Docket #1779 Date Filed: 6/1/2023

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re	Chapter 11
ALDRICH PUMP LLC, *et al.*,	Case No. 20-30608 (JCW)
Debtors.	(Jointly Administered)

THE FUTURE ASBESTOS CLAIMANTS' REPRESENTATIVE'S OPPOSITION TO THE MOTION TO DISMISS ON BEHALF OF ROBERT SEMIAN AND OTHER CLIENTS OF MRHFM

Joseph W. Grier, III, the representative for future asbestos claimants in the above-captioned cases (the "FCR"), through counsel, hereby files this opposition to the Motion to Dismiss on Behalf of Robert Semian and Other Clients of MRHFM (the "Motion to Dismiss") [Dkt. No. 1712], filed by Maune Raichle Hartley French & Mudd, LLC ("Maune").

The Motion states that it is filed on behalf of Robert Semian, and forty-six clients of Maune who have filed proofs of claim in these cases, each suffering from mesothelioma, a fatal and truly horrible asbestos disease. Maune's other client in these cases is Joseph Hamlin, a member of the Official Committee of Asbestos Personal Injury Claimants (the "ACC") and another mesothelioma victim. Sadly, Mr. Hamlin is now deceased and represented by his spouse.[1]

Maune expressly disavows making the Motion to Dismiss on behalf of Mr. Hamlin or the ACC. (Motion to Dismiss at 1, n.1.)

[1] Given the swift progression of mesothelioma, it is likely that all the original members of the ACC with this disease are now deceased. The same may well be true of Maune's other prepetition mesothelioma clients. It is common for mesothelioma asbestos victims to succumb to the disease within 1 to 2 years following diagnosis. If these mesothelioma victims have all died, none of them will have received compensation in their lifetimes for exposure to asbestos fibers in the Debtors' products. Yet in Paddock, the plan has gone effective and the Section 524(g) trust is accepting claims. *Notice of Effective Date*, In re Paddock Enterprises, LLC, Case No. 20-10028 (LSS) (Bankr. D. Del.), Dkt. No. 1506, filed July 18, 2022. Paddock is a success for the fiduciaries and professionals involved. These cases are, so far, a failure.

The Motion to Dismiss must be denied for the reasons discussed below.[2]

I. MAUNE SAT ON ITS HANDS FOR TOO LONG

Maune waited too long to file its Motion to Dismiss, sitting on its hands for nearly three years. Stern v. Marshall, 564 U.S. 462, 482 (2011) (holding that rights not timely asserted before a tribunal with jurisdiction over them can be forfeited).[3] Maune, a sophisticated law firm, knows how to file a motion to dismiss. Indeed, Maune is one of the law firms that control the ACC in the Bestwall bankruptcy case where the ACC filed a motion to dismiss soon after the petition date.[4] In Bestwall, the Court (Judge Beyer) denied the ACC's motion in a lengthy, well-reasoned opinion, on the back of an extensive record, following briefing and argument.[5]

Judge Beyer's opinion was appealed by the ACC and is currently before the U.S. District Court for North Carolina (Judge Conrad).[6] Rulings on that appeal by either the District Court or the Court of Appeals for the Fourth Circuit will provide this Court with judicial certainty as to whether a solvent entity can address substantial asbestos liabilities in a fully funded asbestos bankruptcy trust (it can). There is no need, and there would be no benefit, for multiple appeals to

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2 The FCR, to avoid repetition, incorporates and adopts the Debtors' arguments against dismissal in its objection to the Motion to Dismiss, filed on June 1, 2023.

3 See Peterson v. Atlas Supply Corp. (In re Atlas Supply Corp.), 857 F.2d 1061, 1063 (5th Cir. 1988) (laches barred motion to dismiss chapter 7 filed a year late); In re Kearney, 2020 WL 5534528, at *6 (Bankr. D.N.M. May 13, 2020) (denying motion to dismiss on basis of laches filed more than 30 months after petition date); In re Mirant Corp., 2005 WL 2148362, at **11-12 (Bankr. N.D. Tex. Jan. 26, 2005) (denying motion to dismiss on basis of laches more than 15 months after petition date); In re Shea & Gould, 214 B.R. 739, 750 (Bankr. S.D.N.Y. 1997) (denying motion to dismiss based on laches because movant "could have advanced the same legal arguments he is making now 19 months ago when the debtor filed this case").

4 *Second Amended Order Appointing Official Committee of Asbestos Claimants*, In re Bestwall LLC, Case No. 17-31795, Dkt. No. 690, entered Nov. 20, 2018; *Motion of the Official Committee of Asbestos Claimants to (I) Dismiss the Debtor's Chapter 11 Case for Cause as Bad Faith Filing Pursuant to 11 U.S.C. § 1112(b), or Alternatively, (II) Transfer Venue in the Interest of Justice and for the Convenience of the Parties Pursuant to 28 U.S.C. § 1412*, In re Bestwall LLC, Case No. 17-31795, Dkt. No. 495, filed Aug. 15, 2018.

5 In re Bestwall LLC, 605 B.R. 43 (Bankr. W.D.N.C. 2019).

6 Official Committee of Asbestos Claimants of Bestwall LLC v. Bestwall LLC, Case No. 19-396 (RJC) (D. Del.) (Official Committee of Asbestos Claimants' appeal from Bankruptcy Court's order denying motion to dismiss).

proceed on the merits of that issue.[7] That would just engender more delay, confusion, and be a colossal waste of judicial resources.

Maune does not and cannot point to new controlling law in the Fourth Circuit that would justify its remarkably tardy filing. The Fourth Circuit established a clear standard for dismissal over thirty years ago in Carolin Corp. v. Miller, 886 F.2d 693, 700-01 (4th Cir. 1989). The movant must show that the bankruptcy reorganization is objectively futile and the petition was filed in subjective bad faith. That standard remains unchanged today. Indeed, the Court (Judge Beyer) applied the Carolin standard under similar facts in Bestwall.[8]

Not only is the law unchanged but there are no new facts that would justify dismissal. To the contrary, the Debtors have negotiated and filed a good faith plan of reorganization.[9] That plan is supported by the FCR, who represents an overwhelming majority of asbestos claimants. The plan provides for a $545 million asbestos trust. The Debtors have already funded a $270 million qualified settlement facility, approved by this Court,[10] and have insurance assets to cover the remainder upon confirmation. A bar date[11] and PIQ[12] have been approved and sent out. The parties have commenced, albeit jerkingly, estimation discovery.[13] Last, the parties are about to

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7 In these cases, there are two pending motions to dismiss, one from Maune (Dkt. No. 1712) and one from the ACC (Dkt. No. 1756). The same is true in Bestwall. See In re Bestwall LLC, Case No. 17-31795, Dkt. Nos. 2925 and 2882. If each of those motions, all of which are untimely, results in a merits appeal that would be five appeals on the same issue to the same District Court. If the ACC and Maune file motions to dismiss in DBMP as promised, there will be seven appeals.

8 In re Bestwall LLC, 605 B.R. at 48 ("In the Fourth Circuit, a court may dismiss a Chapter 11 filing as a bad faith filing only when the bankruptcy reorganization is both (i) objectively futile *and* (ii) filed in subjective bad faith. Carolin Corp. v. Miller, 886 F.2d 693, 700-01 (4th Cir. 1989)." (emphasis in original).

9 *Joint Plan of Reorganization of Aldrich Pump LLC and Murray Boiler LLC*, filed Sept. 24, 2021, Dkt. No. 831; *Notice of Filing of Plan Support Agreement*, filed Sept. 24, 2021, Dkt. No. 832.

10 *Order Authorizing the Debtors to Establish a Qualified Settlement Fund for Payment of Asbestos Claims*, entered Feb. 15, 2022, Dkt. No. 994.

11 *Order (I) Establishing a Bar Date for Certain Known Mesothelioma Claims, (II) Approving Proof of Claim Form, (III) Approving Notice to Claimants, and (IV) Granting Related Relief*, entered April 4, 2022, Dkt. No. 1093.

12 *Order Approving Personal Injury Questionnaire and Granting Related Relief*, entered July 6, 2022, Dkt. No. 1246.

13 *Agreed Motion to Amend Case Management Order for Estimation of Asbestos Claims*, filed May 18, 2023, Dkt. No. 1766.

commence court-ordered mediation.[14] All those factual developments on the path to reorganization militate against dismissal.

The truth here, of course, is that the sole driver for the Motion to Dismiss is the Third Circuit's recent LTL decision.[15] That decision engrafts a new statutory requirement onto Section 109 of the Bankruptcy Code: financial distress.[16] The Third Circuit does not define what it means by "financial distress."[17] Lower courts will presumably have to know it when they see it. Nor for that matter does the Third Circuit refer to Section 524(g) in any meaningful way. This despite LTL being an asbestos debtor, facing potentially substantial asbestos liablities, which expressly sought Section 524(g) relief. It is noteworthy that LTL is now back in bankruptcy with the agreement of an overwhelming majority of its asbestos claimants and a $8.9 billion plan. This demonstrates, anew, the "on and off again" love affair tort law firms have with bankruptcy court subject matter jurisdiction. On - when it serves their business interests. Off - when it doesn't. However, for purposes of the Motion to Dismiss, while this is all very interesting, it is irrelevant to the Motion to Dismiss. Supreme Court and Fourth Circuit precedent, not the Third Circuit's LTL decision, is binding on this Court. Thus, Maune cannot point to the LTL decision to explain away its tardiness.

At bottom, if these cases are proper subjects of dismissal today, that was equally true three years ago. Maune, and the ACC for that matter, made the conscious decision not to file a motion to dismiss at the outset of these cases. There is no mulligan allowed here. They must live with

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14 *Order Directing Parties to Mediate and Schedule Further Status Conference*, entered Dec. 6, 2022, Dkt. No. 1449.

15 In re LTL Mgmt., LLC, 64 F.4th 84 (3rd Cir. 2023).

16 Id. at 93.

17 Id. at 102 ("And we need not set out any specific test to apply rigidly when evaluating financial distress. Nor does the Code direct us to apply one."

the consequence of their inaction: denial of the Motion to Dismiss for laches alone. A law firm, particularly one that sits on the ACC, cannot sit idly by, watching the Court, other fiduciaries, and counsel work tens of thousands of hours, at the costs of tens of millions of dollars, towards a reorganization that will most definitely inure to the benefit of the classes of asbestos creditors, and then abruptly decide to move for dismissal.[18]

Accordingly, this Court can and should deny the Motion to Dismiss for laches. There is simply no need for the Court to reach any of Maune's "merits" arguments or the FCR's further arguments in response. To do so would muddy the currently clear appellate waters before Judge Conrad to a point of extreme opaqueness.

II. MAUNE'S POSITIONS HERE ARE INCONSISTENT WITH PADDOCK

Though this Court need not read further, the positions taken by Maune, and the ACC for that matter, are entirely inconsistent, and cannot be reconciled, with those taken in Paddock.[19] Maune sits on the ACC in both these cases and Paddock.[20] A chart, attached hereto as **Exhibit A**, shows all the parties/players common to Garlock, Bestwall, DBMP, Aldrich/Murray, Kaiser, LTL, and Paddock.

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[18] In these cases, from the June 18, 2020 petition date through March 31, 2023, the ACC's professionals have sought and received approval for fees and expenses in the aggregate amount of approximately $25 million. In Bestwall and DBMP, since their respective petition dates and through approximately February 28, 2023 (in Bestwall) and December 31, 2022 (in DBMP), the ACC sought and received approval for fees and expenses in the aggregate amount of approximately $57 million (in Bestwall) and $28 million (in DBMP). All of these numbers are lower than actual fees and expenses given the time lag in the filing of interim fee applications and monthly fee statements.

[19] See Old Republic v. Hartford, 369 NC 500, 797 SE2d 264 (2017) beginning at page 501: "The doctrine of judicial estoppel preserves the integrity of judicial proceedings by preventing a party from taking inconsistent positions before the court, thus safeguarding the rule of law and securing public confidence in the court system." Further, at page 506, "Judicial estoppel is proper when a party's subsequent position . . . [is] clearly inconsistent with its earlier position." (internal quotations omitted) (quoting New Hampshire v. Maine, 532 U.S. 742, 750 (2001)). Still further, the court continues on page 506, "Judicial estoppel seeks to protect the judicial process itself and does not require "mutuality' of the parties, detrimental reliance, or that an issue have been actually litigated in a prior proceeding." (internal quotations omitted).

[20] "Paddock" refers to In re Paddock Enters., LLC, Case No. 20-10028 (LSS) (Bankr. D. Del.).

Like here, Paddock relied on a state corporate restructuring statute and parental funding to address legacy asbestos liabilities in bankruptcy. The Paddock case was filed on January 6, 2020. A Section 524(g) plan of reorganization, with $610 million of funding, nearly all from the parent, O-I Glass, Inc., was confirmed on May 26, 2022 (the "Paddock Plan").[21] The Paddock Plan was jointly proposed by the debtors, the debtors' parent, the FCR, and the ACC on which Maune sat. The Plan went effective on July 8, 2022.[22]

In January 2020, using its December 31, 2019 financials, O-I Glass, Inc. had assets with a book value of $9.6 billion and revenues for the prior twelve months of $6.7 billion.[23] At confirmation in May 2022, using its March 31, 2022 financials, O-I Glass, Inc. had a book value of $8.9 billion and revenues of $6.6 billion.[24] A year following confirmation, using its March 31, 2023 financials, its market cap was $3.6 billion, double what it was at the time of the bankruptcy filing, and its book value was $9.4 billion with revenues of $7 billion.[25]

Applying Maune's own reasoning, Paddock and its affiliates were never financially distressed before, during, or after the bankruptcy, the same factual circumstance that Maune vehemently argues automatically divests this Court of subject matter jurisdiction. Despite this, neither Maune nor the ACC ever filed a motion to dismiss the Paddock case. To the contrary, they

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21 *Paddock Plan*, Paddock, filed May 24, 2022, Dkt. No. 1400. See also *Findings of Fact, Conclusions of Law, and Order Confirming the Third Amended Plan of Reorganization for Paddock Enterprises, LLC Under Chapter 11 of the Bankruptcy Code*, Paddock, entered May 26, 2022, Dkt. No. 1406 (the "Paddock Confirmation Order").

22 *Notice of Effective Date*, Paddock, filed July 18, 2022, Dkt. No. 1506.

23 O-I Glass, Inc., Annual Report for the Period Ended Dec. 31, 2019 (Form 10-K) (Feb. 21, 2020) available at https://d18rn0p25nwr6d.cloudfront.net/CIK-0000812074/959fd5c6-ae10-4dd8-8020-c7cdb8f8b989.pdf (last visited May 31, 2023).

24 O-I Glass, Inc., Quarterly Report for the Period Ended March 31, 2022 (Form 10-Q) (April 26, 2022) available at https://d18rn0p25nwr6d.cloudfront.net/CIK-0000812074/34546998-2f29-4a59-a3e5-2fb28281c69f.pdf (last visited May 31, 2023).

25 O-I Glass, Inc., Quarterly Report for the Period Ended March 31, 2023 (Form 10-Q) (April 26, 2023) available at https://d18rn0p25nwr6d.cloudfront.net/CIK-0000812074/9f05e0ec-4729-4a9c-8c2b-acf41b89a2e6.pdf (last visited May 31, 2023).

actively pursued reorganization. And, ironically, they did so in the federal Circuit with the most permissive of dismissal standards, the Third Circuit.

Judge Silverstein's findings of facts, conclusions of law, and confirmation order in Paddock conclusively demonstrate why this Court cannot give credence to the entirely contradictory positions now being advanced by Maune and the ACC in these cases.[26] They show that Maune, as counsel on the Paddock ACC and as a law firm representing mesothelioma victims, willingly participated in and approved a Section 524(g) plan of reorganization for a solvent asbestos debtor. The same holds true of the other ACC law firms and professionals that are common to these cases and Paddock.

At this juncture, the FCR begs the Court's indulgence in next walking through key elements of the Paddock Confirmation Order. It is critical to do so given what is at stake for the classes of both current and future claims -- fair and equal treatment, with prompt payment on the one hand, uncertainty, disparate treatment, and delay on the other hand. Turning now to the Paddock Confirmation Order, Judge Silverstein first made certain findings of fact.

A. Judge Silverstein's Findings of Fact

Paragraph 3 identifies the members of the ACC, including Candus Ranshaw represented by Maune. Paragraph 4 identifies Mr. James Patton, from the firm Young Conaway, as the FCR. Paragraphs 5-24 explain the swift filing of the joint plan of reorganization with the ACC (on which Maune sits) as a proponent, its various iterations, the disclosure statement, solicitation, declarations from the FCR and others in support, and the confirmation hearing.[27] Paragraphs 26-

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[26] See generally Paddock Confirmation Order.

[27] See Patton Declaration; *Declaration of Thomas Vasquez, Ph.D. in Support of Confirmation of Second Amended Plan of Reorganization for Paddock Enterprises, LLC Under Chapter 11 of the Bankruptcy Code*, Paddock, Dkt. No. 1369, filed May 13, 2022; *Declaration of David J. Gordon in Support of Confirmation of the Second Amended Plan of Reorganization for Paddock Enterprises Under Chapter 11 of the Bankruptcy Code*, Paddock, Dkt. No. 1356, filed May 11, 2023.

28 explain the prepetition restructuring transaction and related agreements. The restructuring transactions and related agreements are **substantively identical** to what the Debtors and their affiliates did here. Paragraphs 29-33 discuss the legacy asbestos liabilities, number of prepetition claims, and amounts paid.

Paragraph 34 explains that Paddock, **just like** the Debtors here, initiated its bankruptcy proceeding "to utilize section 524(g) of the Bankruptcy Code to establish and fund a trust that would provide for the fair and equitable treatment of all current and future asbestos-related claims and demands." This mirrors what Paddock said in its first day declaration.[28]

Paragraph 35 explains how the debtor, parent O-I Glass, Inc, the ACC, and the FCR sought bankruptcy approval to commence mediation. The Court will remember how the ACC in the Aldrich/Murray cases, on which Maune sits, was opposed to mediation and, for that matter, opposes any effort to advance these cases. In contrast, during the pendency of Paddock's glide path bankruptcy case (January 2020 to May 2022), the same common fiduciaries and professionals pushed for prompt confirmation.

Paragraph 36 notes that a key aspect of the Paddock mediation was that the parties agreed that the methodology for estimating asbestos claims would be through the review and analysis of Paddock's historical tort system settlements and verdicts. The mediation "centered around this settlement approach to estimating Paddock's asbestos liabilities" and involved extensive negotiations supported by settlement-based analyses from experts retained by the ACC and the FCR.

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[28] *Declaration of David J. Gordon, President and Chief Restructuring Officer of the Debtor, in Support of Chapter 11 Petition and First Day Pleadings*, Paddock, Dkt. No. 2, filed Jan. 6, 2020, ¶ 5 ("The primary purpose of this case . . . is to address and comprehensively resolve the Debtor's legacy asbestos-related liabilities . . . . The Debtor intends to achieve this goal by promptly negotiating – and ultimately confirming – a plan of reorganization pursuant to sections 524(g) and 1129 of the Bankruptcy Code. The Debtor believes that creation of a section 524(g) trust would be the fairest and most expeditious way for the Debtor to ensure that holders of current and future Asbestos Claims . . . are treated in a fair and just manner.").

Those same claims experts – LAS and Ankura – have been retained by the ACC and the FCR, respectively, in these cases. The number agreed to by the Debtors and the FCR here – $545 million – was derived in the same manner, using the Debtors' settlement database.

The Court will find paragraph 37 illuminating given the relief Maune seeks today. That language was lifted from the Patton Declaration.[29] [30] Mr. Patton, the FCR, explains the factual circumstances that encouraged settlement in Paddock. Given the similarity between Paddock and these cases, and the commonality of so many fiduciaries, counsel, and experts, Mr. Patton's reasons answer whether Maune's positions here are principled or not.

The first reason given by Mr. Patton is the use of historical settlement and verdict data in the parties' global settlement discussions.[31] As explained above, however, that is exactly what the FCR and the Debtors used in these cases to derive their agreed number. The ACC refused to participate in those discussions but the ACC's experts, LAS, undoubtedly used settlement/verdict data when they prepared their liability forecast for these Debtors in 2022. If Maune and the ACC law firms were to ever disclose that forecast to anyone else, it could be used here too to reach a settlement. That, then, is a non-issue.

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29 *Declaration of James L. Patton, Jr. in Support of Confirmation of the Second Amended Plan of Reorganization for Paddock Enterprises Under Chapter 11 of the Bankruptcy Code*, Paddock, Dkt. No. 1362, filed May 11, 2022 (the "Patton Declaration"). For the convenience of the Court, a copy of the Patton Declaration is attached hereto as **Exhibit B**.

30 Compare Paddock Confirmation Order ¶ 37 ("The use of historical settlement and verdict data, that the Debtor and its Affiliates did not move for an injunction or temporary restraining order staying claims against its Affiliates, and that the Debtor and its Affiliates did not engage in aggressive litigation tactics, were critical components that ultimately led to a successful settlement among the Plan Proponents."), with Patton Declaration ¶ 19 ("The use of historical settlement and verdict data, that the Debtor and its affiliates did not move for an injunction or temporary restraining order staying claims against affiliates, and that the Debtor and its affiliates did not engage in aggressive litigation tactics, were critical components that ultimately led to a successful settlement.").

31 Patton Declaration ¶ 19.

The second reason given is that Paddock didn't move for an injunction at the beginning of the case staying current claims against affiliates.[32] But as this Court has found, the automatic stay, standing alone, stays current claims against affiliates.[33] Further, and critically, Paddock resolved its claims through administrative claims-handling agreements not litigation.[34] No law firm therefore sought or even needed to lift the stay to sue any Paddock affiliates. In fact, it was against their business interests to do so. If a plaintiff law firm alleges exposure to Kaylo (a highly friable, highly toxic ubiquitous asbestos insulation product) in a publicly filed complaint (or a proof of claim for that matter), that admission provides a get out of jail free card defense to peripheral asbestos defendants remaining in the tort system, particularly those with encapsulated product liabilities. Thus, no injunction was needed. That reason, then, is a red herring.

The last reason given is that Paddock didn't engage in "aggressive litigation tactics" in its bankruptcy.[35] That undoubtedly refers to what occurred in Garlock, where the debtor sought trust discovery that the Court (Judge Hodges) later found showed widespread prepetition suppression of exposure evidence. Garlock also pursued RICO actions against certain law firms on the ACC on the back of that evidence suppression.

We know this is the reason why the law firms on this ACC want these cases dismissed – to avoid the Court (Judge Whitley) making the same critical determinations of their conduct made

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32 Id.

33 *Findings of Fact and Conclusions of Law Regarding Order: (I) Declaring that the Automatic Stay Applies to Certain Actions Against Non-Debtors, (II) Preliminarily Enjoining Such Actions, and (III) Granting in Part Denying in Part the Motion to Compel*, Aldrich Pump LLC and Murray Boiler LLC v. Those Parties to Actions Listed on Appendix A to Complaint and John Does 1-1000, Adv. Pro. No. 20-03041 (JCW), entered Aug. 23, 2021, Dkt. No. 308 ¶ 182 ("The automatic stay imposed by section 362(a)(1) also either presently extends to, or can be extended through this action, to enjoin actions against the Protected Parties, who share such an identity of interests with the Debtors that the Debtors are, in effect, the real party defendants.").

34 Paddock Confirmation Order ¶ 32 ("Most Asbestos Claims were historically presented to the Debtor through a variety of administrative claims-handling agreements.").

35 Patton Declaration ¶ 19.

by Judge Hodges.[36] But is that a good reason for any fiduciary to seek dismissal and refuse to even engage in settlement discussions? No, it is not. RICO undoubtedly was a big stick against those law firms Garlock sued, but, properly, it is a non-issue for both current claimants, represented by the ACC and its professionals and future claimants represented by the FCR and his professionals, in any case. Neither class of claims has been paid so it is of no worry of theirs, although, as fiduciaries they should want to know if it is still a common practice or not.

Similarly, firms with clients that never had, or never will, engage in that practice are prejudiced by any law firm that may not share the same scruples, presumptively receiving a smaller slice of any pie.[37] Those full disclosure law firms have no reason to fear discovery of evidence suppression. Nor should they, as fiduciaries, ever have good reason to not negotiate by reference to it.

It bears noting that in Paddock, the last of the big dusties, it is highly doubtful any tort firm engaged in evidence suppression. Thus, Paddock had no cause to pursue that issue. It is as easy as kissing your hand to show exposure there: Kaylo is a friable product, not encapsulated. Indeed, it was exposure to such friable products that was suppressed in Garlock. That was Garlock's central argument. It could defend itself in the tort system before the bankruptcy wave because friable exposure was admitted. Thus, Mr. Patton's last reason does explain the law firms' motivations here but it does not justify their conduct.[38]

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[36] Jan. 26, 2023 Hr'g Tr., at 38:25; 39:1-10, Dkt. No. 1599 (Natalie Ramsey, counsel for the ACC, in response to the Court's question as to why precision is needed for an estimation number, stated "The, the difficulty from the claimant perspective . . . and I, I want to be very transparent about this – is that in addition to reaching a low number, Judge Hodges made some very critical determinations about the, the, the way that the plaintiffs and the tort lawyers behaved in the tort system . . . . And that is the responsibility that we bear, is to not let that happen again on our watch.").

[37] Outside of the findings made by Judge Hodges in Garlock, the FCR is not personally aware of instances of evidence suppression and draws no inference as to whether it is a widespread practice or not.

[38] None of this discussion is to be construed as a criticism of Mr. Patton. The FCR and his professionals know Mr. Patton well. He and his firm are involved in various capacities in nearly all asbestos cases/trusts and he is held in high regard. He is to be congratulated, not criticized, for confirming Paddock in short order for the

Mr. Patton's three reasons that sought to distinguish Paddock were cut and pasted from paragraph 19 of his Declaration into the Paddock Confirmation Order. But what is missing is Mr. Patton's actual justification for the settlement, listed in the following paragraph of his Declaration:

> In addition, the contributions that the Debtor and O-I Glass under the Plan will make to the Asbestos Trust are expected to be sufficient to **compensate Holders of Asbestos Claims and Future Demand Holders fully.** Further, **confirmation** of a **consensual plan** of reorganization **provides certainty** of **funding** for Holders of Asbestos Claims and Future Demand Holders. Moreover, the Plan **resolves disputes to the benefit** of Holders of Asbestos Claims and Future Demand Holders and **avoids years of expensive litigation with uncertain results**.

Patton Declaration ¶ 20 (emphasis added). The FCR whole-heartedly agrees with this justification and expects the Court does also.

Section D of the Confirmation Order discusses the Paddock Plan. **Just like** the Debtors seek to do here, Paddock's Plan established a Section 524(g) asbestos trust, constituting a qualified settlement fund.

Section E identifies Plan voting. Judge Silverstein explained that **99.99%** of the current asbestos claims, in number and amount, voted for the Plan.[39] Maune, as a law firm on the ACC, necessarily supported the Plan. Given these numbers, it also surely voted for the Plan on behalf of its mesothelioma victim clients.[40]

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benefit of future claims there.

[39] *Declaration of James Daloia of Kroll Restructuring Administration LLC in Support of Confirmation of the Second Amended Plan of Reorganization for Paddock Enterprises, LLC Under Chapter 11 of the Bankruptcy Code*, Paddock, Dkt. No. 1331, filed April 25, 2022 ¶ 8 (the "Paddock Voting Declaration").

[40] Mr. Waldrep, Maune's North Carolina counsel, argued in Bestwall on behalf of the willfully non-compliant claimants that 82% compliance by others was "extraordinary" and you can never "get a hundred percent of any group of Americans to respond to anything . . . ." June 23, 2022 Hr'g Tr. at 32:1-10, In re Bestwall LLC, Case No. 17-31795. The tort firms, including Maune, came within a whisker when they block voted on behalf of their clients on the Paddock full-pay Plan. As the Court knows in Kaiser, the vote there was 100%. In re Kaiser Gypsum Co., Inc., No. 16-31602 (JCW), 2021 WL 3215102, at *3 (W.D.N.C. July 28, 2021) ("The Debtors received 24,310 acceptances out of 24,310 votes from holders of Class 4 Asbestos Personal Injury Claims, with Class 4 claimants who voted in favor of the Plan holding Claims in the amount of $2,439,570,176.00 for voting purposes only, such acceptances being 100 percent in number and 100 percent in amount of all ballots received . . . ."), aff'd, 60 F.4th 73 (4th Cir. 2023)'

In language this Court may find instructive, Section F explains how the factual elements of the Paddock Plan comply with the requirements of Section 1129 of the Bankruptcy Code. Those requirements are, of course, familiar to the Court.

Paragraph 57 identifies the initial members of the Asbestos Trust Advisory Committee (the "TAC"), which as is standard, tracks the members of Paddock's ACC. Marcus Raichle, Jr., of Maune, is a member of the TAC. Mr. Patton continued as the FCR for the asbestos trust.

Paragraph 73 details how the release provisions satisfy the five Master Mortgage factors. Judge Silverstein notes the plan was overwhelmingly supported by 99% of creditors holding asbestos claims, including presumably all Maune's Paddock clients; that the ACC, on which Maune sat, and the FCR actively negotiated and support the Plan; and that the O-I Glass contribution will fund the asbestos trust and "establish a **100% Payment Percentage** for Asbestos Claims[.]"[41]

Paragraphs 88-92 detail how the Paddock Plan factually satisfied Sections 1129(a)(3) and 1129(e) of the Bankruptcy Code. Paragraphs 91 and 92 are especially telling. As such, they are reproduced below in full:

> 91. **The Plan Proponents proposed the Plan in good faith and not by any means forbidden by law**, as required by section 1129(a)(3) of the Bankruptcy Code, based on the totality of the circumstances surrounding the filing of the Chapter 11 Case, the terms of the Plan, the process leading to the formulation of the Plan, and the solicitation of votes on the Plan. **The full record of the Chapter 11 Case, taken as a whole, demonstrates that the Plan has been proposed with the legitimate purpose of forming and establishing the Asbestos Trust pursuant to section 524(g) of the Bankruptcy Code** to process and pay Asbestos Claims pursuant to the Asbestos Trust Agreement and Asbestos Trust Distribution Procedures.
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> 92. **The Plan allows the Debtor to reorganize by providing a permanent resolution of all Asbestos Claims against the Debtor by channeling all such Asbestos Claims to the Asbestos Trust**. The Plan also provides the Reorganized Debtor with a capital structure and resources sufficient to allow the Reorganized Debtor to satisfy its plan-related obligations and with sufficient liquidity and capital

[41] Paddock Confirmation Order ¶ 73 (emphasis added).

> resources to conduct its business following emergence from the Chapter 11 Case. **Moreover, the Plan itself and the arm's-length negotiations among the Debtor, the Asbestos Claimants Committee, and the Future Claimants' Representative leading to the Plan's formulation, as well as the support of O-I Glass, the sole Equity Interest Holder of the Debtor, for the Plan, provide independent evidence of the Plan Proponents' good faith in proposing the Plan**.[42]

Paragraphs 99 through 102 explain how the Paddock Plan satisfies the best interests test of Section 1129(a)(7). Judge Silverstein concluded in paragraph 100 that the Paddock Plan satisfies 1129(a)(7)(A)(ii) because it "provides for the substantial payment of Asbestos Claims by the Asbestos Trust, which is not less than the amount that Holders of Asbestos Claims would so receive or retain if the Debtor were liquidated under chapter 7 on the Effective Date."[43] Judge Silverstein further concluded in paragraph 102, that all holders of asbestos claims "**can be treated fairly, equitably**" under the Paddock Plan.[44]

Section 24, paragraphs 108 to 113, explain why the Paddock Plan is feasible.

Section G discusses, in detail, how the Paddock Plan complies with Section 524(g) of the Bankruptcy Code.

B. Judge Silverstein's Conclusions of Law.

Turning now to Judge Silverstein's conclusions of law, paragraph 145 is particularly relevant, providing:

> 145. **The Bankruptcy Court and the District Court have jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.** Confirmation of the Plan is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). **The Debtor is qualified to be a debtor under section 109 of the Bankruptcy Code.** Venue of the Chapter 11 Case in the United States Bankruptcy Court for the District of Delaware was proper as of the Petition Date, pursuant to 28 U.S.C. § 1408, and continues to be proper. **The Bankruptcy Court has jurisdiction to enter a final order with respect to**

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42 Id. ¶¶ 91-92 (emphasis added). This mirrors Mr. Patton's conclusions in his Declaration. See Patton Declaration ¶ 22. A full reading of the Patton Declaration is instructive and has direct bearing on the same result Mr. Grier is seeking to achieve here.

43 Paddock Voting Declaration ¶ 8 (The "final tabulation reflects that the Plan was accepted by 69,171 (99.993%) of claims in the amount of $741,057,300.00 (99.997%) and rejected by 5 (0.007%) claims in the amount of $19,602.00 (0.003%).").

44 Paddock Confirmation Order ¶ 102 (emphasis added).

> **confirmation, except to the extent section 524(g) of the Bankruptcy Code requires issuance or affirmance of this Confirmation Order by the District Court**.[45]

On June 22, 2022, the United States District Court for the District of Delaware entered an order affirming the Paddock Confirmation Order.[46] And in October 2022, in stark contrast to these stalled cases, the Owens-Illinois Asbestos Personal Injury Trust began accepting asbestos claims for review, processing, and payment.[47]

How can it be then that Paddock qualifies to be a debtor under Section 109 of the Bankruptcy Code but Aldrich/Murray do not under the same facts and circumstances with many common fiduciaries and professionals? Likewise, how can it be that the Paddock Plan, as factual matter, satisfies Section 1129, the best interests test, treats current and future claims fairly and equitably and is in their best interests, is feasible, is proposed in good faith, and satisfies Section 524(g), but the Debtors' Plan does not? Similarly, how can it be that the bankruptcy court in Delaware has subject matter jurisdiction over a solvent debtor, with nary a murmur of protest from Maune and the ACC, but this Court does not?

The simple truth is that if Judge Silverstein in Delaware has subject matter jurisdiction over a full pay case, with solvent parties, pushed through by Maune and the ACC, then, of course, Judge Whitley in North Carolina does too. Jurisdiction is neither graciously conferred by Maune's consent nor is it divested by its vehement objection. This Court's subject matter jurisdiction is

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45 Paddock Confirmation Order ¶ 145 (emphasis added).

46 *Order Affirming the Bankruptcy Court's Findings of Fact, Conclusions of Law, and Order Confirming the Third Amended Plan of Reorganization for Paddock Enterprises, LLC Pursuant to Chapter 11 of the Bankruptcy Code*, In re Paddock Enterprises, LLC, Case No. 22-246 (UNA), Dkt. No. 11 (D. Del.), entered June 22, 2022.

47 *Owens-Illinois Asbestos Personal Injury Trust*, available at https://www.oiasbestospersonalinjurytrust.com/ (last viewed May 29, 2023).

determined by Congress. It is not dependent on a court's location or the disparate priorities at any given the moment of any tort law firm or group of firms, however powerful or influential.

Mr. Patton's on-point words in paragraph 15 of his Declaration make for bitter reading for the FCR in these cases:

> Moreover, as I noted in the Examiner Objection, the Debtor had asserted that the Chapter 11 Case would be a **full-pay case**. I believed that if the economic parties could negotiate a **resolution** that would pay creditors **sufficiently** and include **adequate** funding for Future Demand Holders, then **the Court** and **all parties** in interest would have **an opportunity to review such resolution** in the form of a plan and trust distribution procedures, **which might obviate the need for costly, protracted litigation and better serve all parties in interest**.[48]

This too is a full-pay case but there is no resolution for asbestos claimants or the Court to review. It is no secret why that is not happening here. The law firms that control the ACC, including Maune, have freely admitted their concern about "aggressive litigation tactics" and what they will reveal, with this Court again making "very critical determinations" of exposure evidence suppression.[49] They want to avoid that at all costs and, therefore, are engaged in a scorched-earth litigation war to get these cases dismissed, by any means.

Of course, the constituency that is suffering from all of this are valid asbestos claimants, deprived of full pay compensation in their lifetimes despite that being in easy reach, a hop, skip, and a jump away, just like Paddock. What makes this more troubling is that it is far from clear that constituency even knows this is happening.[50]

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48 Patton Declaration ¶ 15 (emphasis added).

49 Patton Declaration ¶ 19; Jan. 26, 2023 Hr'g Tr., at 38:25; 39:1-10, Dkt. No. 1599 (Natalie Ramsey, counsel for the ACC, in response to the Court's question as to why precision is needed for an estimation number, stated "The, the difficulty from the claimant perspective . . . and I, I want to be very transparent about this – is that in addition to reaching a low number, Judge Hodges made some very critical determinations about the, the, the way that the plaintiffs and the tort lawyers behaved in the tort system . . . . And that is the responsibility that we bear, is to not let that happen again on our watch.").

50 On November 9, 2020, just four months after the members of the ACC were appointed in Aldrich/Murray, a deposition was taken in a Massachusetts state court case filed by plaintiff Robert Overton (the same Robert Overton who was appointed to the ACC in the Aldrich/Murray cases, with his firm being Shepard Law) against defendant Armstrong International, Inc. See *Order Appointing the Official Committee of Asbestos*

At the hearing on the Motion to Dismiss, Maune may try to justify to this Court, the Bankruptcy Administrator, the classes of current and future claims and their fiduciaries, and indeed likely many of its own clients,[51] how and why it embraced positions in Paddock that are diametrically opposed to the positions it is taking here. It will be a Herculean task. But one thing is abundantly clear, the Paddock Confirmation Order and the Patton Declaration deny them any chance to credibly argue, under the facts of these cases, that they were filed in bad faith and must be dismissed for lack of subject matter jurisdiction.

Personal Injury Claimants, entered July 7, 2020, Dkt. No. 147. During the deposition, Mr. Overton was asked about his appointment to the ACC in Aldrich/Murray and whether he understood what the ACC does. His answers are telling:

Q: Are you involved in any way with the Aldridge [sic] Murray bankruptcy proceedings? A: I am not, not that I know of. Q: Have you been assigned to any claimant committee in connection with that bankruptcy proceeding? A: No. . . . . Q: Have you ever seen any documents from the U.S. Bankruptcy Court for the Western District of North Carolina? A: No. Q. Are you aware that on July 7 of this year you were appointed to the official committee of asbestos personal injury claimants in a case pending in that court? A: I was asked if they could use my name. I don't know if that's who it was for.	Q: What do you mean you were asked if they could use your name? A: I don't remember how it was explained to me. I have an issue with memory loss . . . . Q: Do you have any understanding of the purpose of the official committee of asbestos personal injury claimants of which you are a member? A: I do not. . . . . Q: Do you understand the purpose of that committee? A: I do not. . . . . Q: Did you agree to be a part of that committee? A: I don't know if I am part of that committee.

Nov. 9, 2020 Depo. Tr., Robert Overton vs. Armstrong Int'l, Inc., No. 20-1482 (Mass. Super. Ct. Dept of the Trial Court) at 329:9-15; 378:11-24; 379:1-6, 12-16, 20-22; 380: 2-5. The relevant pages of the deposition are attached as **Exhibit C**.

[51] As the Court is aware, asbestos claimants, particularly those exposed to friable asbestos products, assert claims against multiple defendants and trusts. It is completely feasible for a worker, such as a pipefitter, to have been exposed to asbestos fibers in encapsulated gaskets and asbestos fibers from Kaylo insulation. That pipefitter can now be paid in Paddock. We know his fate here.

III. THE MOTION TO DISMISS SHOULD BE STRICKEN -- MAUNE IS CONFLICTED

Maune acts as the lawyer for Mr. Hamlin, a member of the ACC. As such, Maune is prohibited from advancing arguments on behalf of other clients, the clients listed in its Motion, that are directly counter to the interests of the class of current claims. Maune cannot pretend this problem away by simply saying it is not bringing the Motion on behalf of Mr. Hamlin or the ACC. Nor is this conflict cleansed by the ACC counsel filing a motion to dismiss. That too is antithetical to the interests of the class for all the reasons stated in Paddock Confirmation Order and the Patton Declaration.

The ACC's authority here stems from Sections 105(g) and 524(g) of the Bankruptcy Code.[52] The ACC, just as was true of the ACC in Paddock, has one job: To ensure that the class of valid current claimants is treated fairly and equally under a full pay plan. That means, among other things, that the class receives prompt recovery on valid claims, with similarly situated claims being treated similarly, which can only happen with a fully funded trust.[53] No member of the ACC or their lawyer, can, consistent with their fiduciary duty to the class, propound any argument that is antithetical to that result, and certainly not on behalf of an individual client.[54]

As Judge Silverstein found in Paddock, and as Maune, the ACC, and the FCR argued there, the best result for the classes of current and future claims in a solvent debtor case is a fully funded

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52 *Motion of the Bankruptcy Administrator to Appoint Official Committee of Asbestos Claimants*, filed June 30, 2020, Dkt. No. 126; *Order Appointing the Official Committee of Asbestos Personal Injury Claimants*, entered July 7, 2020, Dkt. No. 147.

53 11 U.S.C. § 524(g)(2)(B)(ii)(V) ("the trust will operate through mechanisms . . . that provide reasonable assurance that the trust will value, and be in a financial position to pay, present claims and future demands that involve similar claims in substantially the same manner.").

54 It is no answer to say, back in the tort system everyone has the rights that they had before so that is a great result. The ACC represents the class. It must protect the class's best interests in receiving equal treatment, with a prompt recovery, not disparate treatment and delayed recovery. Likewise, the ACC has no business protecting or promoting the parochial interests of any law firm or groups of law firms against the interests of that class, regardless of how successful they are in the tort system or how great their influence is across dozens of asbestos cases and trusts, including deciding who does and who does not get highly remunerative retentions.

asbestos trust. The FCR agrees. Indeed, there is no scenario where a fully funded asbestos trust is not the best result. The creation of a trust when a debtor is fully solvent is the only way to ensure 100% recovery for the classes of asbestos creditors, current and future. Consistent with that goal, rather than moving to dismiss the case, Maune and the other law firms on the ACC, on behalf of the class of current asbestos claims, should be pushing for reorganization.

At bottom, if Maune and the ACC properly exercised their fiduciary duty to the class of current claimants in Paddock, and Judge Silverstein found and concluded that they did, they cannot simultaneously be doing so here in pursuing its Motion to Dismiss. It is blackletter law, that a lawyer cannot take a position for a client in one case that is contrary to the interests of another client in another case on a similar issue.[55] That, of course, is writ large when a lawyer is arguing for one client against the interests of another in the same case.

This conflict comes on top of the fact that Maune has unclean hands. On August 18, 2021, the Court (Judge Beyer) held Maune and certain Illinois asbestos claimants (the "Illinois Parties") in contempt for willful failure to comply with its valid, lawful PIQ Order.[56] On September 23, 2021, Judge Beyer ordered the Illinois Parties to pay to the Debtors their losses incurred by their contempt, some $400,000.[57] Of direct relevance here, Judge Beyer noted her concern that Maune 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.**

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55 See, e.g., N.C. R. of Prof'l Conduct 1.7 (Conflict of Interest: Current Clients).

56 *Order on Debtor's Emergency Motion to Enforce PIQ Order and Automatic Stay and Order to Show Cause*, entered Aug. 18, 2021, In re Bestwall LLC, Case No. 17-31795 (LTB), Dkt. No. 1996.

57 *Order with Respect to August 19, 2021 Contempt Compliance Hearing*, In re Bestwall LLC, entered Sept. 23, 2021, Case No. 17-31795 (LTB), Dkt. No. 2095.

Id. ¶ 7 (emphasis added). Such concerns are well-founded as Mr. Overton's deposition shows, fn. 50, *infra*.

IV. THE MOTION FAILS ON ITS OWN PREMISE – FINANCIAL DISTRESS

The Motion to Dismiss falls out of the gate on its factual premise that there is no possible circumstance, now or in the future, where the Debtors could ever be in financial distress in the tort system.[58] This cannot be squared with what Maune seeks from asbestos defendants. For example, in 2019, with co-counsel Levy Konigsberg LLP, Maune sought and won a $325 million asbestos verdict against Johnson & Johnson.[59] Prominent on Maune's website are awards for Maune being listed in the top 10 verdicts in the United States and New York.[60] They are not alone. In 2018, many of the ACC law firms were on the same list. Mr. Kazan's firm won a $117 million verdict against Imerys; Simmons Hanly Conroy won three massive verdicts, a $60 million verdict against A.O. Smith, a $40,113,691 verdict against Aerco International, and a $30,270,501 verdict against CBS Corp. et al; Shepard Law won a $43,100,000 verdict against Philip Morris; and Maune won a $14,620,086 verdict against Parker Hannifer Corp. et al.[61] These are all asbestos cases. And

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58 Motion to Dismiss at 4 ("The Debtors' asbestos liabilities – while substantial in the abstract – never put the Debtors in financial distress."), 8 ("The Debtors have failed to produce any evidence of past, current, or future threat to their (or their affiliates') 'operations, financial condition, liquidity or cash flows' due to asbestos litigation liabilities.").

59 *LK Wins $325 Million Mesothelioma Verdict Against Johnson & Johnson for Asbestos In Baby Powder*, Levy Konigsberg LLP, May 30, 2019, available at https://www.levylaw.com/blog/2019/may/lk-wins-325-million-mesothelioma-verdict-against/ (last visited May 31, 2023).

60 Website of Maune Raichle Hartley French & Mudd, LLC, available at https://www.mrhfmlawfirm.com/?utm_source=bing&utm_medium=cpc&utm_term=%2Bmaune%20%2Braichle%2020%2Bhartley%20%2Bfrench%20%2Bmudd&utm_content=mrhfmlawfirm&utm_campaign=branded-terms&msclkid=9914c4753d471ad52ef3a006f8535721 (last visited May 31, 2023).

61 *Top 10 Asbestos Exposure Verdicts in the United States in 2018*, available at https://topverdict.com/lists/2018/united-states/top-10-asbestos-exposure-verdicts (last visited May 31, 2023). The FCR is aware that the facts of these cases could well be quite different from any presented in these Debtors' cases with only one verdict in their history and encapsulated liability exposure, and that some verdicts could be reduced or reversed on appeal. The point is simply Maune cannot credibly say the Debtors do not face substantial asbestos claims in the tort system while simultaneously demanding the recovery of tens and hundreds of millions of dollars against asbestos defendants.

none of them was even the largest verdict in 2018. That award went to the Lanier law firm, not on the ACC, which won a $4,690,000,000 asbestos verdict against Johnson & Johnson.[62] [63]

V. THE MOTION TO DISMISS FAILS ON THE LAW

The Motion to Dismiss fails on the law too. It is no secret that absent the LTL decision, Maune would not have been emboldened to file its Motion to Dismiss. Nor for that matter would the ACC have done the same. LTL, however, is not binding on this Court, Carolin is. The Carolin standard is clear -- objective futility and subjective bad faith.

For the reasons stated above, pp. 3-4, the Debtors' reorganization is viable and confirmable, just as Paddock's was. In fact, all that it would take for confirmation this year would be for the law firms on the ACC, including Maune, to do what they did in Paddock, consistent with their fiduciary duty to the class of current claims. There is frustrating irony in the fact that the one constituency that is delaying reorganization by refusing to participate – the law firms that control the ACC – is the same one that is arguing futility.

This Court, of course, has a direct benchmark for the complete lack of objective futility here. The proposed funding -- $545 million -- is greater than Garlock (years later) and the Debtors' proposed plan and related plan documents are modeled on Garlock. The ACC, composed of many of the same law firms, and critically, this Court, approved both that funding and the Garlock plan. Lost in all the arguments about financial distress, the Court will recall Coltec was solvent and, for that matter, so was Garlock under the terms of the $480 million settlement. Thus, Maune is asking this Court to find the Debtors' bankruptcy objectively futile despite the reality that it concerns a

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62 Id.

63 These numbers beg the question why the ACC and Maune agreed to a settlement of $610 million in Paddock and that is a full pay case. The answer, of course, is that the asbestos trust, as Judge Silverstein found at Maune and the ACC's urging, will pay all claims fairly and equally, compensating claimants for their injuries at values paid in the tort system in settlement, at 100 %.

subset of asbestos liabilities it knows were addressed by Garlock's plan of reorganization that was confirmed by this Court.

Garlock further shows the precariousness of Maune's arguments. Under Maune's skewed jurisdictional reasoning only insolvent companies may file for and, critically, stay in bankruptcy. Thus, this Court would have been required, *sua sponte*, to dismiss the Garlock/Coltec bankruptcies the very moment the debtors, their parent, and class fiduciaries reached agreement on their full pay settlement. So should have Judge Silverstein for that matter, when the ACC agreed $610 million was a full pay case leaving Paddock and its affiliates equally solvent. And the same in Kaiser.[64] That is nonsense of course.

It cannot be forgotten that Maune's arguments stand on the back of the LTL opinion. That opinion, in addition to not being binding on this Court, sits on shaky legal grounds. As this Court has correctly stated many times in these and prior proceedings, it must follow the plain language of the Bankruptcy Code and the Bankruptcy Rules. Section 109 of the Bankruptcy Code provides who may be a debtor. The plain language of that Section does not impose either a requirement for insolvency or the inability to pay on voluntary Chapter 11 debtors, the same requirement Maune invites this Court to engraft on the Bankruptcy Code. That invitation should be declined. Congress knew how to write those requirements into the Code when it wanted. Indeed, Section 109(c)(3) imposes an insolvency requirement on Chapter 9 municipal debtors.[65] Likewise, Section 303(h) imposes an inability to pay requirement on involuntary Chapter 11 and 7 debtors.[66]

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64 In re Kaiser Gypsum Co., Inc., No. 16-31602 (JCW), 2021 WL 3215102, at *7, 13 (W.D.N.C. July 28, 2021) (plan pays general unsecured claims in full and Kaiser has unlimited access to insurance), aff'd, 60 F.4th 73 (4th Cir. 2023).

65 11 U.S.C. § 109(c)(3) ("Any entity may be a debtor under chapter 9 of this title if and only if such entity . . . is insolvent . . . .").

66 11 U.S.C. § 303(h).

Dispositively, Congress expressly struck the requirement that a Chapter 11 voluntary debtor be insolvent or unable to pay its debts from the Bankruptcy Act when it enacted the Bankruptcy Code.[67] The wisdom of eliminating that restriction is readily seen in the context of asbestos bankruptcies. Unlike other types of bankruptcies, asbestos bankruptcies address future liabilities for decades to come. Waiting until a company is insolvent guarantees that all claimants will receive a partial recovery, with the future claimants most at risk.

How then can Maune seriously suggest Congress intended a financial distress requirement in the Bankruptcy Code when it struck the insolvency and inability to pay requirements for a petition from the Bankruptcy Act? Similarly, how can it suggest that solvent asbestos companies facing substantial asbestos liabilities -- Garlock, Coltec, Paddock, LTL, Aldrich/Murray, Kaiser, and Paddock -- have no recourse to Section 524(g) when that is its very purpose?[68]

The Supreme Court is squarely aligned with this Court's view that plain language of Bankruptcy Code controls (and all other federal statutes for that matter). Indeed, in Toibb v. Radloff, 501 U.S. 157, 161 (1991), the Supreme Court expressly recognized that "Congress took care in § 109 to specify who qualifies—and who does not qualify—as a debtor under the various chapter of the Code." And just this year, the Supreme Court held in MOAC Mall Holdings LLC v. Transform Holdco LLC, 143 S. Ct. 927, 936 (2023), that rules and statutes are treated as jurisdictional only "if Congress clearly states as much." Accordingly, the simple and unavoidable truth here is that there is nothing in Section 109 of the Bankruptcy Code, or any other Code section

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67 See Bankruptcy Act §§ 530(1) (requiring every petition to state that the corporation is insolvent or unable to pay their debts as they mature). In 1978, Congress repealed the Bankruptcy Act and replaced it with the Bankruptcy Code. In doing so, Congress eliminated the insolvency and inability to pay requirement for chapter 11 eligibility.

68 11 U.S.C. § 524(g)(2)(B)(ii)(I) ("the debtor is likely to be subject to substantial future demands[.]").

for that matter, which says this Court only has subject matter jurisdiction over a "financially distressed" debtor, whatever that may mean.

Last, neither In re Kaiser Gypsum Co., Inc., 60 F.4th 73, 78 (4th Cir. Feb. 14, 2023) nor In re Premier Automotive Services, Inc., 492 F.3d 274 (4th Cir. 2007) help Maune's cause. Kaiser says, unremarkably and in passing, that a Section 524(g) plan is appropriate for companies facing substantial asbestos liabilities. Not a shocking proposition. Paddock faced such liabilities, as Judge Silverstein so found at the urging of Maune and the ACC. The Debtors do as well. Indeed, the Debtors' asbestos claims are brought by many of the same firms and may well be the same claimants as in Paddock. As to In re Premier, if the Fourth Circuit actually thought what Maune believes it does (financial distress alone is the dismissal standard), it wouldn't have applied the Carolin factors at all. Rather, it would have said, in a one-line order, the Debtors aren't financially distressed any more, case dismissed.

VI. CONCLUSION

Maune waited too long, cannot pretend away its contradictory positions in Paddock, cannot ignore its conflicts, has unclean hands, and its arguments otherwise fail on the facts and the law. The Motion to Dismiss should be denied or stricken.

WHEREFORE, the FCR respectfully requests that this Court deny or strike the Motion to Dismiss and grant such other and further relief as is just and proper.

Dated: June 1, 2023
Charlotte, North Carolina

Respectfully submitted,

/s/ A. Cotten Wright

A. Cotten Wright (State Bar No. 28162)
GRIER WRIGHT MARTINEZ, PA
521 E Morehead Street, Suite 440
Charlotte, NC 28202
Telephone: (704) 332-0207
Facsimile: (704) 332-0215
Email: cwright@grierlaw.com

-and-

Jonathan P. Guy, Esq. (admitted *pro hac vice*)
Debbie L. Felder, Esq. (admitted *pro hac vice*)
ORRICK, HERRINGTON & SUTCLIFFE LLP
1152 15th Street, N.W.
Washington, D.C. 20005
Telephone: (202) 339-8400
Facsimile: (202) 339-8500
Email: jguy@orrick.com
dfelder@orrick.com

COUNSEL FOR JOSEPH W. GRIER, III,
FUTURE CLAIMANTS' REPRESENTATIVE

Exhibit A

Similarities between Aldrich/Murray, Bestwall, DBMP, Garlock, Kaiser Gypsum, Paddock, and LTL Management

	Aldrich Pump LLC & Murray Boiler LLC Case No. 20-30608, Bankr. W.D.N.C. (Judge Whitley)	**Bestwall LLC** Case No. 17-31795, Bankr. W.D.N.C. (Judge Beyer)	**DBMP LLC** Case No. 20-30080, Bankr. W.D.N.C. (Judge Whitley)	**Garlock Sealing Technologies, LLC** Case No. 10-31607 Bankr. W.D.N.C. (Judge Whitley)	**Kaiser Gypsum Co., Inc.** Case No. 16-31602 Bankr. W.D.N.C. (Judge Whitley)	**Paddock Enterprises, LLC** Case No. 20-10028 Bankr. D. Del. (Judge Silverstein)	**LTL Management LLC** Case No. 21-30589 (dismissed) ("LTL 1") Case No. 23-12835 ("LTL 2") Bankr. D. N.J. (Judge Kaplan)
Debtor's Products Contained Asbestos	Yes	Yes	Yes	Yes	Yes	Yes	Disputed but alleged to contain asbestos
Asbestos Containing Products	Gaskets Packing Boiler Insulation Blankets (Murray)	Joint Compound Products	Asbestos Cement Pipe Asphalt Roofing Products Various Other Asbestos Products	Gaskets Packing Sealing	Joint compounds products Textured paint Acoustic tiling components Masonry cement Plastic cement	"Kaylo" brand: Pipe Coverings Block Insulation Products	Disputed but alleged to be in talcum powder products
Pre-Petition Restructuring	Yes	Yes	Yes	Yes with respect to Coltec	No	Yes	Yes
Purpose of Restructuring To Resolve Current and Future Asbestos Liabilities	Yes	Yes	Yes	Yes – Plan effective 7/31/17 with $480mm asbestos trust	N/A	Yes - Plan effective 7/8/2022 with $610mm asbestos trust	Yes
Funding Agreement with Solvent Non-Debtor Affiliates	Yes	Yes	Yes	Yes with respect to Coltec	No	Yes	Yes
Non-Debtor Affiliates' Market Cap Greater than $1 Billion	Yes	Yes	Yes	Yes (as of 2013)	Unavailable – privately held	Yes	Yes
Law Firms on ACC *** Law firms shown in bold are also on the ACC in Aldrich**	Brayton Purcell, LLP Cooney & Conway Dean Omar Branham Shirley, LLP Goldberg Persky White, P.C. Kazan, McClain, Satterley & Greenwood, PLC Maune Raichle Hartley French & Mudd, LLC Motley Rice The Shepard Law Firm Simmons Hanly Conroy LLC SWMW Law, LLC Weitz & Luxenberg [Order Appointing the Official Committee of Asbestos Personal Injury Claimants, Dkt. No. 147[	Bergman Draper Oslund **Cooney & Conway** Gori Julian & Associates, PC **Kazan, McClain, Satterley & Greenwood, PLC** The Lanier Law Firm **Maune Raichle Hartley French & Mudd, LLC** O'Brien Law Firm, PC **The Shepard Law Firm** **Weitz & Luxenberg** [Second Amended Order Appointing Official Committee of Asbestos Claimants, Dkt. No. 690]	Cohen, Placitella & Roth, P.C. **Cooney & Conway** **Goldberg Persky White, P.C.** The Gori Law Firm **Kazan, McClain, Satterly & Greenwood PLC** **Maune Raichle Hartley French & Mudd, LLC** Law Offices of Peter G. Angelos, P.C. **The Shepard Law Firm** Shrader & Associates, LLP **SWMW Law, LLC** **Weitz & Luxenberg** [Order Appointing the Official Committee of Asbestos Personal Injury Claimants, Dkt. No. 155]	**Kazan McClain Lyons Greenwood & Harley** **Simmons, Browder, et al.** Waters & Kraus, LLP Lipsitz & Ponterio, LLC Thornton & Naumes, LLP Simon, Eddins & Greenstone, LLP **Cooney & Conway** Paul, Reich & Myers, PC **Motley Rice LLC** **Weitz & Luxenberg** Belluck & Fox, LLP The Jaques Admiralty Law Firm, PC [Amended Order Appointing Official Committee of Asbestos Personal Injury Claimants, Dkt. No. 260]	Law Offices of Peter G. Angelos, P.C. **Brayton Purcell LLP** **Cooney & Conway** Gori Julian & Associates, P.C. **Simmons Hanly Conroy LLC** **Kazan, McClain, Satterley & Greenwood, PLC** Kelley & Ferraro, LLP Belluck & Fox, LLP Waters & Kraus, LLP Bergman Draper Landenburg, PLLC **Motley Rice LLC** [Amended Chapter 11 Disclosure Statement for Third Amended Joint Plan of Reorganization of Kaiser Gypsum Company, Inc. and Hanson Permanente Cement, Inc., Dkt. No. 1773]	Bergman, Draper, Oslund, Udo **Cooney & Conway** The Gori Law Firm Levy Konigsberg, LLP **Maune Raichle Hartley French & Mudd, LLC** O'Brien Law Firm **Simmons Hanly Conroy LLC** Waters & Kraus, LLP **Weitz & Luxenberg, PC** [Notice of Appointment of Committee of Asbestos Personal Injury Claimants, Dkt. No. 47]	LTL 1: Ashcraft & Gerel, LLP Fears Nachawati Law Firm Karst von Oiste LLP Levin Papantonio Rafferty OnderLaw, LLC **Weitz & Luxenberg** Beasley Allen Law Firm Hill Carter Franco Cole & Black PC **Kazan, McClain, Satterly & Greenwood PLC** Levy Konigsberg LLP Robinson Calcagnie, Inc. [Order Appointing the Official Committee of Talc Claimants, Dkt. No. 355] LTL 2: Karst Von Oiste LLP Hill Carter Franco Cole & Black PC **Kazan, McClain, Satterly & Greenwood PLC** Robinson Calcagnie, Inc.

	Aldrich Pump LLC & Murray Boiler LLC Case No. 20-30608, Bankr. W.D.N.C. (Judge Whitley)	**Bestwall LLC** Case No. 17-31795, Bankr. W.D.N.C. (Judge Beyer)	**DBMP LLC** Case No. 20-30080, Bankr. W.D.N.C. (Judge Whitley)	**Garlock Sealing Technologies LLC** Case No. 10-31607 Bankr. W.D.N.C. (Judge Whitley)	**Kaiser Gypsum Co., Inc.** Case No. 16-31602 Bankr. W.D.N.C. (Judge Whitley)	**Paddock Enterprises, LLC** Case No. 20-10028 Bankr. D. Del. (Judge Silverstein)	**LTL Management LLC** Case No. 21-30589 (dismissed) ("LTL 1") Case No. 23-12835 ("LTL 2") Bankr. D. N.J. (Judge Kaplan)
							Levin Papantonio Rafferty Beasley Allen Law Firm Ashcraft & Gerel, LLP **Weitz & Luxenberg** Levy Konigsberg LLP Golomb Spirt Grunfeld **Motley Rice, LLC** [Notice of Appointment of Official Committee of Talc Claimants, Dkt. No. 162]
Counsel & Asbestos Valuation Consultant to ACC *** Professionals shown in bold are also retained in Aldrich**	Robinson & Cole LLP Caplin & Drysdale, Chartered Winston & Strawn LLP Gilbert LLP Hamilton Stephens Steele & Martin, PLLC Legal Analysis Systems, Inc. (Asbestos Valuation Consultant)	**Robinson & Cole LLP** Special Litigation Counsel for Medical Science: (Kazan/Maune/Ruckdeschel/ Weitz law firms) **Hamilton Stephens Steele & Martin, PLLC** **Legal Analysis Systems, Inc. (Asbestos Valuation Consultant)**	**Robinson & Cole LLP** **Caplin & Drysdale, Chartered** **Winston & Strawn LLP** **Hamilton Stephens Steele & Martin, PLLC** **Legal Analysis Systems, Inc. (Asbestos Valuation Consultant**	**Caplin & Drysdale, Chartered** **Hamilton, Moon, Stephens, Steele & Martin, PLLC** **Legal Analysis Systems, Inc. (Asbestos Valuation Consultant)**	**Caplin & Drysdale, Chartered** Higgins & Owens, PLLC Anderson Kill P.C. **Legal Analysis Systems, Inc. (Asbestos Valuation Consultant)**	**Caplin & Drysdale, Chartered** **Winston & Strawn LLP** Campbell & Levine, LLC **Legal Analysis Systems, Inc. (Asbestos Valuation Consultant)**	LTL 1: Brown Rudnick LLP Genova Burns LLC Bailey Glassier Otterbourg P.C. Miller Thomson LLP (No Asbestos Valuation Consultant retained) LTL 2: (proposed) Brown Rudnick LLP Genova Burns LLC Massey & Gail LLP Otterbourg P.C. (No Asbestos Valuation Consultant retained yet)
FCR	Joseph W. Grier, III	Sander Esserman	Sander Esserman	Joseph W. Grier, III	Lawrence Fitzpatrick	James Patton, Jr.	LTL 1: Randi Ellis LTL 2: Randi Ellis
Counsel to FCR & Asbestos Valuation Consultant	Orrick, Herrington & Sutcliffe LLP Grier Wright Martinez PA **Ankura (Asbestos Valuation Consultant)**	Young Conaway Stargatt & Taylor, LLP Alexander Ricks PLLC **Ankura (Asbestos Valuation Consultant)**	Young Conaway Stargatt & Taylor, LLP Alexander Ricks PLLC **Ankura (Asbestos Valuation Consultant)**	Orrick, Herrington & Sutcliffe LLP Grier Furr & Crisp, P.A. Hamilton Rabinovitz & Associates (Asbestos Valuation Consultant)	Young Conaway Stargatt & Taylor, LLP Hull & Chandler, P.A. Anderson Kill P.C. **Ankura (Asbestos Valuation Consultant)**	Young Conaway Stargatt & Taylor, LLP **Ankura (Asbestos Valuation Consultant)**	LTL 1: Walsh Pizzi O'Reilly Falanga LLP Berkeley Research Group (Asbestos Valuation Consultant LTL 2: (proposed) Walsh Pizzi O'Reilly Falanga LLP (No Asbestos Valuation Consultant retained yet)

Exhibit B

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
PADDOCK ENTERPRISES, LLC,[1]	Case No. 20-10028 (LSS)
Debtor.	**Ref. Docket No. 1219**

DECLARATION OF JAMES L. PATTON, JR. IN SUPPORT OF CONFIRMATION OF THE SECOND AMENDED PLAN OF REORGANIZATION FOR PADDOCK ENTERPRISES, LLC UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

I, James L. Patton, Jr., the legal representative for future demand holders (the "Future Claimants' Representative" or "FCR") in the above-captioned chapter 11 case (the "Chapter 11 Case") of Paddock Enterprises, LLC ("Debtor"), pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I submit this declaration in support of the Debtor's request for entry of an order confirming the *Second Amended Plan of Reorganization for Paddock Enterprises, LLC Under Chapter 11 of the Bankruptcy Code* [Docket No. 1286] (as amended, modified, and/or supplemented, the "Plan").[2]

2. On January 22, 2020, the Debtor filed the *Motion of Debtor for Entry of an Order Appointing James L. Patton, Jr., as Legal Representative for Future Asbestos Claimants,* Nunc Pro Tunc *to the Petition Date* [Docket No. 58]. On June 18, 2020, the Bankruptcy Court entered an order approving my appointment as the Future Claimants' Representative. *See* Docket No. 377.

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

[2] Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Plan.

3. On June 26, 2020, the Bankruptcy Court approved my application to retain and employ Young Conaway Stargatt & Taylor, LLP ("YCST") as my counsel [Docket No. 129] and Ankura Consulting Group, LLC ("Ankura") as my claims evaluation consultants [Docket No. 402]. On August 20, 2020, the Court approved my co-retention and co-employment with the Official Committee of Asbestos Personal Injury Claimants (the "ACC") of FTI Consulting, Inc. ("FTI" and collectively with YCST and Ankura, the "FCR Professionals"), as my financial advisor [Docket No. 477].

4. This declaration is based upon my personal knowledge and experience in this Chapter 11 Case, my review of various documents, and other due diligence, including my discussions with representatives of the ACC, Debtor, and O-I Glass. This declaration describes my recollection and analysis at this time based on the information currently available to me. It does not attempt to capture every detail of every topic addressed. I reserve the right to revise, amend, and/or supplement my declaration as appropriate in my judgment to address other matters or to the extent additional or updated information becomes available to me.

I. Qualifications of the Future Claimants' Representative

5. I have more than 30 years of experience with asbestos litigation, mass tort bankruptcies, and settlement trusts. I am Chairman Emeritus of YCST and a partner in its Bankruptcy and Corporate Restructuring section. I specialize in corporate restructurings, mass tort insolvencies and complex asbestos bankruptcies, and post-confirmation settlement trusts.

6. Since May 8, 2006, I have served as the future claimants' representative for the Celotex Asbestos Settlement Trust. I also served as the future claimants' representative in the bankruptcy cases of *In re Leslie Controls, Inc.*, Case No. 10-12199 (CSS) (Bankr. D. Del.), following my appointment on July 12, 2010; *In re United Gilsonite Labs*, Case No. 5:11-bk-

02032 (RNO) (Bankr. M.D. Pa.), following my appointment on June 30, 2011; *In re Yarway Corp.*, Case No. 13-11025 (BLS) (Bankr. D. Del.), following my appointment on April 22, 2013; *In re Maremont Corp.*, Case No. 19-10118 (KJC) (Bankr. D. Del.), following my appointment on March 13, 2019; and *In re The Fairbanks Co.*, Case No. 18-41768 (PWB) (Bankr. N.D. Ga.), following my appointment on April 17, 2019. I continue to serve as the future claimants' representative for the asbestos personal injury settlement trusts established from those cases. In addition, I currently serve as the future claimants' representative in the pending bankruptcy cases of *In re Imerys Talc America, Inc.*, Case No. 19-10289 (LSS) (Bankr. D. Del.), following my appointment on June 3, 2019; and *In re Boy Scouts of America and Delaware BSA, LLC*, Case No. 20-10343 (LSS) (Bankr. D. Del.), following my appointment on April 24, 2020.

7. In addition, my firm and I have represented the future claimants' representatives in numerous mass tort bankruptcy cases (cases denoted with an asterisk are those in which I serve(d) as the FCR):

a. YCST represented the legal representative for future claimants in the following asbestos bankruptcy cases that reached confirmation: *In re The Fairbanks Co.*, Case No. 18-41768 (PWB) (Bankr. N.D. Ga. 2021)*; *In re Maremont Corp.*, Case No. 19-10118 (KJC) (Bankr. D. Del. 2019)*; *In re Duro Dyne Nat'l Corp.*, Case No. 18-27963 (MBK) (Bankr. D.N.J. 2018); *In re Kaiser Gypsum Co., Inc.*, Case No. 16-31602 (JCW) (Bankr. W.D.N.C. 2016); *In re Sepco Corp.*, Case No. 16-50058 (AMK) (Bankr. N.D. Ohio 2016); *In re Yarway Corp.*, Case No. 13-11025 (BLS) (Bankr. D. Del. 2013)*; *In re Metex Mfg. Corp.*, Case No. 12-14554 (BRL) (Bankr. S.D.N.Y. 2012); *In re Rapid-Am. Corp.*, Case No. 13-10687 (SMB) (Bankr. S.D.N.Y. 2013); *In re United Gilsonite Labs*, Case No. 11-2032 (Bankr. M.D. Pa. 2011)*; *In re Specialty Prods. Holding Corp.*, Case No. 10-11780 (JKF) (Bankr. D. Del. 2010); *In re Leslie Controls, Inc.*, Case No. 10-12199 (CSS) (Bankr. D. Del. 2010)*; *In re Durabla Mfg. Co.*, Case No. 09-14415 (MFW) (Bankr. D. Del. 2009); *In re Porter-Hayden Co.*, Case No. 02-54152-SD (Bankr. D. Md. 2006); *In re The Flintkote Co.*, Case No. 04-11300 (JKF) (Bankr. D. Del. 2004); *In re Mid-Valley, Inc.*, Case No. 03-35592 (JKF) (Bankr. W.D. Pa. 2003); *In re ACandS Inc.*, Case No. 02-12687 (RJN) (Bankr. D. Del. 2002); *In re Kaiser Aluminum Corp.*, Case No. 02-10429 (JKF) (Bankr. D. Del. 2002); *In re N. Am. Refractories Co.*, Case No. 02-20198 (JKF) (Bankr. W.D. Pa. 2002); *In re Glob. Indus. Techs.*, Inc., Case No. 02-21626 (JKF) (Bankr. W.D. Pa. 2002); *In re Federal-Mogul Glob. Inc.*,

Case No. 01-10578 (Bankr. D. Del. 2001); *In re USG Corp.*, Case No. 01-2094 (RJN) (Bankr. D. Del 2001); *In re Armstrong World Indus.*, Inc., Case No. 00-4471 (Bankr. D. Del. 2000); *In re The Babcock & Wilcox Co.*, Case No. 00-10092 (Bankr. E.D. La. 2000); *In re Owens Corning*, Case No. 00-3837 (Bankr. D. Del. 2000); *In re Pittsburgh Corning Corp.*, Case No. 00-22876 (JKF) (Bankr. W.D. Pa. 2000); and *In re The Celotex Corp.*, Case No. 90-100016-8B1 (Bankr. M.D. Fla. 1996). In addition, YCST represented the legal representative for future claimants exposed to tetrochloroethylene in *In re Met-Coil Sys. Corp.*, Case No. 03-12676 (MFW) (Bankr. D. Del. 2003). YCST also represented the future claimants' representative for opioid victims in *In re Mallinckrodt PLC*, Case No. 20-12522 (JTD).

b. YCST currently represents the legal representative for future claimants in the pending bankruptcy cases of *In re DBMP LLC*, Case No. 20-30080 (JCW) (Bankr. W.D.N.C.); *In re Boy Scouts of America and Delaware BSA, LLC*, Case No. 20-10343 (LSS) (Bankr. D. Del.)*; *In re Imerys Talc America, Inc.*, Case No. 19-10289 (LSS) (Bankr. D. Del.)*; and *In re Bestwall LLC*, Case No. 17-31795 (LTB) (Bankr. W.D.N.C. 2017).

c. YCST represents the legal representative for future claimants in connection with asbestos personal injury settlement trusts established from the *ACandS*, *Babcock & Wilcox*, *Celotex*, *Federal-Mogul*, *Kaiser Aluminum*, *Porter-Hayden*, *Pittsburgh Corning*, *Flintkote*, *SPHC*, *UGL*, *Durabla*, *Leslie Controls*, *APG*, *NARCO*, *Metex*, *Yarway*, *Fairbanks*, *Duro Dyne*, *Kaiser Gypsum, Sepco*, *Rapid American*, and *Maremont* bankruptcy cases. In addition, YCST represents the legal representative for future claimants in connection with the asbestos and silica settlement trusts established from the *Mid-Valley* (DII Industries, LLC) bankruptcy case, the legal representative for future claimants in connection with the asbestos settlement trust established from the bankruptcy case of *In re Quigley Co.*, Case No. 04-15739 (SMB) (Bankr. S.D.N.Y. 2004), the legal representative for future claimants in connection with the Met-Coil TCE Trust, and the legal representative future opioid claimants in connection with the Mallinckrodt Opioid Personal Injury Trust. YCST also represents the State Insulation Corporation Asbestos Trust.

d. YCST represented the debtor in the asbestos-related chapter 11 case of *In re Fuller-Austin Insulation Co.*, Case No. 98-2038 (JJF) (Bankr. D. Del. 1998), for which a plan was confirmed in 1998.

II. Prepetition Due Diligence and Discussions

8. My due diligence began in late 2019, when the Debtor's predecessor, Owens-Illinois, Inc. ("Owens-Illinois"), requested that I serve as the prepetition Future Claimants' Representative. As the prepetition FCR, I began conducting extensive due diligence concerning

the background, nature, and scope of Owens-Illinois's alleged liability for Asbestos Claims. The investigation included, among other things, careful review of the following:

- the background, nature, and scope of Owens-Illinois's liability for Asbestos Claims;
- the number and value of the Asbestos Claims historically asserted against Owens-Illinois;
- Owens-Illinois's prepetition asbestos settlement and litigation history;
- the nature and extent of the Asbestos Claims pending against Owens-Illinois; and
- the likelihood and potential value of future Asbestos Claims and Demands against Owens-Illinois.

Owens-Illinois and its advisors worked constructively with me and my team during this prepetition due diligence, producing over 1,600 pages of documents and written responses to my information requests, as well as attending in-person and telephonic diligence meetings prior to the Petition Date.

9. My investigation and diligence informed my discussions with Owens-Illinois. These discussions centered on a potential pre-negotiated plan of reorganization. The discussions were productive but did not result in any conclusive terms to be included in a consensual plan prior to the Petition Date.

III. Prepetition Restructuring Transaction and Chapter 11 Filing

10. In December 2019, Owens-Illinois undertook a corporate restructuring pursuant to section 251(g) of the General Corporation Law of the State of Delaware (the "Prepetition Restructuring Transaction"), and, and January 2020, the Debtor filed a chapter 11 case for reasons described in the Disclosure Statement. *See, e.g.*, Disclosure Statement Art. III.C. The Debtor requested that I continue to serve as the FCR after the Petition Date, and I agreed to do

so. As mentioned above, the Debtor filed a motion to retain me as the FCR, which the Bankruptcy Court approved on June 18, 2020. *See* Docket Nos. 58 & 377.

11. Neither my team nor I were involved in any manner with respect to the Prepetition Restructuring Transaction, and indeed were unaware of Owens-Illinois' plans to effectuate the Prepetition Restructuring Transaction, but upon learning of it, I immediately began diligence into potential estate causes of action against affiliates and fiduciaries related to the Prepetition Restructuring Transaction.

IV. Postpetition Investigation, Negotiations, and Examiner Motion

12. Due diligence and negotiations continued following the Petition Date. They involved, among other things, in-person meetings and conference calls between YCST, the Debtor's counsel, and counsel to the ACC, written responses to certain of the information requests from YCST and counsel to the ACC, and the review of thousands of documents relating to the Debtor and its predecessor.

13. The Prepetition Restructuring Transaction, which created the Debtor, was a significant area of focus and concern, as in my view it would be inappropriate for the Prepetition Restructuring Transaction to serve in any way as a limitation on liability owed to current claimants or future Demand Holders. Accordingly, while I pursued negotiations seeking to achieve a global resolution and confirmable plan of reorganization, it remained my unwavering view that unless the Debtor and O-I Glass (the Debtor's corporate parent after the Prepetition Restructuring Transaction) provided a firm commitment supported by sufficient funding to satisfy all claims and Demands, I would challenge the Prepetition Restructuring Transaction based upon a variety of legal theories, including derivative liability theories, such as alter ego liability, successor liability, substantive consolidation, and fraudulent conveyance theories.

14. Despite my and the ACC's ongoing investigations and negotiations, the U.S. Trustee filed a motion to appoint an examiner [Docket No. 113] (the "Examiner Motion") who, as the Court characterized, would have been tasked with investigating three broad areas of inquiry: the legality and effect of the Prepetition Restructuring Transaction, and the role of debtor's officers, directors and professionals in the Prepetition Restructuring Transaction; a claims analysis of the historical claims and current claims; and whether the Debtor could propose a confirmable plan. *See* June 17, 2020 Hr'g Tr. at 6:18–7:1.

15. I opposed the Examiner Motion [Docket No. 164] (the "Examiner Objection") on the basis that the scope of investigation contemplated in the Examiner Motion would be entirely duplicative of the one already underway by the ACC and me, and that we were appropriately equipped to undertake the necessary efforts to protect the interest of holders of claims and Demands with respect to the inquiries contemplated in the Examiner Motion. Moreover, as I noted in the Examiner Objection, the Debtor had asserted that the Chapter 11 Case would be a full-pay case. I believed that if the economic parties could negotiate a resolution that would pay creditors sufficiently and include adequate funding for Future Demand Holders, then the Court and all parties in interest would have an opportunity to review such resolution in the form of a plan and trust distribution procedures, which might obviate the need for costly, protracted litigation and better serve all parties in interest.

16. After considering the Examiner Motion and the objections thereto, the Court concluded that it would not be appropriate to appoint an examiner, and the Court afforded the parties an opportunity to negotiate a plan. *See* June 17, 2020 Hr'g Tr. at at 9:5-11.

IV. Mediation

17. Following months of informal negotiations and diligence, on February 16, 2021, the Debtor, O-I Glass, the ACC, and I agreed to a formal mediation of our disputes conducted by Kenneth Feinberg and Hon. Layn R. Phillips (the "Mediators"). *See* Certification of Counsel Regarding Order Appointing Mediators [Docket No. 718]. The Bankruptcy Court granted ourrequest [Docket No. 721], appointed the Mediators, and sent the parties to mediation, which commenced on February 23, 2021.

18. To that end, the Debtor, O-I Glass, the ACC, and I participated in numerous mediation sessions, spending considerable time negotiating over the terms of a possible plan of reorganization for the Debtor, particularly focusing on the funding for the Asbestos Trust to be established by the Plan and the contributions to be made by the Debtor and O-I Glass. The mediation, which was challenging and at times contentious, resulted in the material terms of the Plan, which is described further below and in the Disclosure Statement.

19. A key aspect of the mediation was that all parties agreed that the appropriate methodology for valuing the Debtor's asbestos-related liabilities was through review and analysis of the company's historical settlements and verdicts. The use of historical settlement and verdict data, that the Debtor and its affiliates did not move for an injunction or temporary restraining order staying claims against affiliates, and that the Debtor and its affiliates did not engage in aggressive litigation tactics, were critical components that ultimately led to a successful settlement.

20. In addition, the contributions that the Debtor and O-I Glass under the Plan will make to the Asbestos Trust are expected to be sufficient to compensate Holders of Asbestos Claims and Future Demand Holders fully. Further, confirmation of a consensual plan of

reorganization provides certainty of funding for Holders of Asbestos Claims and Future Demand Holders. Moreover, the Plan resolves disputes to the benefit of Holders of Asbestos Claims and Future Demand Holders and avoids years of expensive litigation with uncertain results.

V. Overview of the Plan, the Asbestos Trust, the Asbestos Trust Distribution Procedures, and the Asbestos Channeling Injunction

21. The Plan and the contracts, instruments, agreements, and documents necessary and related to implementing, effectuating, and consummating the Plan - including all exhibits to the Plan such as the Asbestos Trust Documents - along with the Plan's classification, indemnification, release, injunction, and exculpation provisions, are the culmination of the extensive good-faith, arm's-length negotiations and mediation sessions among the Debtor, O-I Glass, the ACC, and myself that led to the Plan's formulation. Further, the individuals that have been identified to serve as the officers and directors of the Reorganized Debtor, as disclosed in the Plan Supplement, were selected with the participation of myself and the ACC given that, as discussed below and in the Disclosure Statement, the Asbestos Trust will own 100% of the equity interests in the Reorganized Debtor if certain events occur.

22. Based on my work in this and other cases of this type, it is my opinion that (i) the Plan was proposed in good faith, (ii) the Plan has the same material features as many other plans that have been found by courts to comply with sections 524(g) and 1129 of the Bankruptcy Code, (iii) the Plan is fair and equitable to Future Demand Holders, (iv) the Plan represents a reasonable resolution of the Debtor's liabilities, (v) pursuit of channeled Asbestos Claims outside the procedures prescribed by the Plan is likely to threaten the Plan's purpose to deal equitably with such claims and future Demands, (vi) the injunctions established pursuant to the Plan are necessary under the facts of this case to ensure the fair and equitable treatment of Future Demand Holders, and (vii) the terms of the Plan, the Asbestos Trust Agreement (the "Trust Agreement")

and the Asbestos Trust Distribution Procedures (the "TDP") provide reasonable assurance that the Asbestos Trust will value, and be in a financial position to pay, present Claims and future Demands that involve similar claims in substantially the same manner.

23. From my perspective, the centerpiece of the Plan is the establishment of the Asbestos Trust. The Asbestos Trust's purpose is to assume liabilities for all Asbestos Claims, including Demands. See Plan at Art. VIII.3; Asbestos Trust Agreement (Plan Exhibit A). More specifically, the Plan provides that the Asbestos Trust shall have no liability for any Claims and Demands other than Asbestos Claims and Asbestos Trust Expenses and, further, that no Claims other than Asbestos Claims and Asbestos Trust Expenses shall be transferred and channeled to the Asbestos Trust. Id.

24. Pursuant to Article VIII.3 of the Plan, the Asbestos Trust will be funded on the Effective Date by the Asbestos Trust Assets, which consist of: (a) the Asbestos Trust Contributions; (b) all other assets, rights, and benefits assigned, transferred or conveyed to the Asbestos Trust in connection with the Plan or any other Plan Documents; and (c) all proceeds of the foregoing.

25. The Asbestos Trust is required by its terms to use the Asbestos Trust Assets and the income therefrom to resolve Asbestos Claims in accordance with the Trust Agreement) and the TDP. The TDP establishes a set of procedures that the Asbestos Trust will follow to review, process, and resolve the Asbestos Claims. See Trust Agreement; TDP (Plan Exhibit B).

26. In connection with the channeling of Asbestos Claims and Demands to the Asbestos Trust, Art. X.3 of the Plan contemplates the issuance of an Asbestos Channeling Injunction, which will enjoin all Holders of Asbestos Claims and Future Demand Holders from

taking any action for the purpose of directly or indirectly recovering on such Asbestos Claims from the Debtor or the other Protected Parties identified in the Plan.

27. I believe that the issuance of the Asbestos Channeling Injunction under the Plan is necessary to secure the contributions to the Asbestos Trust by the Debtor and the other Protected Parties. As mentioned above, I have been personally involved in the Plan negotiations in this case. The scope of the Asbestos Channeling Injunction and the issue of who would be included among the Protected Parties were the subject of extensive negotiations by and between the ACC and me, on the one hand, and the Debtor and representatives of the entities who ultimately would become Protected Parties, on the other.

28. Based upon my experience in general and in the context of this case specifically, I have concluded that protecting the Protected Parties is necessary to secure the contributions to the Asbestos Trust by the parties who are making such contributions. In each of the agreements involving the Protected Parties, the non-Debtor parties have provided or agreed to provide substantial consideration to or for the protections to be provided by the Asbestos Channeling Injunction. Moreover, extending the Asbestos Channeling Injunction for the Protected Parties is appropriate in the context of this case because, absent such protection, the potential prosecution of channeled Asbestos Claims against the Protected Parties could embroil the Reorganized Debtor and the Asbestos Trust in litigation and cause the Reorganized Debtor and the Asbestos Trust to incur costs that ultimately may diminish the assets available to the Holders of channeled Asbestos Claims and Future Demand Holders. Accordingly, I believe that including each of the Protected Parties in the Asbestos Channeling Injunction is fair and equitable with respect to persons that might subsequently assert channeled Asbestos Claims in light of the benefits provided or to be provided to the Asbestos Trust on behalf of such Protected Parties.

29. Moreover, the assignment, transfer, and conveyance of the Asbestos Trust Assets to the Asbestos Trust on the Effective Date supports the imposition of the Asbestos Channeling Injunction in favor of all of the Protected Parties as of the Effective Date.

30. Also, pursuant to Section 8.3(e) of the Plan and Section 6.1 of the Asbestos Trust Agreement, I will serve as the Post-Effective Date Future Claimants' Representative in connection with the Asbestos Trust.

VI. Section 524(g) Requirements

31. Based on my previous and ongoing experience, I am familiar with the requirements of section 524(g) of the Bankruptcy Code. I believe that the Plan complies with the requirements set forth in section 524(g) of the Bankruptcy Code for the Bankruptcy Court to issue the Asbestos Channeling Injunction.

A. The Asbestos Trust will assume the asbestos-related liabilities of the Debtor.

32. Section 524(g) requires that a trust be created to assume liability for a debtor's asbestos-related torts before a court may order an injunction to supplement a plan's discharge injunction. As noted above, the Plan provides for the creation of the Asbestos Trust, which will assume liability for all Asbestos Claims and will use the Asbestos Trust Assets to resolve and, if eligible, compensate the holders of Asbestos Claims. See Plan at Art. VIII.3; Trust Agreement at § 1.2.

B. The Asbestos Trust will be funded partially by the obligation of the Reorganized Debtor to make future payments to the Asbestos Trust and, upon the occurrence of specified contingencies, the majority of the common stock of the Reorganized Debtor.

33. Section 524(g)(2)(B)(i)(II) requires that a trust be funded, in part, by the obligation of a reorganized debtor to make future payments to the trust that would enable the

trust to own, upon the occurrence of specified contingencies, the majority of the voting shares of the reorganized debtor.

34. The Plan provides that on the Effective Date, all right, title, and interest in and to the Asbestos Trust Assets, and any proceeds thereof, including the Paddock Trust Contribution and the O-I Glass Trust Contribution, shall be automatically, and without further act or deed, transferred to, vested in and assumed by the Asbestos Trust. See Plan at Art. VIII.3. As part of the Asbestos Trust Assets, the Asbestos Trust will receive a secured non-recourse payment note in the principal amount of $8,500,000. The Payment Note is secured by a pledge of 100 percent of the equity interests of the Reorganized Debtor as of the Effective Date.

C. The Debtor is likely to be subject to substantial Demands, the amounts, number, and timing of which cannot be determined.

35. Relief under section 524(g) of the Bankruptcy Code is available upon a determination by the bankruptcy court that the debtor likely will continue to be subject to substantial future demands for payment arising out of the same or similar conduct or events that gave rise to the claims that are addressed by the channeling injunction. Section 524(g) also requires the court to find that the actual amounts, numbers, and timing of such future demands against the debtor cannot be determined.

36. Because of the lengthy and unpredictable latency periods associated with various asbestos diseases, I believe that it is impossible to predict with certainty the actual amounts, numbers, timing, or extent of future Demands. However, based on my work and my experience with asbestos-related bankruptcies and trusts, I believe that it is overwhelmingly likely that the Debtor will be subject to substantial future Demands for payment arising out of the same or similar conduct or events that gave rise to the current Asbestos Claims that are addressed by the Asbestos Channeling Injunction. Although the number, timing and actual amount of future

Asbestos Claims cannot be calculated with absolute precision, the numbers can be forecasted or estimated with a reasonable degree of probability.

D. Pursuit of Demands outside of the Asbestos Trust will threaten the Plan's ability to deal equitably with such Demands.

37. Without the creation of the Asbestos Trust as provided by the Plan, Future Demand Holders would be forced to litigate their claims in the tort system as they arise. That would devolve into a race to the courthouse, with the inevitable result that the Debtor's resources would be consumed by those claimants who are first to file suit, leaving little or nothing for Future Demand Holders. Distributions to creditors would most likely be delayed, and due to the costs of litigation, there remains a risk that the funds actually available for distribution to creditors and Future Demand Holders may be reduced.

38. Accordingly, equitable treatment of both Holders of current Asbestos Claims and Future Demand Holders depends on all claimants being subject to the same rules and procedures as provided under the terms of the Asbestos Trust Agreement and the TDP.

E. The terms of the Asbestos Channeling Injunction are fully set forth in the Plan and the Disclosure Statement.

39. As part of the confirmation process in this Chapter 11 Case, the Debtor included the terms of the Asbestos Channeling Injunction, including any provisions barring actions against third parties (including, for example, the Protected Parties), in conspicuous language in both the Plan and the Disclosure Statement. See Plan at Art. X.3; Disclosure Statement at 42–44. I negotiated with the Debtor and the ACC to provide an extensive description of such terms in the Plan and Disclosure Statement.

F. The Asbestos Trust will treat present Asbestos Claims and Demands in substantially the same manner.

40. I believe that the Asbestos Trust will be in a position to pay present Asbestos Claims and Demands that involve similar claims in substantially the same manner. To ensure this result, YCST and I engaged in negotiations with the ACC over the terms of the Asbestos Trust Agreement and the TDP.

41. The TDP are a set of rules that the Asbestos Trust will use to receive, process and, if valid, pay channeled Asbestos Claims. I participated in lengthy negotiations primarily with the ACC concerning the provisions of the TDP. The processes set forth in the TDP provide a reasonable assurance that the Asbestos Trust will value, and be in a financial position to pay, present claims and future Demands that involve similar claims in substantially the same manner. See Plan at Art. VIII.3.b; TDP §§ 1.1, 2.1.

42. The TDP furthers the goal of treating all beneficiaries of the Asbestos Trust equitably by setting forth procedures for processing and paying the Debtor's several share of the unpaid portion of the liquidated value of Asbestos Claims generally on an impartial, first-in-first-out basis, with the intention of paying all claimants over time as equivalent a share as possible of the value of their claims based on historical values for substantially similar claims in the tort system. See TDP § 2.1. To the extent possible, the negotiations surrounding the TDP stressed the need to reduce processing complexity and costs in order to ensure the efficient management of the resources of the Asbestos Trust.

43. The TDP establishes a schedule for eight (8) asbestos-related diseases, which have presumptive medical and exposure requirements and, for seven (7) of the diseases, specific liquidated values (the "Scheduled Values"). The disease levels, medical and exposure criteria, and Scheduled Values, all have been selected and derived with the intention of achieving a fair

allocation of the Asbestos Trust funds to claimants suffering from different diseases, and they were derived, in light of the best available information and considering the settlement history of the Debtor and the rights claimants would have in the tort system absent this Chapter 11 Case. See TDP § 2.1.

44. Requiring evidence that will satisfy the medical and exposure criteria set forth in the TDP is the principal mechanism by which meritorious claims will be distinguished from claims lacking merit and more serious claims from those that are less serious. Because every dollar the Asbestos Trust spends on a non-meritorious or less serious claim represents one less dollar the Asbestos Trust otherwise would have to pay a future meritorious or more serious claim, it was critically important to me that the TDP be formulated to exclude non-meritorious claims, assign lower payment values to less serious claims, and provide for the payment of Asbestos Claims based only on certain diseases, primarily malignant claims, and to those claims that provide evidence of the type of exposure patterns that were required by the Debtor for payment of claims in the tort system based on the specialized nature of the products that gave rise to the Debtor's liability.

45. After the Asbestos Trust has determined the liquidated value of an Asbestos Personal Injury Claim pursuant to the procedures set forth in the TDP, the Asbestos Trust shall pay the claimant a pro-rata share of that value based on the then-current Payment Percentage (as defined in the Asbestos Trust TDP) for such claims. See TDP § 2.3.

46. The Initial Payment Percentage shall be 100%. The Initial Payment Percentage was selected and derived based on financial analysis and projections prepared by me and the FCR Professionals and in negotiation with the Asbestos Claimants Committee. The Payment Percentage can be adjusted by the Asbestos Trustees with the consent of the Asbestos Trust

Advisory Committee and the Post-Effective Date Future Claimants' Representative (which will be me initially) to assure that the Asbestos Trust shall be in a financial position to pay Holders of unliquidated and/or unpaid Asbestos Claims in substantially the same manner. Furthermore, the TDP and Trust require the Asbestos Trustees to re-evaluate the Payment Percentage no less frequently than once every three (3) years to assure that it is based on accurate, current information. The TDP thus provides the Asbestos Trust with the flexibility to modify the Payment Percentage over time based upon updated information on the number, types, and values of Asbestos Claims and future Demands, the value of the assets then available to the Asbestos Trust, all anticipated administrative and legal expenses, and any other material matters that are reasonably likely to affect the sufficiency of funds to pay a comparable percentage of the full value to all Holders of Asbestos Claims. See id. § 4.2.

47. Further, the TDP imposes a maximum annual payment ("MAP"), which limits the amount of distributions that the Asbestos Trust can make in a year in order to manage the cash flow of the Asbestos Trust. Id. § 2.4. The MAP will be based on models of cash flow, principal and income year-by-year to be paid over the life of the Asbestos Trust to provide reasonable assurance that Holders of current Asbestos Claims and Future Demand Holders are compensated at the same payment percentage. Id.

48. The TDP utilizes a number of mechanisms to prevent payment of illegitimate claims, including by requiring the Asbestos Trust to implement an audit program. Id. § 5.8. The Asbestos Trustees, with the consent of the TAC and Post-Effective Date Future Claimants' Representative, may also implement a filing fee for Asbestos Claims. Id. § 6.4.

49. Based on my due diligence, as well as my own experience as the Future Claimants' Representative in this Chapter 11 Case and others, and considering the structure of

the Asbestos Trust Agreement and the TDP described above, I believe that the Asbestos Trust Agreement and the TDP will ensure that Future Demand Holders will be treated in substantially the same manner as Holders of similar Asbestos Claims regardless of the timing of the assertion of such claims.

50. I also believe that Section 6.5 of the TDP appropriately protects the privacy interests of the Debtor's asbestos claimants, who are generally sick and dying individuals, or their survivors. To receive payment from a settlement trust, claimants must submit non-public personal information of the kind that is protected from disclosure under federal and state law, including the Bankruptcy Code. The confidentiality provisions are consistent with the Bankruptcy Code and my experience in these and other cases. In my opinion, the confidentiality provisions are in the best interests of Future Demand Holders. Making available to parties not involved in the administration of this trust a database of sick, elderly, and vulnerable individuals who just received payments from an asbestos trust puts those individuals at risk for identity theft and other predatory schemes, such as senior scams and phishing scams. Notwithstanding, the Asbestos Trust will disclose the contents of a claimant's submission with the consent of the claimant and/or in response to a valid subpoena.

G. The issuance of the Asbestos Channeling Injunction is fair and equitable to Future Demand Holders.

51. Pursuant to the Plan, the Protected Parties are (i) the Debtor, (ii) the Reorganized Debtor, (iii) the Non-Debtor Affiliates, and (iv) any Representative of the foregoing Entities. Plan at Art. I.1.

52. The Debtor and O-I Glass, on behalf of themselves and other Protected Parties, are contributing substantial assets to the Asbestos Trust. See Plan §§ I.1, VIII.3. Absent the Plan, the Asbestos Trust and the Asbestos Channeling Injunction, Future Demand Holders would

face far greater uncertainty as to the availability of sufficient funds to satisfy their claims when they arise. I believe that receipt of the benefit of the Asbestos Channeling Injunction by all of the Protected Parties is fair and equitable with respect to persons that might assert Demands as required by section 524(g) of the Bankruptcy Code.

VII. CONCLUSION

53. Based upon my involvement and due diligence in this Chapter 11 Case, I believe that the funding and structure of the Asbestos Trust serve the interests of Future Demand Holders. I also am confident that the structure of the Asbestos Trust and the TDP ensures, with even greater certainty, that funds will be available to satisfy Asbestos Claims whenever they arise.

54. Based upon my own experience and personal knowledge of the facts of this Chapter 11 Case and the terms of the Plan and the other Plan Documents, I believe that the Plan provides reasonable assurance that Future Demand Holders will be treated substantially similarly to Holders of current Asbestos Claims involving similar claims. Specifically, as I noted above, the Plan Documents provide for mechanisms (including, matrices (TDP § 5.3(a)(3)); periodic review of estimates and numbers and values of Asbestos Claims, (TDP §§ 4.1 & 4.2); and periodic adjustment of the Payment Percentage (TDP § 4.2)), that will help ensure that the Asbestos Trust will value and be in a financial position to pay Asbestos Claims that involve similar claims in substantially the same manner. Finally, I believe that the Plan is fair and equitable with respect to persons that might assert Demands in light of benefits provided to the Asbestos Trust by or on behalf of the Debtor and the other Protected Parties.

55. In light of the foregoing, I believe that the overall treatment provided under the Plan with respect to channeled Asbestos Claims and Demands is fair and equitable to the Holders of such Claims and Demands.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

/s/ James L. Patton, Jr.

Dated: May 11, 2022

James L. Patton, Jr.
Future Claimants' Representative

Exhibit C

In the Matter Of:

Overton vs

Armstrong International, Inc.

ROBERT OVERTON

November 09, 2020

VOLUME 3
PAGES 283 - 442
EXHIBITS: None

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS. SUPERIOR COURT DEPT.
OF THE TRIAL COURT
NO. 20-1482

****
ROBERT OVERTON, *
Plaintiff, *
*
vs. *
*
ARMSTRONG INTERNATIONAL, INC., et *
al., *
Defendants *
****

CONTINUED VIDEOTAPED VIDEOCONFERENCE
DEPOSITION OF ROBERT OVERTON
Monday, November 9, 2020
9:00 a.m. - 12:35 a.m.

--- Deanna L. Veinotte, RPR, CRR, CCP, CRC ---
LEXITAS
(508) 478-9795 ~ (508) 478-0595 (Fax)
www.LexitasLegal.com

A P P E A R A N C E S:

(Counsel, witness, and court reporter appeared remotely)

Representing the Plaintiff:
THE SHEPARD LAW FIRM, P.C.
160 Federal Street
Boston, MA 02110
BY: ERIKA A. O'DONNELL, ESQ.
(617) 451-9191
eodonnell@shepardlawfirm.com

Representing The Nash Engineering Company:
ADLER, COHEN, HARVEY, WAKEMAN & GUEKGUEZIAN
75 Federal Street
Boston, MA 02110
BY: ALEXANDER E. TERRY, ESQ.
(617) 423-6674
aterry@adlercohen.com

Representing U.S. Steel:
CAMPBELL, CONROY & O'NEIL
One Constitution Wharf, Suite 310
Boston, MA 02129
BY: MICHAEL C. GRENIER, ESQ.
(617) 241-3000
mgrenier@campbell-trial-lawyers.com

Representing Armstrong International; Cleaver-Brooks, Inc.; and Milwaukee Valve Co., Inc.:
CETRULO LLP
2 Seaport Lane, 10th Floor
Boston, MA 02210
BY: ADAM C. MARTIN, ESQ.
(617) 217-5500
amartin@cetllp.com

Representing Riley Power Inc.; Honeywell International, Inc. f/k/a AlliedSignal, Inc. as successor-in-interest to The Bendix Corporation; International Paint, LLC; and Pneumo Abex LLC, successor in interest to Abex Corporation:
CETRULO LLP
2 Seaport Lane, 10th Floor
Boston, MA 02210
BY: RYAN F. KENNY, ESQ.
(617) 217-5500
rkenny@cetllp.com

Representing Neles-Jamesbury, Inc.; Kaiser; and special and limited appearance for Parker Hannifin:
CETRULO LLP
2 Seaport Lane, 10th Floor
Boston, MA 02210
BY: SUSAN A. JACKSON, ESQ.
(617) 217-5500
sjackson@cetllp.com

Representing Bird, Inc. and Homasote:
CETRULO LLP
2 Seaport Lane, 10th Floor
Boston, MA 02210
BY: MATTHEW C. OLEYER, ESQ.
(617) 217-5500
moleyer@cetllp.com

Representing Crane Co.; Spence Engineering; and Eckel Industries:
CMBG3 LAW LLC
265 Franklin Street, 6th Floor
Boston, MA 02110
BY: SUZANNE ENGLOT, ESQ.
(617) 279-8200
senglot@cmbg3.com

Representing Taco, Inc.:
ECKERT, SEAMANS, CHERIN & MELLOTT
Two International Place, 16th Floor
Boston, MA 02110
BY: JOHN M. MILSO, ESQ.
(617) 342-6800
jmilso@eckertseamans.com

Representing Aurora, Columbia, DeZurik, and Greene Tweed:
ECKERT, SEAMANS, CHERIN & MELLOTT
Two International Place, 16th Floor
Boston, MA 02110
BY: RYAN M. MURPHY, ESQ.
(617) 342-6800
rmmurphy@eckertseamans.com

Representing Mannington Mills, Inc., and Burnham LLC:
HERMES, NETBURN, O'CONNOR & SPEARING, P.C.
265 Franklin Street, 7th Floor
Boston, MA 02110
BY: BRAD GRAHAM, ESQ.
(617) 728-0050
bgraham@hermesnetburn.com

Representing Flowserve US, Inc., solely as successor to Edward Valves, Inc., Nordstrom Valves, Inc. and Rockwell Manufacturing Company:
HOWD & LUDORF
40 Washington Street, Suite 220
Wellesley, MA 02481
BY: JONI KATZ MACKLER, ESQ.
(781) 235-5594
jmackler@hl-law.com

Representing Union Carbide Corporation and Bayer CropScience, Inc.:
LEWIS, BRISBOIS, BISGAARD & SMITH, LLP
One Citizens Plaza, Suite 1120
Providence, RI 02903
BY: OLIVIA PHETTEPLACE, ESQ.
(401) 406-3310
olivia.phetteplace@lewisbrisbois.com

Representing The Goodyear Tire and Rubber Company; Saint-Gobain Abrasives, Inc., formerly known as Norton Company; and Baltimore Aircoil Company, Inc.:
MANNING GROSS + MASSENBURG LLP
125 High Street
6th Floor, Oliver Street Tower
Boston, MA 02110
BY: SHANNON M. O'NEIL, ESQ.
(617) 670-8800
soneil@mgmlaw.com

Representing Industrial Holdings Corporation f/k/a The Carborundum Company; The Marley-Wylain Company, improperly sued as “Weil McLain United Dominion CO.”; and Sterling Fluid Systems (USA) LLC:
MCELROY, DEUTSCH, MULVANEY & CARPENTER, LLP
Metro East Office Park
117 Metro Center Blvd., Suite 1004
Warwick, RI 02886
BY: CLINT D. WATTS, ESQ., ESQ.
(401) 298-9001
cwatts@mdmc-law.com

Representing Atwood & Morrill Co., Inc., incorrectly designated and sued herein as a division of Weir Power & Industrial and Rheem Manufacturing Company:
MELICK & PORTER, LLP
One Liberty Square
Boston, MA 02109
BY: ROBERT S. LUDLUM, ESQ.
(617) 523-6200
rludlum@melicklaw.com

Representing Goulds Pumps LLC, ITT LLC and York International Corp.:
MORGAN, LEWIS & BOCKIUS, LLP
One Federal Street
Boston, MA 02110
BY: WAYNE E. GEORGE, ESQ.
(617) 341-7700
wayne.george@morganlewis.com

Representing Carrier Corporation; Goodrich Corporation f/k/a The B.F. Goodrich Company; IMO Industries, Inc. f/k/a DeLaval Steam Turbine Company; and Warren Pumps, LLC:
PIERCE, DAVIS & PERRITANO, LLP
10 Post Office Square, Suite 1100N
Boston, MA 02109
BY: JACQUELYN KAPLAN, ESQ.
(617) 350-0950
jkaplan@piercedavis.com

Representing H.B. Fuller:
RUBIN AND RUDMAN, LLP
53 State Street
Boston, MA 02109
BY: SHAYNA LIU, ESQ.
(617) 330-7000
sliu@rubinrudman.com

Representing R.W. Beckett:
STILLMAN & ASSOCIATES, P.C.
51 Mill Street, Suite 11
Hanover, MA 02339
BY: DAVID H. STILLMAN, ESQ.
(781) 829-1077
dhs@stillmanlegal.com

Representing Crosby Valve, LLC:
VON BRIESEN & ROPER
411 East Wisconsin Avenue, Suite 700
Milwaukee, WI 53202
BY: MELANIE L. PERSICH, ESQ.
(414) 287-1242
mpersich@vonbriesen.com

Q. I do the same thing.

You were asked on the first day of your deposition to name the boiler manufacturers that you recalled, and you were unable to come up with any at that time; do you recall that?

MS. O'DONNELL: Objection.

A. I don't know.

Q. Are you involved in any way with the Aldridge Murray bankruptcy proceedings?

A. I am not, not that I know of.

Q. Have you been assigned to any claimant committee in connection with that bankruptcy proceeding?

A. No.

Q. At the end of the day on Friday, you mentioned the name Burnham. Is there something that you reviewed or something that caused you to mention the name Burnham?

A. I do believe I changed a Burnham boiler at my brother's house and put in a warm air furnace.

Q. And you said -- I'm sorry.

A. I told my brother Burnham is a pretty

THE WITNESS: You're welcome.

MS. O'DONNELL: It's been an hour. So do you want to take another quick break?

THE VIDEOGRAPHER: We are off the record. The time is 10:56 a.m.

(Off the record, 10:56 a.m.)

(Back on the record, 11:05 a.m.)

THE VIDEOGRAPHER: We are back on the record. The time is 11:05 a.m.

Q. Mr. Overton, Brad Graham again. Just a few more questions. Have you ever received any documentation from the United States Bankruptcy Court for the Western District of North Carolina?

A. No.

Q. Have you ever seen any documents from the U.S. Bankruptcy Court for the Western District of North Carolina?

A. No.

Q. Are you aware that on July 7 of this year you were appointed to the official committee of asbestos personal injury claimants in a case pending in that court?

A. I was asked if they could use my name.

I don't know if that's who it was for.

Q. What do you mean you were asked if they could use your name?

A. I don't remember how it was explained to me. I have an issue with memory loss. I was asked --

MS. O'DONNELL: Again, sir, if you can answer that question without getting into any confidential conversations that you've had with your attorneys.

A. I cannot say.

Q. Do you have an understanding of the purpose of the official committee of asbestos personal injury claimants of which you are a member?

A. I do not.

Q. Did you have to sign any documentation related to that committee?

A. I did not.

Q. Do you understand the purpose of that committee?

A. I do not.

Q. Did you agree --

A. Why did I agree?

Q. I'm changing the question. I apologize. Did you agree to be a part of that committee?

A. I don't know if I am part of that committee.

Q. You said that they asked if they could use your name, whatever that means. Did you agree to participate in that committee?

MS. O'DONNELL: Objection.

A. I don't know if I agreed to be in a committee.

Q. Did you sign any documentation related to the committee of asbestos personal injury claimants?

A. No.

MR. GRAHAM: All right. Thank you, sir.

* * * * *

EXAMINATION CONDUCTED

BY MS. ENGLOT:

Q. Hi, Mr. Overton. My name is Suzanne Englot. I'm going to ask you a few questions now. How are you doing right now?

A. My headache is starting to increase,