

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

In re

ALDRICH PUMP LLC, *et al.*,

Debtors.

Chapter 11

Case No. 20-30608 (JCW)

(Jointly Administered)

**THE FUTURE ASBESTOS CLAIMANTS' REPRESENTATIVE'S OBJECTION TO  
THE REQUESTS OF THE OFFICIAL COMMITTEE OF ASBESTOS PERSONAL  
INJURY CLAIMANTS AND THE MAUNE RAICHLE CLAIMANTS  
FOR CERTIFICATION OF DIRECT APPEAL OF ORDER  
DENYING MOTIONS TO DISMISS**

Joseph W. Grier, III, the representative for future asbestos claimants in the above-captioned cases (the “FCR”), through counsel, brings this objection (“Objection”) to the (I) *Request of the Official Committee of Asbestos Personal Injury Claimants for Certification of Direct Appeal to the Court of Appeals of Order Denying Committee’s Motion to Dismiss* (the “ACC Request for Certification”) (Dkt. 2074), filed by the Official Committee of Asbestos Personal Injury Claimants (the “ACC”), and (II) *Request for Certification of Direct Appeal to the Court of Appeals of Order Denying Mr. Robert Semian and Forty-Six Other MRHFM Plaintiffs’ Motion to Dismiss* (the “Semian Request for Certification,” (Dkt. 2061), and together with the ACC Request for Certification, the “Requests for Certification”), filed on behalf of claimant Robert Semian and others (collectively, “Mr. Semian,” and with the ACC, the “Movants”).<sup>1</sup> Through the Requests for Certification, the Movants seek certification of a direct appeal to the Fourth Circuit Court of

<sup>1</sup> The FCR’s Objection does not address the legal infirmities of the Requests for Certification because the FCR adopts and incorporates by reference the arguments made in the Debtors’ Objection to the Requests for Certification, filed on January 31, 2024 (Dkt. 2092). Instead, the FCR’s Objection focuses on why granting certification would not advance the best interests of all classes of claimants.



Appeals relative to the Court's *Order Denying Motions to Dismiss* (the "Dismissal Order") entered on December 28, 2023 (Dkt. 2047).

The FCR respectfully submits that the Requests for Certification should be denied. By order of this Court, the FCR is charged with protecting the best interests of the class of valid future asbestos claimants (the "Future Claimants").<sup>2</sup> The best interests of that class, and for that matter the class of current claimants, are served by the immediate creation of an asbestos trust that will pay valid claims quickly and in full. Those class interests are not served by further delay and distraction in these cases or, more problematically, dismissal, which would condemn claimants to the inequities and inefficiencies of the tort system.<sup>3</sup>

The ACC joined in the Semian Request for Certification, which cites to this Court's Dismissal Order that until there is appellate resolution of the question as to whether the plain language of the Bankruptcy Code limits bankruptcy filings to financially distressed or insolvent companies, "no progress will be made in these bankruptcy cases."<sup>4</sup> Problematically, however, as counsel for both of the Movants have made clear repeatedly, they will not support confirmation of *any* plan of reorganization in *any* of the pending North Carolina asbestos cases under *any*

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<sup>2</sup> *Order Appointing Joseph W. Grier, III as Legal Representative for Future Asbestos Claimants*, entered Oct. 14, 2020, Dkt. 389 ¶ 2 ("The Future Claimants' Representative shall represent the interests of, appear and act (to the extent permitted by law) on behalf of, and be a fiduciary to Future Claimants to protect the rights and interests of such Future Claimants []").

<sup>3</sup> The Debtors' confidential settlement/verdict database for the five years before the bankruptcy filings demonstrates, in stark relief, the disparate treatment of asbestos claimants in the tort system, seemingly driven by where a plaintiff lives and who the plaintiff's lawyer might be, not the severity of plaintiff's disease or the likelihood of exposure to asbestos fibers in the Debtors' products as a result of the plaintiff's occupation. Thus, without revealing any individual confidential information, the lowest mesothelioma recovery for a claimant is less than \$1,000; the highest is in the millions. The divergence for lung cancer claims is similar, ranging from \$200 to \$75,000. Further, individuals with the same disease and the same occupation can receive vastly different recoveries. For example, a mesothelioma claimant with a case in Texas received \$1,000, while a claimant in Illinois with the same occupation but with different counsel received \$125,000. This disparate treatment is repeated throughout the Debtors' database, irrespective of the disease or the claimant's occupation. If needed, this information can be provided to the Court under seal.

<sup>4</sup> *See* Semian Request for Certification at 1-2 (citing Dismissal Order at 21).

circumstances, including, necessarily, the potential affirmation of the Dismissal Order by the Fourth Circuit or, for that matter, the Supreme Court.<sup>5</sup> Progress for Mr. Semian and the ACC, currently at least, means only one thing: dismissal. But dismissal of these cases—resulting in no asbestos trust—would be antithetical to the best interests of all classes of claimants who would lose the ability to secure swift resolutions of their claims.

The path taken by the asbestos claimants in *Paddock Enterprise, LLC*'s Chapter 11 plan stands in stark contrast to the Movants' position in these cases.<sup>6</sup> In *Paddock*, the Debtors, ACC, and FCR jointly proposed a plan for a debtor with a substantively identical two-step restructuring and a solvent parent.<sup>7</sup> At the time of plan confirmation, Paddock's parent company, O-I Glass, Inc., was solvent with a market capitalization exceeding \$2.4 billion.<sup>8</sup> The *Paddock* plan was confirmed in May 2022 and provides for an asbestos trust with fixed funding and trust distribution procedures, including standard jury trial opt outs.<sup>9</sup> Most importantly, for the sake of the classes of

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<sup>5</sup> See, e.g., July 14, 2023 Hr'g Tr., Dkt. 1888 at 87:3-6 (Mr. Thompson, on behalf of Mr. Semian, stated: "So regardless of whatever happens in this case, if it's dismissed now, if by some unforeseen thing a vote is confirmed, which I think is never gonna happen, there's always gonna be the Ortiz problem."); *id.* at 91:18-22 (Mr. Thompson also stated: "What, what we want is fair compensation for our clients. It's not gonna happen in a bankruptcy. It's only gonna happen at arm's length. It's not gonna happen when we're not in the same boat. The debtors need to be in the same boat with the creditors. Otherwise, it's never gonna work.").

<sup>6</sup> See *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, In re Paddock Enters., LLC*, No. 20-10028 (LSS), Dkt. 1406 (Bankr. D. Del. May 26, 2022) ("Paddock Confirmation Order").

<sup>7</sup> See *id.*; see also *Declaration of David J. Gordon, President and Chief Restructuring Officer of the Debtor, in Support of Chapter 11 Petition and First Day Pleadings, In re Paddock Enters., LLC*, No. 20-10028 (LSS), Dkt. 2 (Bankr. D. Del. Jan. 6, 2020) at ¶ 24 ("The Company undertook the Corporate Modernization Transaction to structurally separate the legacy liabilities of the Debtor's predecessor, Owens-Illinois, Inc., from the active operations of Owens-Illinois, Inc.'s subsidiaries, while fully maintaining the Debtor's ability to access the value of those operations to support its legacy liabilities.").

<sup>8</sup> See O-I Glass, Inc. Form 10-Q filed with the Securities and Exchange Commission for the quarter ended March 31, 2022. The number of shares of common stock, par value \$.01 of O-I Glass, Inc. outstanding as of March 31, 2022 was 156,215,929. The closing share price on May 26, 2022, the day the plan was confirmed, was \$15.66. See O-I Glass, Inc., Historical Stock Quote, [investors.o-i.com/stock-info/default.aspx#stock-historical](https://investors.o-i.com/stock-info/default.aspx#stock-historical) (last viewed Jan. 29, 2024).

<sup>9</sup> See *Paddock Confirmation Order*, Exh. B to Plan, Asbestos Trust Distribution Procedures § 7.6 ("Suits in the Tort System." If the holder of a disputed claim disagrees with the Asbestos Trust's determination regarding

*Paddock* asbestos claimants eager for compensation during their lifetimes, the *Paddock* trust is paying claims, promptly and efficiently.<sup>10</sup>

The Movants have provided no credible reason why a similar result cannot be obtained here. Based on review of the confidential claims database, it is noteworthy that throughout all of the Debtors' decades long history of tens of thousands of asbestos claims only one claim went to a jury trial.<sup>11</sup> All others were either dismissed<sup>12</sup> or resolved by settlement.<sup>13</sup>

An asbestos trust, of course, is nothing more than a global settlement offer. Claimants can accept or reject the offered values, just as they do in the tort system where individual and bulk administrative settlements are common. Those who reject trust settlement values may, in turn, exercise their jury trial rights. That is true of dozens of extant asbestos trusts, including not only *Paddock* but of course the *Garlock* trust that was approved by this Court, notably with the support of this FCR and the Garlock ACC.<sup>14</sup> In a perfect demonstration of the merits of such trusts as compared to the delays and inequities of the tort system, claimants rarely exercise jury trial rights,

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the Disease Level of the claim, the claimant's exposure or medical history, the compensability of the claim under the provisions of this TDP, or the liquidated value of the claim, and the holder has first submitted the claim to non-binding arbitration . . . , the holder may file a lawsuit against the Asbestos Trust . . . ).

<sup>10</sup> See *Notice of Filing Annual Report and Claims Summary, In re Paddock Enters., LLC*, No. 20-10028 (LSS), Dkt. 1700, § IV. A (Bankr. D. Del. Apr. 28, 2023).

<sup>11</sup> See Debtors' confidential settlement/verdict database provided to the parties-in-interest in these cases.

<sup>12</sup> See *Informational Brief of Aldrich Pump LLC and Murray Boiler LLC*, filed June 18, 2020, Dkt. 5 at 21 ("the Debtors have been able to obtain dismissals in approximately two-thirds of cases post-Bankruptcy Wave – due, largely, to plaintiff naming practices with no basis in reality . . . ").

<sup>13</sup> *Id.* at 31 (noting that, for example, the Debtors settled 900 mesothelioma cases per year).

<sup>14</sup> See *Garlock Settlement Facility Second Amended and Restated Claims Resolution Procedures* § 9.6 ("Suits in the Tort System. If the holder of a disputed Claim disagrees with the Trust's determination regarding the Claim, . . . the holder may file a lawsuit against the Trust . . . ."), available at <http://garlocksettlementfacility.com/assets/uploadedFiles/8eedc7d3-3283-4663-b851-3a929d102e94.pdf> (last viewed Jan. 29, 2024). In the *Aldrich/Murray* cases, the Debtors and FCR contemplate similar claims resolution procedures that would allow claimants, as is standard, to seek recourse in the tort system.

reasonably preferring prompt compensation in their lifetimes. Indeed, if these cases had followed the trajectory of *Paddock*, Mr. Semian would have the right to pursue his trust claim *now*, with recourse to a jury trial if the settlement values were not acceptable to him.

This Court reasonably posits that a plan of reorganization that provides for evergreen funding and jury trial opt outs would be “mutually advantageous” for both the Debtors and claimants.<sup>15</sup> The FCR agreed to trust funding in the amount of \$545 million in these cases based on and informed by his extensive experience in *Garlock*.<sup>16</sup> In *Garlock*, with an even greater number of potential claims concerning many identical encapsulated asbestos gasket products, a smaller amount in trust funding has been sufficient to pay all approved claims in full. In fact, the *Garlock* settlement values have doubled since that trust’s inception by agreement with the trustee, the FCR, and the trust advisory committee.<sup>17</sup> The proposed funding in these cases compares favorably with the \$610 million agreed to in *Paddock*—particularly given that the claims in *Paddock* related to highly toxic and friable asbestos (*i.e.*, asbestos that is not occupation specific in terms of exposure).<sup>18</sup> Regardless, the FCR does not oppose a pay-as-you-go or evergreen trust,

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<sup>15</sup> Dismissal Order at 41 (“Even for solvent or non-distressed debtors, it would appear mutually advantageous to employ a trust mechanism to pay the claims of victims who prefer these more expeditious procedures to pursuing their claims in the tort system. Potentially, a plan/trust might offer ‘evergreen’ trust funding by the debtor and its allies to ensure all claims are paid in full. Or an ‘opt out’ right could preserve the right to litigate in the tort system for those claimants who prefer that course. Thus, even for a solvent and ‘non-distressed’ asbestos debtor and its creditors, there may be advantages to be obtained in Chapter 11.”).

<sup>16</sup> See *Joint Plan of Reorganization of Aldrich Pump LLC and Murray Boiler LLC*, filed Sept. 24, 2021, Dkt. 831, § 1.1.65 “Initial Cash Funding” means \$540 million in cash, § 4.7.3 “Funding” includes the Initial Cash Funding and a Debtor note for \$5 million, totaling \$545 million.

<sup>17</sup> See GST Settlement Facility Notice of Increase to Maximum Settlement Values, dated Nov. 11, 2021 (noting that, with the consent of the Claimant Advisory Committee and the Future Claimants’ Representative, the maximum settlement values increased), available at <http://garlocksettlementfacility.com/assets/documents/GST-Notice-re-MSV-Increase.pdf> (last viewed Jan. 29, 2024); see also *Potential Maximum Values by Disease and Contact Group*, available at <http://garlocksettlementfacility.com/assets/uploadedFiles/b950703d-c88e-44c0-9962-2d9a914a30e9.pdf> (last viewed Jan. 29, 2024).

<sup>18</sup> See *Paddock Confirmation Order* ¶ 127 (cash and other consideration totaling \$610 million funded to an Asbestos Trust).

with standard jury trial opt out language long acceptable to claimants. Accordingly, the FCR, through this Objection, renews his offer to the ACC, the Debtors, and indeed Mr. Semian to negotiate a plan acceptable to all parties just as occurred so easily in *Paddock*.

In sum, the FCR questions whether granting the Requests for Certification would encourage claimants to negotiate a confirmable plan as they did in *Paddock* or, instead, to continue the current, unfortunate path. Experience to date suggests the answer is the latter. For this reason, and the reasons stated in the Debtors' objection, which are incorporated herein by reference, the FCR is constrained to oppose the Requests for Certification because any other result would further delay compensation for all classes of claimants during their lifetimes.<sup>19</sup>

WHEREFORE, for the reasons stated above, the FCR respectfully requests that this Court deny the Requests for Certification and grant such other and further relief as is just and proper.

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<sup>19</sup> While the FCR, of course, cannot predict how reviewing courts will rule, we do have some indication. *See, e.g., Order, Official Committee of Asbestos Claimants in Bestwall, LLC v. Bestwall LLC*, No. 19-408, Dkt. 13 (4th Cir. Nov. 14, 2019) (Fourth Circuit's order denying ACC's motion for permission to appeal from order denying dismissal); *In re Bestwall LLC*, 71 F.4th 168 (4th Cir. 2023) (confirming application of *Carolin* standard to a solvent debtor in the context of affirming issuance of preliminary injunction).

Dated: January 31, 2024  
Charlotte, North Carolina

Respectfully submitted,

/s/ A. Cotten Wright

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