 *In Re W. R. Grace & Co.*

Exhibit 6-4 *In Re F & C Int'l*

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EXHIBIT 1

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re: City of Detroit, Michigan, Debtor.	Bankruptcy Case No. 13-53846 Honorable Thomas J. Tucker Chapter 9

[PROPOSED] ORDER SUSTAINING
CITY OF DETROIT'S OBJECTION TO CLAIMS 2374

This matter having come before the Court on the *City of Detroit's Objection to Claim Numbers 2374* ("Objection") upon proper notice and a hearing, the Court being fully advised in the premises, and there being good cause to grant the relief requested,

THE COURT ORDERS THAT:

1. The Objection is sustained.

2. Proof of claim number 2374 is disallowed and expunged.

3. The City's claims agent is authorized to update the claims register in accordance with the terms of this Order.

4. The Court retains jurisdiction over any and all matters arising from the interpretation or implementation of this Order.

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EXHIBIT 2 – NOTICE

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re: City of Detroit, Michigan, Debtor.	Bankruptcy Case No. 13-53846 Honorable Thomas J. Tucker Chapter 9

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NOTICE OF OBJECTION TO CLAIM

The City of Detroit has filed an objection to a claim in this bankruptcy case which may affect you.

The claim may be reduced, modified, or denied. You should read these papers carefully and discuss them with your attorney, if you have one.

If you do not want the Court to deny or change your claim, then on or before May 17, 2017, you or your attorney must:

1. File with the court a written response to the objection, explaining your position at:

United States Bankruptcy Court
211 W. Fort St., Suite 1900
Detroit, Michigan 48226

If you mail your response to the court for filing, you must mail it early enough so that the court will **receive** it on or before the date stated above. All attorneys are required to file pleadings electronically.

You must also mail a copy to:

DYKEMA GOSSETT PLLC
Attn: Kathryn J. Humphrey
400 Renaissance Center, 37th Floor
Detroit, Michigan 48243

2. Attend the hearing on the objection, scheduled to be held on **May 24, 2017,** at **1:30 p.m.** in Courtroom 1925, United States Bankruptcy Court, 211 W. Fort Street, Detroit, Michigan, unless your attendance is excused by mutual agreement between yourself and the City's attorney. (Unless the matter is disposed of summarily as a matter of law, the hearing shall be a pre-trial conference only; neither testimony nor other evidence will be received. A pre-trial scheduling order may be issued as a result of the pre-trial conference.)

If you or your attorney do not take these steps, the Court may deem that you do not oppose the objection to your claim, in which event the hearing will be canceled, and the objection sustained.

DYKEMA GOSSETT PLLC

By: */s/ Kelly R. Houk*

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Dated: April 19, 2017

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EXHIBIT 4 – CERTIFICATE OF SERVICE

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re: City of Detroit, Michigan, Debtor.	Bankruptcy Case No. 13-53846 Honorable Thomas J. Tucker Chapter 9

The undersigned hereby certified that on April 19, 2017, she caused a copy of the *City of Detroit's Objection to Claim Numbers 2374* to be served upon all parties registered for ECF service and by first class mail to the following parties:

LIDDLE & DUBIN, P.C.
Laura L. Sheets
975 E. Jefferson Ave.
Detroit, Michigan 48207

Dated: April 19, 2017

DYKEMA GOSSETT PLLC

By: */s/Kelly R. Houk*
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EXHIBIT 6-1

CLAIM 2374

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B10 (Official Form 10) (04/13) (Modified)

UNITED STATES BANKRUPTCY COURT EASTERN DISTRICT of MICHIGAN	CHAPTER 9 PROOF OF CLAIM
Name of Debtor: City of Detroit, Michigan — Case Number: 13-53846	
NOTE: *Do not use this form to make a claim for an administrative expense that arises after the bankruptcy filing.*	
Name of Creditor (the person or other entity to whom the debtor owes money or property): CLS NO: 13-CC9226-NZ RECEIVED	COURT USE ONLY
Name and address where notices should be sent: Maccga, Cibble, and Dubin P.C. 975 East Jefferson Ave Detroit, MI 48207 FEB 24 2014 KURTZMAN CARSON CONSULTANTS Telephone number: 313-392-0015 email: LSHEETS@mlcclassaction.com	☐ Check this box if this claim amends a previously filed claim. **Court Claim Number:** _____ (*If known*) Filed on: _____
Name and address where payment should be sent (if different from above): " " " " Telephone number: " " email: " "	☐ Check this box if you are aware that anyone else has filed a proof of claim relating to this claim. Attach copy of statement giving partic

FILED U.S. BANKRUPTCY COURT EASTERN DISTRICT OF MICHIGAN DETROIT 2014 FEB 21 A 9:38

1. Amount of Claim as of Date Case Filed: $ 520,357.82

If all or part of the claim is secured, complete item 4.
If all or part of the claim is entitled to priority, complete item 5.
☐ Check this box if the claim includes interest or other charges in addition to the principal amount of the claim. Attach a statement that itemizes interest or charges.

2. Basis for Claim: Preperition Claim for pending lawsuit
(See instruction #2)

3. Last four digits of any number by which creditor identifies debtor: _____

3a. Debtor may have scheduled account as: _____
(See instruction #3a)

4. Secured Claim (See instruction #4)
Check the appropriate box if the claim is secured by a lien on property or a right of setoff, attach required redacted documents, and provide the requested information.

Amount of arrearage and other charges, as of the time case was filed, included in secured claim, if any: $ _____

Nature of property or right of setoff: ☐ Real Estate ☐ Motor Vehicle ☐ Other
Describe:

Basis for perfection: _____

Value of Property: $ _____

Amount of Secured Claim: $ _____

Annual Interest Rate (when case was filed) _____ % ☐ Fixed or ☐ Variable

Amount Unsecured: $ _____

5. Amount of Claim Entitled to Priority as an Administrative Expense under 11 U.S.C. §§ 503(b)(9) and 507(a)(2). $ _____

5b. Amount of Claim Otherwise Entitled to Priority. Specify Applicable Section of 11 U.S.C. § _____. $ _____

6. Credits. The amount of all payments on this claim has been credited for the purpose of making this proof of claim. (See instruction #6)

7. Documents: Attached are **redacted** copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, security agreements, or, in the case of a claim based on an open-end or revolving consumer credit agreement, a statement providing the information required by FRBP 3001(c)(3)(A). If the claim is secured, box 4 has been completed, and **redacted** copies of documents providing evidence of perfection of a security interest are attached. *(See instruction #7, and the definition of "redacted".)* DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.
If the documents are not available, please explain: SEE ATTACHED

8. Signature: (See instruction # 8)
Check the appropriate box.

☐ I am the creditor. ☑ I am the creditor's authorized agent. ☐ I am the trustee, or the debtor, or their authorized agent. (See Bankruptcy Rule 3004.) ☐ I am a guarantor, surety, indorser, or other codebtor. (See Bankruptcy Rule 3005.)

I declare under penalty of perjury that the information provided in this claim is true and correct to the best of my knowledge, information, and reasonable belief.

Print Name: Laura Sheets
Title: Attorney
Company: Maccga, Cibble + Dubin P.C
Address and telephone number (if different from notice address above):
975. E Jefferson
Detroit, MI
Telephone number: 313 392 0015 email: lsheets@mldclassaction.com

(Signature) 2-18-14 (Date)

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment

EXHIBIT 6-2

STATE COURT DISCOVERY REQUESTS

DYKEMA GOSSETT•A PROFESSIONAL LIMITED LIABILITY COMPANY•400 RENAISSANCE CENTER•DETROIT, MICHIGAN 48243

STATE OF MICHIGAN

IN THE CIRCUIT COURT OF THE COUNTY OF WAYNE

VALERIE ABERNATHY, et al,

Plaintiffs,

v.

CITY OF DETROIT,

Defendant.

Case No. 16-010128-NZ

Hon. John H. Gillis, Jr.

LIDDLE & DUBIN, P.C.
Laura L. Sheets (P63270)
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DEFENDANT'S SECOND SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS TO PLAINTIFFS

Defendant, City of Detroit Water and Sewerage Department ("DWSD"), through its attorneys, Dykema Gossett PLLC, submits these Requests for Production of Documents and Second Set of Interrogatories ("Discovery Requests") to Plaintiffs.

INSTRUCTIONS

Pursuant to MCR 2.309, Defendant requests that Plaintiffs prepare and file answers, separately and fully, in writing and under oath, to the following interrogatories and serve a copy of the answers on the undersigned attorneys for Defendant within 28 days from the date these interrogatories are served. Pursuant to MCR 2.310, Defendant requests that Plaintiffs produce each document identified in answer to any interrogatory, or separately requested herein, within 28 days from the date the request is served.

DISCOVERY REQUESTS

Interrogatories

Interrogatory No. 1: How many Proofs of Claim were filed with the Bankruptcy Court, in connection with the allegations of Plaintiffs in this lawsuit?

Response:

Interrogatory No. 2: How many Proofs of Claim were filed with the State Circuit Court, in connection with the allegations of Plaintiffs in this lawsuit?

Response:

Interrogatory No. 3: How many Proofs of Claim were filed with the City of Detroit Claims Processing Center, Kurtzman Carson Consultants LLC, in connection with the allegations of Plaintiffs in this lawsuit?

Response:

Interrogatory No. 4: Who prepared each of the Proofs of Claim, referred to in your responses to Interrogatories 1, 2, and 3? If more than one person was involved, list the claim number, and the corresponding preparer's name and address.

Response:

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Interrogatory No. 5: Was the preparer, in each instance, also the filer? If not, identify the filer's name and address for each claim.

Response:

Interrogatory No. 6: Identify the documentation, if any, that was submitted with the Proofs of Claim in connection with the allegations of Plaintiffs in this lawsuit.

Response:

Interrogatory No. 7: Were any of the Proofs of Claim filed by a purported Rule 2019 authorized agent on behalf of an alleged creditor? If so, list each such claim number, the corresponding alleged creditor's name and address, and the name and address of the purported authorized agent.

Response:

Interrogatory No. 8: For each Proof of Claim that was filed by a purported Rule 2019 authorized agent on behalf of an alleged creditor, state whether a verified statement was prepared for each alleged creditor and submitted with the Proof of Claim, pursuant to Rule 2019 of the Federal Rules of Bankruptcy Procedure.

Response:

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Interrogatory No. 9: For each Proof of Claim that was filed by a purported Rule 2019 authorized agent on behalf of an alleged creditor, state how authorization was allegedly granted to the purported agent from the represented creditor.

Response:

Interrogatory No. 10: For each Proof of Claim filed in connection with the allegations of the Plaintiffs in this lawsuit, state whether any person or entity requested confirmation that those Proofs of Claim had been received. If so, who? Was any such confirmation received?

Response:

Requests To Produce

Request to Produce No. 1: Produce each Proof of Claim, formal or informal, filed in connection with the allegations of the Plaintiffs in this lawsuit.

Response:

Request to Produce No. 2: Produce all documentation, information, reports, correspondence, or memoranda that were prepared for or related to filing the Proofs of Claim, in

DYKEMA GOSSETT•A PROFESSIONAL LIMITED LIABILITY COMPANY•400 RENAISSANCE CENTER•DETROIT, MICHIGAN 48243

connection with the allegations of the Plaintiffs in this lawsuit.

Response:

Request to Produce No. 3: Produce all verified statements that were prepared in accordance with Rule 2019 for or related to filing the Proofs of Claim, in connection with the allegations of the Plaintiffs in this lawsuit.

Response:

Request to Produce No. 4: Produce all instruments, documentation, information, reports, correspondence, or memoranda that allegedly authorized the purported agent under Rule 2019 to file a Proof of Claim on a creditor's behalf, in connection with the allegations of the Plaintiffs in this lawsuit.

Response:

Request to Produce No. 5: Produce all documentation, information, reports, correspondence, or memoranda that purportedly served as confirmation that the Proofs of Claim were received.

Response:

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Request to Produce No. 6: Produce all correspondence to or from the Bankruptcy Court, State Circuit Court, or Claims Processing Center, accompanying the filing of the Proofs of Claim, or following up with, or relating to that filing, in connection with the allegations of the Plaintiffs in this lawsuit.

Response:

Request to Produce No. 7: Produce all documents, information, reports, correspondence, or memoranda supporting your answers or referred to in responses to the Interrogatories here.

Response:

DYKEMA GOSSETT PLLC

By: */s/ Kathryn J. Humphrey*

Kathryn J. Humphrey (P32351)
Attorney for Defendant
400 Renaissance Center
Detroit, Michigan 48243
313-568-6848
khumphrey@dykema.com

Date: February 6, 2017

DYKEMA GOSSETT•A PROFESSIONAL LIMITED LIABILITY COMPANY•400 RENAISSANCE CENTER•DETROIT, MICHIGAN 48243

CERTIFICATE OF SERVICE

I hereby certify that on February 6, 2017, my assistant electronically served the foregoing document via U.S. Mail to counsel for Plaintiff.

DYKEMA GOSSETT PLLC

By: */s/ Kathryn J. Humphrey*
Kathryn J. Humphrey (P32351)
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EXHIBIT 6-3

In Re W. R. Grace & Co., 316 F. App'x 134 (3d Cir. 2009)

DYKEMA GOSSETT•A PROFESSIONAL LIMITED LIABILITY COMPANY•400 RENAISSANCE CENTER•DETROIT, MICHIGAN 48243

In re W. R. Grace & Co.

United States Court of Appeals for the Third Circuit

December 12, 2008, Submitted under Third circuit LAR 34.1(a); March 11, 2009, Opinion Filed

No. 08-1044

Reporter
316 Fed. Appx. 134 *; 2009 U.S. App. LEXIS 5281 **

RE: W. R. GRACE & CO., ET AL, DEBTORS. MISSION TOWERS, a/k/a Foxridge Towers Office Building; BETHESDA REHABILITATION HOSPITAL; FIRST TENNESSEE BANK, f/k/a National Bank Building; FIRST TENNESSEE BANK, f/k/a Hamilton National Bank; WASHINGTON TOWNSHIP HEALTH CARE DISTRICT, f/k/a Washington Hospital; NEW HANOVER REGIONAL MEDICAL CENTER, f/ka/ New Hanover Memorial Hospital; FIRST HEALTH MONTGOMERY MEMORIAL HOSPITAL, f/k/a Montgomery Memorial Hospital; PIERRE LACLEDE CENTER NOS. 1 and 2, f/k/a Pierre Laclede Buildings; ST. JOSEPH'S HILL INFIRMARY NURSING HOME; IBM METRO EMPLOYEES FEDERAL CREDIT UNION, f/k/a Manufacturers Hanover Trust; PALOS COMMUNITY HOSPITAL, f/k/a Palos Hospital, IL; ST MARY'S MEDICAL CENTER, f/k/a St. Mary's Hospital; FRIENDLY HOME NURSING CARE & REHABILITATION, f/k/a Deaf Hard of Hearing & Speech Impaired Building; 99 FOUNDERS PLAZA; ONEIDA COUNTY OFFICE BUILDING; MANOR OAK TWO; CAYUGA COUNTY OFFICE BUILDING, f/k/a Cayuga Company Office Building; ST. LUKE'S HOSPITAL; SCHUYLER HOSPITAL; SANTA TERESA MEDICAL OFFICE BUILDING; NEBRASKA SKILLED NURSING AND REHABILITATION; VIRTUA HEALTH WEST JERSEY HOSPITAL VOORHEES; TITUSVILLE AREA HOSPITAL, f/k/a Titusville/Farrell Hospital; HOTEL CAPTAIN COOK Tower # 2; GUNDERSEN LUTHERAN MEDICAL CENTER, f/k/a Lacrosse Lutheran Hospital Addition; BAPTIST HEALTH MEDICAL CENTER LITTLE ROCK, f/k/a Arkansas Baptist Medical Center; ABBEVILLE GENERAL HOSPITAL, f/k/a Abbeville Hospital; ST. ANTHONY'S REGIONAL HOSPITAL AND NURSING HOME, f/k/a St. Anthony's Hospital and Hospital in Carroll, IA; FULTON COUNTY HEALTH CENTER; OHIO SAVINGS PLAZA, f/k/a Penton & Park Plaza Investment Tower; YWCA of GREATER DES MOINES, f/k/a YMCA Building; SCOTTISH RITE CATHEDRAL; FIRST TENNESSEE BANK-COURT THOMAS COMPUTER CENTER, f/k/a National Bank Building; PANDA PRINTS, f/k/a Lehigh Tile/Marble

Warehouse; MCKENZIE WILLIAMETTE MEDICAL CENTER, f/k/a McKenzie Hospital; KELLER BUILDING, f/k/a ALBERT KELLER MEMORIAL HOSPITAL; VIRTUA WEST JERSEY HOSPITAL MARLTON, f/k/a Garden State Hospital; THE HOMEPLACE OF MONDOVI HOSPITAL, f/k/a Buffalo Memorial Hospital; DODGE COUNTY HOSPITAL; CARSON PIRIE SCOTT STORE # 537, f/k/a Saks Fifth Avenue; HARRY C. LEVY GARDENS-HOUSING AUTHORITY OF THE CITY OF LAS VEGAS; JORDAN HOSPITAL, INC.; UNIVERSITY OF NEW ENGLAND-WESTBROOK COLLEGE, f/k/a Webber Hospital; 1199 SEIU, f/k/a 310 West 43rd Street Building, Appellants

Notice: NOT PRECEDENTIAL OPINION UNDER THIRD CIRCUIT INTERNAL OPERATING PROCEDURE RULE 5.7. SUCH OPINIONS ARE NOT REGARDED AS PRECEDENTS WHICH BIND THE COURT.

PLEASE REFER TO FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1 GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

Prior History: [1]** On Appeal from the United States District Court for the District of Delaware. (D. C. Nos. 07-cv-00287-00330). District Judge: Hon. Ronald L. Buckwalter.
Mission Towers v. Grace, 2007 U.S. Dist. LEXIS 89913 (D. Del., Dec. 6, 2007)

Counsel: For In the Matter of: WR GRACE & CO, Debtor - Appellee: Janet S. Baer, Esq., Lisa G. Esayian, Esq., Kirkland & Ellis, Chicago, IL; David M. Bernick, Esq., Kirkland & Ellis, New York, NY; Christopher Landau, Esq., Gregory L. Skidmore, Esq., Kirkland & Ellis, Washington, DC; James E. O'Neill, III, Esq., Pachulski Stang Ziehl & Jones, Wilmington, DE.

For MISSION TOWERS, AKA Foxridge Towers Ofc, BETHESDA REHAB HOSP, FIRST TN BANK, FKA Hamilton Natl Bank, FKA Natl Bank Bldg, WASHINGTON TOWNSHIP HEALTH CARE DISTRICT, FKA Washington Hospital, NEW HANOVER REGIONAL, FKA New Hanover Memorial Hospital, FIRST HEALTH MONTGOMERY MEMORIAL HOSPITAL, FKA Montgomery Memorial Hospital, PIERRE LACLEDE CENTER NOS. 1 AND 2, FKA Pierre Laclede Bldgs, ST. JOSEPH'S HILL INFIRMARY NURSING HOME, IBM METRO EMPLOYEES FEDERAL CREDIT UNION, FKA Mfg Hanover Trust, PALOS COMM HOSP, FKA Palos Hosp IL, ST MARYS MED CTR, FKA St Marys Hosp, FRIENDLY HOME NURSING CARE & REHABILITATION, FKA Deaf Hard of Hearing & Speech Impaired Building, 99 FOUNDERS PLAZA, ONEIDA CTY OFC **[**2]** BLDG, MANOR OAK TWO, CAYUGA CTY OFC BLDG, FKA Cayuga Co Ofc Bldg, ST LUKE HOSP, SCHUYLER HOSP, SANTA TERESA MED OFC, NE SKILLED NURSING, VIRTUA HEALTH WEST JERSEY HOSPITAL VOORHEES, TITUSVILLE AREA HOSP, FKA Titusville/Farrell Hosp, HOTEL CAPT

COOK, Tower # 2, GUNDERSEN LUTHERAN, FKA Lacrosse Luthern Hospital Addition, BAPTIST HEALTH MEDICAL CENTER LITTLE ROCK, FKA AR Baptist Med Ctr, ABBEVILLE GEN HOSP, FKA Abbeville Hosp, ST. ANTHONY'S REGIONAL HOSPITAL AND NURSING HOME, FKA Anthony's Hospital and Hospital in Carroll, IA, FULTON CTY HEALTH, OH SAV PLAZA, FKA Penton & Park Plaza Investment Tower, YWCA OF GREATER DES MOINES, FKA YWCA Bldg, SCOTTISH RITE CATHEDRAL, FIRST TENNESSEE BANK-COURT THOMAS COMPUTER CENTER, FKA Natl Bank Bldg, PANDA PRINTS, FKA Lehigh Tile/Marble Warehouse, MCKENZIE WILLIAMETTE MEDICAL CENTER, FKA McKenzie Hosp, KELLER BLDG, FKA Albert Keller Memorial Hospital, VIRTUA WEST JERSEY HOSPITAL MARLTON, FKA Garden State Hosp, HOMPLACE OF MONDOVI HOSPITAL, FKA Buffalo Memorial Hospital, DODGE CTY HOSP, CARSON PIRIE SCOTT STORE # 537, FKA Saks Fifth Avenue, HARRY C. LEVY GARDENS-HOUSING AUTHORITY OF THE CITY OF LAS VEGAS, JORDAN HOSP INC, UNIVERSITY OF NEW ENGLAND-WESTBROOK **[**3]** COLLEGE, FKA Webber Hosp, 1199 SEIU, FKA 310 West 43rd Street Building, Plaintiff - Appellants: Marion C. Fairey, Jr., Esq., Speights & Runyan, Hampton, SC; Christopher D. Loizides, Esq., Loizides & Associates, Wilmington, DE; Daniel A. Speights, Esq., Law Office of Daniel A. Speights, Hampton, SC.

Judges: Before: McKEE, SMITH and ROTH, Circuit Judges.

Opinion by: ROTH

Opinion

[*135] ROTH, Circuit Judge:

Forty-four claimants in the bankruptcy proceeding of W.R. Grace & Company appeal the judgment of the United States District Court for the District of Delaware affirming the Bankruptcy Court's Order **[*136]** disallowing their asbestos property damage claims against W.R. Grace, et. al. (Grace). For the reasons discussed below, we will affirm.

Because the facts are well known to the parties, we will discuss them only briefly here.

Grace filed for Chapter 11 bankruptcy protection in the United States Bankruptcy Court for the District of Delaware on April 2, 2001. In April 2002, the Bankruptcy Court entered an order that established March 31, 2003 as the "bar date"--the date by which proofs or claims must be filed. After the bar date the law firm of Speights & Runyan (S&R) nevertheless filed 2,938 asbestos property damage claims against **[**4]** Grace. None were personally signed by the claimants. Instead, either Daniel Speights or Amanda Steinmeyer, both of S&R, signed the claims. This prompted the Bankruptcy Court to order S&R to categorize all of its asbestos property damage claims based "upon the authority by which it had filed the claims."

For the forty-four claims at issue here,

claimants conceded that they authorized S&R to bring their claims after the bar date. The Bankruptcy Court thus entered the Order disallowing and expunging the claims. Claimants appealed, and the District Court affirmed. Claimants now appeal the District Court's Order.

The Bankruptcy Court had jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334. The District Court appropriately exercised its appellate jurisdiction pursuant to 28 U.S.C. § 158(a)(1). We have jurisdiction pursuant to 28 U.S.C. § 1291. Because the District Court sat as an appellate court reviewing a final order of the Bankruptcy Court, our review of its decision is plenary. *E.g., In re O'Brien Envtl. Energy, Inc.,* 188 F.3d 116, 122 (3d Cir. 1999).

Claimants first argue that the Bankruptcy Court erred in disallowing their claims because S&R had authority to file individual claims on claimants' **[**5]** behalf by virtue of its role as class counsel in a South Carolina class action. We review the Bankruptcy Court's legal determination *de novo. In re Myers,* 491 F.3d 120, 125 (3d Cir. 2007). Claimants' argument fails because the authority to act for a class pursuant to Rule 23 does not imply any authorization to file a proof of claim for an individual in bankruptcy proceedings. *See In re Standard Metals Corp.,* 817 F.2d 625, 631 n.10 (10th Cir. 1987), *vacated in part on other grounds,* 839 F.2d 1383 (10th Cir. 1988).

Claimants next argue that the Bankruptcy Court erred in disallowing their claims because each claimant retroactively ratified S&R's filings after the bar date. We review this legal determination *de novo. In re Myers,* 491 F.3d at 125. Ratification results when a principal affirms a previously unauthorized act by her agent. *In re Packer Ave. Assocs.,* 1 B.R. 286, 292 (Bankr. E.D. Pa. 1979). The effect of ratification is to give the agent the authority to perform the unauthorized act as of the time the agent performed the unauthorized act. *Id.* But the intervening bar date vitiates claimants' argument because ratifications are deemed ineffective in the face of an intervening deadline. **[**6]** *See, e.g., Fed. Elect. Comm'n v. NRA Political Victory Fund,* 513 U.S. 88, 98, 115 S. Ct. 537, 130 L. Ed. 2d 439 (1994) ("[I]t is essential that the party ratifying should be able not only to do that act ratified at the time the act was done, but also at the time the ratification was made.") (internal quotation marks removed) (emphasis removed). Claimants' attempted ratifications were thus ineffective ratifications.

Claimants finally argue that the Bankruptcy Court erred in disallowing their claims because they should have been allowed to conduct discovery and present evidence that they were "known creditors" **[*137]** who did not receive actual notice of the bar date. We review the Bankruptcy Court's discovery rulings for abuse of discretion. *In re Kiwi Intern. Air Lines, Inc.,* 344 F.3d 311, 323 (3d Cir. 2003). An abuse of discretion occurs "if a discovery ruling is seen to be a gross abuse of discretion resulting in fundamental unfairness in the trial of the case." *Public Loan Co. v. Fed. Deposit Ins. Corp.,* 803 F.2d 82, 86 (3d Cir.

1986) (internal quotation marks omitted).

Known creditors must be provided with actual written notice of a debtor's bankruptcy filing. *Chemetron Corp. v. Jones*, 72 F.3d 341, 346 (3d Cir. 1995). A known **[**7]** creditor is one "whose identity is either known or 'reasonably ascertainable by the debtor.'" *Id.* (quoting *Tulsa Prof'l Collection Serv., Inc. v. Pope*, 485 U.S. 478, 490, 108 S. Ct. 1340, 99 L. Ed. 2d 565 (1988). A creditor's identity "is reasonably ascertainable if that creditor can be identified through reasonably diligent efforts." *Id.* (internal quotation marks and citations omitted). Reasonable diligence does not require impracticable and extended searches. *Id.* The requisite search for a known creditor, instead, usually requires only a careful examination of a debtor's books and records. *See id.* at 347.

Here, claimants argue that their identities were reasonably ascertainable from a review of Grace's records. For Grace to notify claimants, it would have to (1) conduct searches for thousands of buildings where Grace asbestos-containing product was installed and (2) search those title records to locate the current owners of those buildings. We have held that debtors are not required to conduct title searches to locate prospective claimants because it is beyond the reasonably ascertainable standard. *See id.* at 348. The Bankruptcy Court thus acted well within its discretion.

The Bankruptcy Court did not err in disallowing **[**8]** claimants' claims as untimely, and the District Court did not err in affirming the Bankruptcy Court's decision. For the reasons set forth above, we will affirm the judgment of the District Court.

End of Document

EXHIBIT 6-4

In Re F & C Int'l, No. 93-11688 (Bankr. S.D. Ohio, Feb. 18, 1994)

DYKEMA GOSSETT•A PROFESSIONAL LIMITED LIABILITY COMPANY•400 RENAISSANCE CENTER•DETROIT, MICHIGAN 48243

4836-2751-0855.1
ID\ 014201\000042

In re F & C Int'l

United States Bankruptcy Court for the Southern District of Ohio, Western Division

February 18, 1994, Filed, Entered

Case No. 93-11688 Chapter 11

Reporter
1994 Bankr. LEXIS 274 *

IN THE MATTER OF F & C INTERNATIONAL, INC., Debtor

Judges: [*1] AUG, JR.

Opinion by: J. VINCENT AUG, JR.

Opinion

ORDER DISALLOWING PROOFS OF CLAIM NO. 662 and 673 (Class Proof of Claim)

This Chapter 11 case is before the Court on the Motion of Debtor F & C International, Inc. ("F&C" or "Debtor") for Disallowance of Proofs of Claim Nos. 1299 and 1334 [1] ("Motion") (Doc. 427) and the Memorandum in Opposition ("Memorandum") (Doc. 519) filed by the shareholder plaintiffs in the F&C securities litigation pending in the U.S. District Court for this District. Today's Order deals only with Claim Nos. 662 and 673 (the Sheppard claim). Claim No. 658 (the Gilder claim) will be dealt with at a later time.

This contested matter questions **[*2]** the propriety of a purported class proof of claim filed on behalf of all persons who suffered fraud damages by virtue of the purchase of F&C's common stock between December 13, 1991 and April 2, 1993 (the "Class Claimants"). The Debtor has objected to the proof of claim on the bases of timeliness, failure to comply with Bankr. R. 2019, failure to obtain class certification from the Bankruptcy Court, and failure of the claim to assert adequate factual support. The Class Claimants dispute the Debtor's position and ask that the Motion be denied and the claim allowed.

The Court has jurisdiction over this matter pursuant to 29 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2). A hearing was conducted on February 11, 1994.

I. CLASS PROOFS OF CLAIM

Both sides to this dispute rely on the case of *Reid v. White Motor Corp.*, 886 F.2d 1462 (6th Cir. 1989), *cert. denied*, 494 U.S. 1080, 108 L. Ed. 2d 939, 110 S. Ct. 1809 (1990) as support for their positions. The Class Claimants assert that *Reid* clearly **[*3]** stands for the proposition that there is no

[1] The Court's Claims Docket reflects that the claims in question are actually Claim Nos. 662, 673 and 658. We believe the numbers 1299 and 1334 are creditor numbers assigned to the claimants by Debtor's claims manager. Claim 673 appears to be an amendment of 662, with the attachment of Official Form No. 10 and a copy of the amended class action complaint as the only differences.

statutory authority to preclude class proofs of claim. Although a split of authority exists on the question of the propriety of class claims in bankruptcy, Class Claimants argue that *Reid* follows the more equitable path, as set forth in the Seventh Circuit decision of *Matter of American Reserve Corp.*, 840 F.2d 487 (7th Cir. 1988), of allowing class claims. The Debtor argues that *Reid* and *American Reserve* do not necessarily endorse the use or class claims, but merely permit a bankruptcy judge, if he is so inclined and if all proper procedural steps are taken, to allow a class claim. Here, Debtor argues, the proper procedure has not been followed and the claim should be disallowed.

We agree with the Debtor's interpretation of *Reid* and *American Reserve*. It is within the Bankruptcy Court's discretion to allow a class claim after balancing the benefits to be derived and the burdens imposed. Class proofs of claim are fraught with difficult issues in the best of circumstances and are not to be allowed nonchalantly. This Court can, nonetheless, imagine times when a class claim is a logical and efficient **[*4]** vehicle for resolving issues of liability and compensation. The claim before us, however, does not fall in that category. Instead we are faced with a procedurally deficient and late-filed document asserting a massive claim, the liquidation of which would be a difficult and time-consuming distraction on the eve of confirmation of the Debtor's plan, and would quite likely delay confirmation and distribution.

II. TIMELINESS

The F&C securities class action litigation was commenced by the filing of a complaint in the U.S. District Court for the Southern District of Ohio on November 19, 1992. F&C's Chapter 11 petition was filed on April 19, 1993. The name and address of Richard Wayne, counsel for the Class Claimants, was listed on Master Service List No. 1 (Doc. 88), filed with the Court on May 17, 1993, and has remained on every subsequent updated list that has been filed.

On August 3, 1993, Debtor filed its Notice of Deadline for Filing Proofs of Claim and Procedure Therefor (Doc. 222), fixing September 9, 1993, as the bar date for filing proofs of claim in this case. According to its certificate of service, that Notice was served on all persons and entities on the Equity Holders' List, **[*5]** the Creditors' Matrix and the Master Service List No. 3. Mr. Wayne's name and address appeared on Master Service List No. 3. Class Claimants' counsel does not dispute that his office received the bar date notice.

On or about November 9, 1993, Class Claimants filed a proof of claim "by and through Co-Lead Counsel," in the amount of not less than $ 30 million. The basis of the claim is alleged to be "damages for violations of the federal securities laws, applicable state laws and common law in connection with the purchases by Claimants and the Class of the common stock of through the initial public offering and open market transactions during the Class Period," as set forth in the District Court complaint.

Class Claimants argue that they are not yet

under any deadline to file a claim because the individual class members were not scheduled by the Debtor as holding contingent, unliquidated or disputed claims as required by Bankr. R. 1007(a)(1) and L.B.R. 3.12. This argument is without merit. While individual representative shareholders are named in the proof of claim at issue here, they did not file the claim. [2] The class attorney did. That same attorney had notice of the bankruptcy **[*6]** case from its inception and notice of the bar date as soon as that notice was served. Under Bankruptcy Rule 9006(d)(2), once the bar date has passed, permission to file a late claim may only be given upon motion and a finding or excusable neglect. Class Claimants did not file a motion seeking an enlargement of the time to file a claim, nor have they made any showing of excusable neglect as required by Bankr. R. 9006(d)(2) nor has any other justification been given for their failure to file a claim within the deadline. The claim is time-barred.

III. PROCEDURAL INADEQUACY

The Debtor alleges that the Class Claimants have failed to follow the procedures as set forth in the Bankruptcy Code and Rules for filing a class claim. **[*7]** Specifically, Debtor argues, the Class Claimants have failed to comply with Bankruptcy Rule 2019 [Representation of Creditors and Equity Security Holders in Chapter 9 Municipality and Chapter 11 Reorganization Cases), which requires that any entity or committee purporting to represent more than one creditor or equity security holder must file a verified statement with the clerk setting forth the names and addresses of the creditors, the nature and amount of the claims, the facts and circumstances surrounding the employment of the agent, and a copy of any instrument whereby the agent is empowered to act on behalf of the creditors he is representing.

Counsel signed the proof of claim as Co-Lead Counsel for Claimants, but has filed nothing in the way of a Rule 2019 verification that would substantiate his authority to act on behalf of shareholders in the Bankruptcy Court. Under Bankruptcy Rule 3001, a proof of claim may be executed by a creditor's authorized agent. With no evidence Of such authorization, however, the claim is invalid. This Court is charged with overseeing the reorganization or the Debtor and the eventual distribution to creditors under the Debtors' plan. The safeguards **[*8]** of Rule 2019 are in place to assist the Court and Debtors in assuring that distributions are made in the proper amount to the proper creditor, and that conflicts of interest are avoided. Without the verification, Debtors and the Court run the risk that parties purporting to act on another's behalf may not be authorized to do so and may receive distributions to which they are not entitled.

The fact that counsel may be authorized to represent a particular class in District Court litigation does not excuse his failure to comply with Rule 2019. "Consent to being a

[2] In the event individual shareholders file post-bar date proofs of claim asserting fraud damages, they will have every opportunity to raise and argue questions of proper notice and excusable neglect. We see no prejudice to individual shareholders from disallowance of this purported class claim.

member of a class in one piece of litigation is not tantamount to a blanket consent to any litigation the class counsel may wish to pursue." *In re Baldwin-United Corp.*, 52 Bankr. 146, 148-148 (Bankr. S.D. Ohio 1985); *see also, Reid v. White Motor Corp.*, 886 F.2d 1462, 1471-72 (6th Cir. 1989); *In re Standard Metals Corp.*, 817 F.2d 625, 631 (10th Cir. 1987), modified on other grounds, 839 F.2d 1383 (1988), *cert. dismissed*, 488 U.S. 881 (1988); *In re Manville Forest Products Corp.*, 89 Bankr. 358, 376-77 (Bankr. S.D.N.Y. 1988). **[*9]**

Class Claimants reply that they do not need to provide evidence in accordance with Rule 2019(a) that they represent the Claimants because on February 4, 1994 they filed a motion for class certification pursuant to Bankruptcy Rules 9014 and 7023. Further, they assert that the motion for certification was timely because they had to wait until the Debtors filed an objection to their claim, thus creating a contested matter, before they could move under Rule 9014 for application of Rule 7023. The claimants cite in support *In re Charter Co.*, 876 F.2d 866, 874 (11th Cir. 1989), *cert. dismissed*, 496 U.S. 944 (1990).

We believe the Class Claimants are mistaken as to their options. There is nothing in the Code or Rules that would have prevented the Class Claimants from filing a motion, thus creating a contested matter, at the beginning of this case seeking allowance of a class proof of claim. The claimants could have asked for application of Rule 7023 and certification of a class at that time. Issues surrounding the propriety and scope of the representation would then have been addressed at an early stage of this case. While we recognize **[*10]** that this case has moved quickly, we are not inclined, less than a month from the confirmation hearing, to bollix up the works with issues that could have come before the Court at the outset, particularly where class counsel, experienced in both securities and bankruptcy law, were active from the start. An eleventh-hour motion for certification will not excuse the failure to comply with Rule 2019. Likewise, as our colleague Judge Newsome noted, "we do not believe, and have found no authority for the proposition that by triggering a contested matter, the Debtor's objections to claims can serve to retroactively legitimize an otherwise unauthorized proof of claim." *In re Baldwin-United*, 52 Bankr. 146, 149-50 (Bankr. S.D. Ohio 1985).

For the reasons set forth above, Claim Nos. 662 and 673 are hereby DISALLOWED in their entirety.

IT IS SO ORDERED.

J. VINCENT AUG, JR.

United States Bankruptcy Judge

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