Docket #2595 Date Filed: 3/20/2025

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re	Chapter 11
ALDRICH PUMP LLC, *et al.*,[1]	Case No. 20-30608 (LMJ)
Debtors.	(Jointly Administered)

THE OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS' OBJECTION TO THE DEBTORS' MOTION TO AMEND CASE MANAGEMENT ORDER FOR ESTIMATION OF ASBESTOS CLAIMS

The Official Committee of Asbestos Personal Injury Claimants (the "**Committee**"), through its undersigned counsel, hereby objects (this "**Objection**") to the *Debtors' Motion to Amend Case Management Order for Estimation of Asbestos Claims* [Dkt. No. 2562] (the "**Motion**"). In support of the Objection, the Committee respectfully states as follows:

PRELIMINARY STATEMENT

The Committee previously addressed the utility of the present Estimation process with the Court, extolling the Court to "not allow these Debtors to proceed down the same path [as *Bestwall*], especially as estimation would result in a purely advisory opinion, making estimating the Debtors' aggregate liabilities a pointless exercise."[2] Estimation is a burdensome, pointless exercise and the advisory estimation opinion issued at the end of the process will have zero relevance to those voting on any plan for several reasons. First, Trane is fully capable of resolving its asbestos-related liabilities in the tort system—it did so for decades without distress and, if this bankruptcy was

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

[2] *See Status Report and Statement of the Official Committee of Asbestos Personal Injury Claimants* [Dkt. No. 2376] at 17 (Oct. 10, 2024) (the "**Status Report**").

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terminated, is more than able to continue doing so now. Second, these Debtors assert that they can pay all current and future claimants in full, inside or outside of bankruptcy, so there is no reason to waste time the cancer victims do not have litigating what Trane *thinks* its total asbestos liability should be. Finally, the *Joint Plan of Reorganization of Aldrich Pump LLC and Murray Boiler LLC* [Dkt No. 831] (the "**Plan**") and the *Plan Support Agreement* [Dkt. No. 832] (the "**PSA**") between the Debtors and the FCR already established the value *the Debtors and the FCR* believe the Debtors' asbestos-related liabilities are worth—a total of $500 million to cover asbestos-related claims (with $125 million earmarked to compensate pre-petition asbestos claims) and $45 million to administer the proposed asbestos trust.

The Plan identifies the value *the Debtors believe* their asbestos-related liabilities are worth. *The FCR*, a co-proponent of the Plan through the PSA, *believes* that the current asbestos claimants would take the money offered by the Plan. *See* Oct. 24, 2024 Hr'g Tr. ("**Oct. Hr'g Tr.**") at 97:7–12 (Mr. Guy) ("the people who are not here, the people who are ill that we don't see . . . they're not getting paid. And I hazard to guess if we were to ask them as a group, 'Would you like to be paid? Here's money on the table. Would you like to take it,' they would probably say, 'Yes.'").

And what does the Committee believe? The Committee "believe[s] if the debtors really have the conviction of what they say, they really want a settlement, they really want to get this case moving, they should move forward with their plan." Oct. Hr'g Tr. at 153:15-19 (Ms. Ramsey). The Committee supports moving forward now with soliciting a Plan that contains a trust funding amount that the Debtors *believe* will resolve their asbestos-related liabilities and the FCR *believes* the present claimants will accept. *See* Oct. Hr'g Tr. at 145:4-15 (Ms. Ramsey) ("We have been saying since the motion that the debtor filed to estimate, **'Let's get on with the plan process. You filed your plan. You put a number on the table. Let's go forward. Put your plan out**

to vote. Let, let's hear what the claimants say.'") (emphasis added). The Committee believes that the Court should shut down the estimation process and order the Debtors to solicit the Plan. *Now.*

At the conclusion of the January 30, 2025, hearing (the "**January Hearing**"),[3] this Court tasked the parties with putting forward "good faith proposals" to present a clear path forward. *See* Jan. 30, 2025 Hr'g Tr. ("**Jan. Hr'g Tr.**") at 46:3–25 (James, J.). Estimation is not that path. Estimation will waylay these cases on a road to nowhere rather than propel them toward resolution. *See, e.g.*, *Status Report and Statement of the Official Committee of Asbestos Personal Injury Claimants*, Dkt. No. 2376 at 10-17. If the Court permits Estimation to proceed as presently ordered, the Committee will continue to engage in good faith. Notwithstanding, throughout the pendency of these cases, the Committee has undertaken steps to put these cases on an alternate, and more efficient, path, including the pursuit of adversary proceedings. *Id.* at 18-23. The Committee plans to file a creditor plan in the near term—a plan that is Constitutional, that will withstand appellate review, and that will likely receive broad creditor support. *See id.* at 23-25. If Estimation is to be pursued, the Committee asks that competing plan proposals be made during the Estimation process, instead of after it.

The relief sought in the Debtors' Motion does not respond to this Court's charge to the parties. The Debtors seek a written fact discovery deadline of March 27, 2026, and expedition of expert reports, when they have yet to produce a single case file. The Debtors' proposed schedule is designed to jam the Committee and prevent a robust challenge to the Debtors' estimation theory. If there is to be an Estimation, the Committee needs case file information from the Debtors and needs it immediately.

[3] Capitalized terms not defined in the Preliminary Statement shall have the meanings ascribed to them *infra*.

It is imperative the Committee be equipped to evaluate and test the Debtors' insistence that their settlement history should be disregarded entirely for purposes of Estimation because of allegedly concealed alternative exposures. The Debtors demanded Estimation, claiming they were misled in the tort system and seeking to rewrite decades of their claims resolution history on a theory that they *would* have settled thousands of cases differently if they had "perfect" information regarding the claimants' other exposures. By advancing this theory, the Committee must know what information the Debtors sought—and what information the Debtors had in their possession—at the time they settled those claims.

But the Debtors have not yet produced any documents showing their contemporaneous case evaluations. Instead, and somewhat incredibly, the Debtors ask this Court to believe the Committee is proceeding unreasonably in requesting documents from the Debtors' national coordinating counsel, jurisdictional counsel, and company officers regarding the manner in which the Trane Enterprise[4] resolved decades of pre-petition asbestos-related litigation and liability. But belief does not equal reality. Several years into the Estimation discovery process, the Debtors have not produced a *single* case file to the Committee. If this Court allows Estimation to proceed, the Committee must have access to those files.

This Court has already found that the Debtors' bankruptcy cases were never "undertaken for the benefit of the asbestos claimants[,]" concluding that "these bankruptcies were designed to isolate the asbestos claimants from the overall corporate enterprise and strand them in bankruptcy until such time as they agree to a Section 524(g) plan." *See* Court's Findings and Conclusions ¶ 121. The Debtors' *entered these bankruptcy cases* alleging that the Trane Enterprise previously

[4] As defined in the *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*, ¶ 47, Adv. Pro. No. 20-03041, Dkt. No. 308 ("Court's Findings and Conclusions").

settled cases for too much money and was the victim of the sick, dying, or deceased asbestos personal injury claimants because the Trane Enterprise did not possess perfect information when it chose to settle with the asbestos personal injury claimants. On the Petition Date—before this Court ordered the formation of the Committee and even before the Bankruptcy Administrator conducted any committee formation interviews—the Debtors complained they lacked the perfect information needed: alternative asbestos exposure. *See* Debtors' Informational Brief at 6. Years have passed, and the Debtors have not produced the very documents they put at the heart of their unneeded bankruptcy and fanciful Estimation theory.

The Debtors' theory, designed to apply a "bankruptcy discount" to the Trane Enterprise's present and future asbestos-related liabilities, is the reason behind the Debtors' request for an estimation of asbestos-related liabilities. The Motion continues the narrative effort. In asking this Court to order all parties to provide expert reports identifying asbestos related liabilities (without completing fact discovery), the Debtors are attempting to manipulate the Court into believing that declaring a dollar value that could be plugged into their plan or, that the Debtors will assert, will lead to a negotiated, consensual resolution, will ultimately advance this case. This is a false narrative. The Debtors hope that in ordering preliminary expert reports, the Court will overlook the substantive, non-economic objections the Committee has raised regarding any plan process or Section 524(g) trust.

While the Committee acknowledges that identifying timelines and establishing other deadlines may have a salutary effect on the estimation process, the Debtors unilaterally proposed "solution"—designed to keep the Debtors in the driver's seat and sustain their preferred narrative—fails to address the issues that currently stifle meaningful advancement of the case. Rather, the Debtors' proposal is designed to shift the risks of any delay related to the Debtors'

agreed-upon production onto the Committee and prejudice the expert liability analyses by identifying preliminary values without the Committee having an opportunity to challenge the Debtors' expert's analysis (because the very documents the Debtors and the Trane Enterprise knew about or should have known about when settling pre-petition cases will not have been produced yet).

FACTUAL BACKGROUND

1. The Debtors filed for bankruptcy on June 18, 2020 (the "**Petition Date**"). On the same day, the Debtors filed an informational brief alleging that it was denied perfect information when the Trane Enterprise settled personal injury claims prepetition because plaintiffs allegedly engaged in "a 'widespread' pattern on the part of plaintiffs to not divulge evidence related to the alternative asbestos exposures." *Informational Br. of Aldrich Pump LLC and Murray Boiler LLC* [Dkt. No. 5] at 6 (the "**Debtors' Informational Brief**").

2. Nearly three weeks later, the Court ordered the Committee's formation. *Order Appointing the Official Committee of Asbestos Personal Injury Claimants* [Dkt. No. 147].

3. In August 2021, the Debtors announced a settlement among the Debtors and the Future Claimants' Representative ("**FCR**") that contemplated the establishment of a section 524(g) trust with $545 million, $125 million of which would be allocated to Prepetition Asbestos Claims (the "**Debtors/FCR Settlement**"). *See Motion of the Debtors for Estimation of Prepetition Asbestos Claims* [Dkt. No. 833] at ¶ 10 (the "**Estimation Motion**").

4. In connection with the Debtors/FCR Settlement, the Debtors filed the Estimation Motion, seeking to estimate only the Debtors' liability for "Prepetition Asbestos Claims" (the "**Estimation**"). The Committee objected. *See Objection of the Official Committee of Asbestos Personal Injury Claimants to the Motion of the Debtors for Estimation of Prepetition Asbestos*

Claims [Dkt. No. 892] (the "**Estimation Objection**"). Although the Court denied the Estimation Objection, the Court did order an estimation of *all* of the Debtors' present and future liabilities. *See Order Authorizing Estimation of Asbestos Claims* [Dkt. No. 1127] (Bankr. W.D.N.C. Apr. 18, 2022). The parties have been embroiled in estimation-related discovery since.

5. In pursuit of their Estimation case, the Debtors have gathered discovery they believe will help them develop the supposedly perfect information the Trane Enterprise was purportedly denied in the tort system. *See, e.g., Order Granting Motion of the Debtors for an Order Authorizing the Debtors to Issue Subpoenas on Asbestos Trusts and Paddock Enterprises, LLC* [Dkt. No. 1240] and *Order Approving Personal Injury Questionnaire and Granting Related Relief* [Dkt. No. 1246] (together, the "**Debtors' Discovery Requests**").

6. In order to gather information to counter the Debtors' estimation theory, the Committee served *The Official Committee of Asbestos Personal Injury Claimants' First Set of Requests for Admission, First Set of Interrogatories, and First Set of Document Requests Directed to the Debtors Pursuant to Bankruptcy Rules 7026, 7033, 7024, 7036 and 9014* (the "**Initial Committee Discovery**") on September 1, 2022. As the Debtors noted in the Motion, they have yet to fully respond to the Initial Committee Discovery. Motion ¶¶ 8, 9, 11, and 14. It is highly likely that, if Estimation proceeds and the Committee receives the discovery responsive to these requests, it will be revealed that the Debtors (and the Trane Enterprise) had far *more* information than they have represented regarding alternative asbestos exposures when they were settling cases in the tort system, and that their settlement history reflects that knowledge.

OBJECTION

7. Since the Petition Date, the Debtors have alleged that they were subjected to a pattern of plaintiffs not divulging evidence related to alternative asbestos exposure. Debtors'

Informational Brief at 6. To be clear, the Debtors asserted this argument before the Court ordered the formation of the Committee and before the Court ever ordered Estimation. The Debtors have since advanced a position that Estimation is necessary to fund a 524(g) trust, making it clear that they believe this case can be resolved if only a Court declares a dollar value that can be plugged into their plan.

8. The Committee, meanwhile, has consistently been clear that it believes Estimation to be lengthy and unnecessary in the grand scheme of the bankruptcy. *See* Dec. 2, 2021 Hr'g Tr. at 40:4–14 (Ms. Ramsey) ("[Estimation] is a process that is unnecessary. It's unhelpful. It will not advance the case. It will result in, as we've seen in the other cases -- and I'll come back to this -- more adversity and, frankly, the current claimants are not going to be persuaded to support or not support a plan or a result based on an estimation hearing . . . . it will result in undue delay and it won't advance a resolution. And that's not only because of the, what we're seeing of the estimation process, but also because [] estimation's a first step in a much longer process."). If this Court orders Estimation to proceed as currently contemplated, the Committee will follow the Court's directive, including the discovery process inherent thereto, but will not sacrifice the due process the asbestos claimants deserve in challenging the Debtors' belief that they were entitled to be supplied with perfect information in the tort system.

9. As the Committee has repeatedly made clear, this case is not about finding a number and slotting it into a plan. The Debtors "already have sufficient assets, we believe, to pay all valid claims in full without regard to the funding agreement." *See* Feb. 3, 2022 Hr'g Tr. 115:7–9 (B. Erens). If the Debtors are to be believed, protecting an asbestos personal injury victim's Seventh Amendment jury trial rights by including a plan provision allowing those claimants to opt out of

an asbestos trust to litigate against the Debtors in the tort system for uncapped state law damages is critical and the only plan that could be confirmed and upheld on appeal.

10. No claimant can be forced into an involuntary settlement in a case where proceeding with his or her claim would not hurt any other claimant. The Motion fails to acknowledge, and the Debtors refuse to consider, this basic tenet of the Committee's position. Simply establishing a number—or even competing numbers—through a premature expert report process will not advance these cases toward their ultimate end.

I. ESTIMATION WILL RESULT IN AN UNNECESSARY ADVISORY OPINION.

11. The Debtors' acknowledged template for the Estimation proceeding here is *Garlock*, whereby the Court ultimately concluded that Garlock's aggregate liability for present and future mesothelioma claims totaled $125 million.[5] Garlock's years-long process cost the debtors' estates more than $120 million in professional fees—a number that fails to include or account for the additional expenses imposed on Garlock's asbestos victims during that time. The *Garlock* estimation was irrelevant to the resulting settlement number—$500 million,[6] or four times greater than the Court's estimation—which was jointly negotiated by the committee, the debtor, and the FCR.

[5] *In re Garlock Sealing Techs., LLC*, 504 B.R. 71, 97 (Bankr. W.D.N.C. 2014).

[6] *See Disclosure Statement for Modified Joint Plan of Reorganization of Garlock Sealing Technologies LLC, et al. and OldCo, LLC, Proposed Successor by Merger to Coltec Industries Inc.*, at ii, *In re Garlock Sealing Techs., LLC*, No. 10-31607 (Bankr. W.D.N.C. July 29, 2016) [Dkt. No. 5444]. Under the plan that was confirmed in *Garlock*, the debtors retained their right to insurance actions and settlements and even had the right "to seek reimbursements for their contributions to the Asbestos Trust under the plan." *Id.* at 55. *Modified Joint Plan of Reorganization of Garlock Sealing Techs. LLC, et al. and OldCo, LLC, Successor by Merger to Coltec Indus. Inc.*, art. 7.3.10, *In re Garlock Sealing Techs. LLC*, No. 10-31607 (Bankr. W.D.N.C. May 19, 2017) [Dkt. No. 5965-1]. The Garlock Asbestos Personal Injury Trust received only a limited right of 50% of any insurance recovered by Coltec in excess of $25 million, but it did not have the right to bring or prosecute such an action. Garlock Plan art. 7.3.10. Further, $20 million of the total settlement was earmarked to pay Canadian government agencies for Canadian liability subrogation rights.

12. There was obviously no correlation between the *Garlock* estimation decision—issued in January 2014—and the *Garlock* plan settlement—which was not confirmed until June 2017. Instead of a quick plan process following estimation, Garlock confirmed a plan with a trust contribution four times greater than the Court's estimated liability forty-one months—almost four years—after the Court issued the *Garlock* estimation decision. For the Debtors to pretend that the *Garlock* estimation process impacted its plan settlement discussions is simply an attempt to recast history, institutionalize delay, and hold the Debtors' asbestos creditors—the true victims of this bankruptcy case—further hostage to a wasteful and cynical ploy. Delay benefits only the Debtors and Trane and is harmful—and often deadly—to the asbestos victims.

13. Moreover, estimation is not required in asbestos bankruptcies. Section 502(c)(1) of the Bankruptcy Code provides: "There shall be estimated for purpose of allowance under this section . . . any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case." 11 U.S.C. § 502(c)(1) (emphasis added). There are, therefore, no asbestos claims that require liquidation during the course of the bankruptcy, and thus no predicate for the application of § 502(c). Indeed, here Estimation has delayed and will continue to delay the administration of these cases.

14. Asbestos personal injury claims cannot lawfully be estimated for allowance purposes. The asbestos claimants' Seventh Amendment right to a jury trial is preserved in bankruptcy cases. *See* 28 U.S.C. § 1411(a); *see also A.H. Robins Co. v. Piccinin*, 788 F.2d 994, 1012 (4th Cir. 1986) ("The bankruptcy court thus is without authority . . . over 'the liquidation or estimation of contingent or unliquidated personal injury or wrongful death claims against the estate for purposes of distribution under Title 11.'" (quoting 28 U.S.C. § 157(b)(2)(B))). Personal-injury and wrongful-death claimants are "ultimately entitled, if they elect to do so, to have a jury trial of

their claim in the district court. Section 157(b)(5) gives them that right." *Id.*; *see also In re Dow Corning Corp.*, 211 B.R. 545, 569 (Bankr. E.D. Mich. 1997) ("These claims must be liquidated via a jury trial if the claimant requests one, and they cannot be estimated by a bankruptcy judge for purposes of distribution unless all parties consent."). Estimating asbestos claims for allowance purposes violates the claimants' rights to a trial by jury.

15. Estimating asbestos claims for allowance purposes also violates claimants' constitutional due process rights because the merits of each individual and individualized claim will not be evaluated and tried. No matter how sophisticated, the very nature of an estimation means that the estimate would contain shortcuts based on samples or averages and would extrapolate from that basis to assign value to claims. This is inconsistent with extensive case law holding that asbestos personal injury claims cannot be decided *en masse*; the pervasive factual disputes underlying asbestos claims are too individualized. In the *Georgine* litigation, for example, the Third Circuit concluded that the putative class of future asbestos claimants could not lawfully be certified for class action treatment under Rule 23 of the Federal Rules of Civil Procedure because the individual claims were so disparate on their facts. *Georgine v. Amchem Prods., Inc.*, 83 F.3d 610, 626 (3d Cir. 1996), *aff'd sub nom. Amchem Prods., Inc. v. Windsor*, 521 U.S. 591 (1997); *see also Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 853 (1999) ("The resulting incentive to favor the known plaintiffs in the earlier settlement was, indeed, an egregious example of the conflict noted in *Amchem* resulting from divergent interests of the presently injured and future claimants." (citation omitted)). "Causation of plaintiff's injury by defendant's product and plaintiff's resultant damages must be determined as to 'individuals, not groups.'" *Cimino v. Raymark Indus., Inc.*, 151 F.3d 297, 313 (5th Cir. 1998) (emphasis added) (quoting *In re Fibreboard Corp.*, 893 F.2d 706, 711 (5th Cir. 1990)); *see also Malcolm v. Nat'l Gypsum Co.*, 995

F.2d 346, 350-54 (2d Cir. 1993) (disapproving consolidation for trial of forty-eight asbestos cases because too many different individual exposures, jobs, job sites, and diseases were involved).

16. Therefore, this Court should not feel compelled to spend additional years overseeing contentious litigation that would result in, at best, an advisory opinion of no utility. *See, e.g.*, *Trustgard Ins. Co. v. Collins*, 942 F.3d 195, 200 (4th Cir. 2019) ("That courts may not issue advisory opinions is one of the most long-standing and well-settled jurisdictional rules.").

II. ESTIMATION BASED ON ALLEGED EVIDENCE SUPPRESSION IS THE DEBTORS' THEORY, BUT IT WILL NOT RESULT IN A CASE RESOLUTION.

17. The Debtors moved for Estimation to determine their "legal liability" for pending asbestos claims on the theory that such a valuation was necessary to fund a section 524(g) trust. *See, e.g.,* Estimation Motion. This is a fallacy. The Debtors "legal liability" arises under state law and is determined either by a jury or by the parties through arm's length negotiations. Estimation is a key component of the Debtors' improper bankruptcy/litigation strategy, and the Debtors bear the burden to prove their case that the valuation of their asbestos liability should be discounted because of, among other things, non-disclosure of alternative asbestos information. *See* Mar. 3, 2022 Hr'g Tr. 119:3–25 (B. Erens); Jan. Hr'g Tr. at 11:4–7 ("[O]ne of the arguments that we have in support of [estimation] is that we expect to argue and, that many of the settlements were reached without full disclosure of information."). In pursuit of their "evidence suppression" theory, the Debtors rely almost solely on Judge Hodges' *Garlock* decision. *See* Oct. Hr'g Tr. at 40:4–13 (M. Evert). The Committee contends, however, that *Garlock* is inapplicable because Garlock, unlike the Trane Enterprise, was not able to pay its present and future asbestos claimants in the tort system in full. The Debtors and the Trane Enterprise can do *exactly* that—can pay their present and future asbestos claimants in the tort system now and forever because the asbestos liabilities at issue are little more than a rounding error on the Trane Enterprise's current financial market capitalization.

Moreover, the Committee contends the *Garlock* estimation decision was based on limited (and possibly inaccurate or incomplete) evidence.

18. Despite opposing Estimation, if on the path, the Committee has the right to challenge the Debtors' factual assertions and counter the Debtors' Estimation theory. The Initial Committee Discovery seeks information about what the Debtors knew or should have known when they settled cases in the tort system and, specifically, the exposure information the Debtors contend the Trane Enterprise did or did not have prior to settling cases in the tort system (the "**Allegedly Missing Exposure Information**"). Initial Committee Discovery, Interrogatory # 1. The Allegedly Missing Exposure Information goes to the heart of the Debtors' Estimation theory that because the Trane Enterprise was not provided with perfect information before it chose to offer—and accept—settlements to resolve asbestos litigation, it should be entitled to claim a "legal liability" less than their settlement history suggests. The discovery sought by the Committee is essential to a proper assessment of the adequacy and accuracy of the Debtors' theory. In other words, the Committee seeks information directly relevant to assessing and countering the Debtors' Estimation case.

19. Estimation embodies the Debtors' desired path forward, driving toward the discounted case resolution they hope to achieve. As discussed above, this Court does not need to allow the Debtors to continue the path to nowhere. Having proposed the Motion, the Debtors hope that the Court is subsequently blinded to the Committee's needs once the Debtors finally produce any of the agreed upon discovery to the Committee: an appropriate amount of time to review the discovery provided and issue additional necessary discovery to address any incompleteness in the Debtors' production. The proposed written fact discovery deadline in the Motion has the potential to compromise the Committee's case as the Debtors' proposed timeline places all of the risk of

incomplete information on the Committee. The Debtors received the Initial Committee Discovery three years prior, but no claimant-related documents have yet been produced. Indeed, the Debtors have only just commenced collecting them. Motion, ¶ 17. In October 2024, the Debtors indicated that they would complete discovery within a year of negotiating a 502(d) order and production protocol agreement,[7] which is essentially Debtors' proposal in the Motion, but the Committee needs sufficient time to review the production.

20. The Debtors' proposed timeline enables the Debtors to continue to delay production of essential information for almost another year, then expects the Committee to synthesize and respond to this information in ninety days (and in some instances, even less). Motion, Ex. A, ¶ 4. This places an unfair burden on the Committee to prepare its case on an accelerated timeline while the Debtors are free to ration out the production of information supporting their contentions.

21. In January, the Court aptly pointed out that the parties may have lost the forest for the trees in focusing for years on estimation rather than exiting from bankruptcy. *See, e.g.,* Jan. Hr'g Tr. at 31:7–20 (James, J.). The Motion proposes a continuation of the present process while shifting all the risk of inadequate time to the Committee, *see* Motion ¶ 20 ("The adoption of this date would essentially be a return to the original plan in this case for the timing of estimation discovery."), and continues to miss the bigger picture: resolving the Committee's non-economic structural concerns with these bankruptcy cases. Given that the Debtors assert they can pay all current and future claimants what they owe them under state law in whatever amount is awarded

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[7] MR. EVERT: . . . I would hope we would be able to reach an agreement . . . on the protocol in the next . . . 30-to-45 days. . . .

THE COURT: So I would say by the end of 2025 would be fair, right? Right?

. . .

MR. EVERT: -- that's very fair. So we will move toward that.

Oct. Hr'g. Tr. at 170:13–5, 173:11–6.

by juries, and as the Committee previously informed the Court, estimation "will not advance the case. . . . [F]rankly, the current claimants are not going to be persuaded to support or not support a plan or a result based on an estimation hearing." Dec. 2, 2021 Hr'g Tr. at 40:4–14 (Ms. Ramsey).

III. THE TIMELINE SUGGESTED IN THE MOTION IS UNREASONABLE AND IMPRACTICAL.

A. Garlock Is a Case Study Against Jamming Committee Discovery

22. As set forth above, since the beginning of this process, the Debtors have relied on Judge Hodges' decision in *In re Garlock Sealing Technologies, LLC*, Case No. 10-BK-31607, as the basis for allowing discovery against the claimants, proceeding with an estimation, and justifying the estimation theory advanced by the Debtors here. But, as other courts have acknowledged, these non-distressed billionaire asbestos cases—where those debtors assert that all claimants can be paid in full outside of bankruptcy—"[are] not *Garlock*"[8] and are unique, with their own individual narratives and factual underpinnings. At least one bankruptcy court in the Western District of North Carolina has cast doubt on the *Garlock* estimation discovery, noting that the timing of waivers of privilege on certain underlying claimant file materials likely caused issues for the Committee. *See* Sept. 29, 2021 Bestwall Hr'g Tr. at 32:13–18 (J. Beyer) ("And I did go back and, and look at Garlock and the timing of, of where that happened and when that happened and, and it was very close to the estimation hearing and I do think that it likely was in some ways prejudicial to the claimants that it was that far into the process and I don't want that to happen here….").

23. In this case, the Debtors argue that *Garlock* stands for the proposition that "exposure evidence was undisclosed to the debtor at the time of settlement of the cases that debtor

[8] Jan. 24, 2019 Hr'g Tr., *In re Bestwall LLC*, No. 17-31795 (Bankr. W.D.N.C.) at19:6-24 (the Court).

faced in the tort system." Motion ¶ 22. But as Judge Whitley explained, the *Garlock* ruling has been read overly broadly and misapplied to current cases:

> It's interesting to me, as I watched him when he did this, Judge Hodges' ruling was written narrowly, but has been read broadly and it is, admittedly, based on a fairly number, limited number of instances of suppression of evidence by plaintiffs' firms, only 15. . . . I am not at the moment reading *Garlock* as an indictment of the tort system as a whole or a suggestion that all those good people in the state courts need this little bankruptcy court to protect them from fraud. There are problems in trying these cases in, in state court. I understand that, but when it comes to inherent fraud as a matter of law or, or patently unconfirmable because it leads to fraud, we're making a lot of assumptions and it appears to me that having been alerted to the *Garlock* conclusions any tribunal can effectuate measures to, to deal with potential fraud.

Sept. 4, 2019 Hr'g Tr., *In re Kaiser Gypsum Co.*, Case No. 16-31602 at 51:13–52:6 (J. Whitley).

24. If Estimation continues, any discovery process must allow the Committee access to the information it needs to counter the Debtors' Estimation theory.

B. The Debtors' Suggested Timeline is Impractical

25. In their Motion, the Debtors suggest a fact discovery deadline of March 27, 2026. However, this suggestion fails to account for the real delay in this Estimation discovery process: the failure to timely produce discovery from defense firms. Under the Debtors' timeline, it would have nine additional months to produce documents responsive to a request served three years ago. The Committee would then have ninety days to not only review and process the responsive information, but also serve, receive, and review any additional discovery that may be required. Such a proposal is facially impractical.

26. To date, the Debtors have produced ***zero*** claimant documents. While the Debtors have produced approximately 10,000 documents total, none of these documents relate to claimant files. The Committee has had no opportunity to even begin weighing and evaluating the Debtors' Estimation theory.

27. This timing dichotomy renders itself even more objectionable when the Debtors describe how they are at the mercy of national coordinating counsel or jurisdictional counsel firms' whims for millions of documents and are unable to determine the timing of when they may receive the documents and begin their own review. Motion, ¶¶ 17–18. This means that in spite of the Debtors' best efforts and representations to the Court that they will endeavor to produce the discovery 90 days prior to the proposed Written Discovery Deadline, the Committee may not start to receive the bulk of the documents until near the end of that period. This is unacceptable, especially when the Debtors planned this bankruptcy scheme months in advance of the Petition Date and knew that they would seek an Estimation even before filing their petitions. The purpose of estimation under § 502(c) is to prevent undue delay in administering the case; as envisioned by the Debtors, however, Estimation itself leads to "undu[e] delay [in] the administration of the case." *See* 11 U.S.C. § 502(c)(1).

28. Additionally, on the exact day that the Debtors are due to complete production, and in the face of potentially little time for the Committee to review the documents, the Debtors' proposed order requires the parties to exchange preliminary disclosures of their fact and expert witnesses. Motion, Ex. A, ¶ 3. Expecting the Committee to shoulder the time crunch is both impractical and inequitable.

29. Moreover, a 90-day deadline is particularly impractical because the Debtors tend to produce documents on a rolling basis meaning that claimant files remain incomplete until production is over. It has been Committee counsels' experience that debtors involved in similar discovery productions do not produce the entirety of one claimant file before moving on to the next; rather, they produce a mix of documents such that the Committee has no way of knowing when a file is complete until the producing party certifies the production is substantially complete.

Because of this, it is largely a waste of resources for the Committee to review claim files in earnest while production remains ongoing because evaluation of the claimant file changes with any new document and costs attorney time and estate resources to continually review and update the work product. This piecemeal production helps the Debtors move forward more quickly but does nothing to assist the Committee with its analysis and assessment of the production. Because of this piecemeal nature, the Committee anticipates being forced to fully review the entire production only after the Debtors have affirmed the production is substantially complete, or minimally, provide an assertion that all the documents relating to a certain claimant are produced.

30. Even the Debtors seem to recognize that the proposed timeline may not work: "should [the proposed Written Discovery Deadline] not be enough time, it will certainly allow enough time for the parties to make great strides and be well-informed should another adjustment become necessary." Motion ¶ 20. The Debtors' proposed order contains these provisions to ask for extensions. Motion, Ex. A, ¶¶ 7, 9. Looking down the road under the proposed schedule, the Committee fears it will be the party placed in the unenviable position of requesting extensions, and thus being the party accused of delaying the case. Instead, if the Court is interested in setting fact discovery deadlines that will hasten discovery as best it can, it should set a deadline for the triggering domino in the line: the date by which the Debtors' tort defense firms must produce all documents to the Debtors for review.[9] An alternative possibility that would significantly decrease production delays would be to order the Debtors to produce the entire, unredacted claim file and require the Debtors to waive privilege with respect to every document associated with any individual plaintiff the Debtors identify as a person who did not provide perfect information—or

[9] Such production has already been agreed to and outlined for the Court at the January 30, 2025, hearing.

purportedly engaged in "evidence suppression" or "misrepresentation" of alternative exposures—in the tort system pre-petition.

31. This Court has previously found that it has authority to order third parties to not only produce documents, but to create documents for use in these bankruptcy cases over the objection of such third parties. *See Order Approving Personal Injury Questionnaire and Granting Relief* [Dkt. No. 1246]. Ordering the tort defense firms to produce documents by a Court imposed deadline should be authorized under this same authority. The Debtors unquestionably are bound by deadlines imposed by this Court and have already agreed to produce these documents.

32. As it stands now, under the Debtors' proposal, the only party to suffer from this arbitrary deadline is the Committee. The Debtors' proposal does not seek to materially advance this case, it seeks merely to provide the Debtors with a litigation advantage and the appearance of being responsive to the Court's concerns. The proposed timeline gives the Debtors nine months to complete their initial production despite having had the document request for three years, and then in the same breath, gives the Committee ninety days to review and follow up on the production. Given that the Debtors will have reviewed all documents well before any deadline that affects their case strategy and disclosures arrives, the delay in production hurts only the Committee and is plainly unfair.

IV. PRODUCING EXPERT REPORTS BASED ON INCOMPLETE FACTUAL INFORMATION IS AN UNFAIR LITIGATION STRATEGY INCONSISTENT WITH THE FEDERAL RULES OF CIVIL PROCEDURE.

33. The Motion contemplates the production of "Initial Expert Reports," or "Executive Summaries" of such reports, before the substantial completion of fact discovery. This proposal only hinders the Committee's ability to assess the adequacy of the Debtors' estimation theory and underlying factual contentions, as well as fine tune its own estimation theory, and shifts the parties'

focus from completing discovery to the expert stage, thereby prejudicing the process. Moreover, this process distracts from the reality that this case is not about a number.

34. The potential for unnecessary or unreasonable delay in the discovery process is a vital concern, but in this circumstance "adequate time must be allowed for discovery of the facts and assembly of the proof." *Freehill v. Lewis*, 355 F.2d 46, 48 (4th Cir. 1966). It is appropriate under the circumstances of this Estimation to allow the parties' attorneys and experts to review the facts of the case and digest the information.

35. Any flexibility potentially provided under Federal Rule of Civil Procedure 26(d)[10] with respect to the timing of expert reports is intended to prevent misuse of the procedural rules as a litigation strategy which historically "converted what was intended as an orderly process for the preparation for trial into a game of strategy and a jockeying for position." *Caldwell-Clements, Inc. v. McGraw-Hill Pub. Co.*, 11 F.R.D. 156, 158 (S.D.N.Y. 1951) (describing tactics used by parties under Rule 26); *see also* Fed. R. Civ. P. 26 advisory committee's note to 1970 amendments (describing intent of subsection d). The purpose of exchanging expert reports before trial is to provide notice to opposing counsel about the expert witness's testimony, prevent unfair surprise at trial, and allow the opposing party to prepare rebuttal reports, depose the expert in advance of trial, and prepare for depositions and cross-examination at trial. *See Bresler v. Wilmington Tr. Co.*, 855 F.3d 178, 189 (4th Cir. 2017) (interpreting Fed. R. Civ. P. 26(a)(2)).[11] The process of disclosing expert reports ensures that the expert report reflects the testimony the expert is expected to give at trial. *Campbell v. United States*, 470 F. App'x 153, 156 (4th Cir. 2012) (citing *Sharpe v. United States*, 230 F.R.D. 452, 458 (E.D. Va. 2005)).

[10] As made applicable to this proceeding under Rules 7026 and 9014 of the Federal Rules of Bankruptcy Procedure.

[11] The Committee recognizes that Fed. R. Civ. P. 26(a)(2) does not explicitly apply to this proceeding. Fed. R. Bankr. P. 9014(c); Initial CMO at ¶ 3 (adopting subsection (a)(1) to the Estimation).

36. While the Debtors assert that the anticipated expert estimation theories are no secret, Motion ¶¶ 22-24, expert conclusions based on those theories cannot be expected to be substantively completed before the close of factual discovery. Indeed, in light of the Debtors' theory of estimation, much of the information sought to test the Debtors' theory is also necessary for the Committee's expert estimation analysis, and the Committee has not yet decided on whether other fact and expert analysis relevant to estimation may be appropriate. The reality is that expert reports are based on the facts obtained during the factual discovery phase, "which often (as here) concludes before expert discovery so that the parties may rely on a complete factual record to inform their own experts and depose their opponents' experts." *Gore v. 3M Co.*, No. 5:16-CV-716-BR, 2017 WL 5076021, at *2 (E.D.N.C. Nov. 3, 2017). This principle has been applied consistently in many contexts across jurisdictions. *See, e.g., Finjan, LLC v. Qualys Inc.*, No. 18CV07229YGRTSH, 2020 WL 6581836, at *2 (N.D. Cal. Nov. 10, 2020) (distinguishing discovery phases in patent infringement litigation); *Booker v. P.A.M. Transp., Inc.*, No. 2:23-CV-18 WJ/KRS, 2024 WL 4664420, at *9 (D.N.M. Nov. 4, 2024) (experts entitled to know facts before forming opinions); *Tibor Design, Inc. v. Yantai Res. Fashion Co.*, No. 11 CIV. 2425 KBF, 2013 WL 541396, at *1 (S.D.N.Y. Feb. 5, 2013); *Occidental Chem. Corp. v. 21st Century Fox Am., Inc.*, No. CV1811273MCAJD, 2020 WL 1969898, at *6 (D.N.J. Apr. 24, 2020) (scientific methodologies in expert phase dependent on discoverable relevant factual information).

37. Estimation proceedings are no different. For example, after several years of litigation concerning estimation protocols and discovery, the court for *G-I Holdings, Inc.* allowed expert discovery to commence only after fact discovery had concluded. *See In re G-I Holdings, Inc.*, No. 01-30135 (RG), 2006 WL 2403531, at *23 (Bankr. D.N.J. Aug. 11, 2006). This further suggests the importance of requiring experts who opine on estimation methodologies and theories

to provide informed reports on a complete factual record. Put simply, the Debtors' sudden proposal to thrust the significantly shorter phase of expert discovery into the tail end of factual discovery only serves to impede the Committee's preparation for the Estimation and may well lead to a disorganized and more complicated Estimation.

38. Here, the Debtors propose the parties submit expert reports without a proper dataset and verification and assessment of the underlying facts. Producing expert reports is time consuming and costly. If the Committee were to direct its estimation expert to prepare an initial report based on incomplete claimant files, then as new information is produced, the Committee's experts must spend additional time to reevaluate their prior conclusions and, if necessary, update their reports. Moreover, despite the Debtors' proposal to permit supplementation of expert reports where new facts or a change of opinion supports changes, the parties nonetheless have a continuing duty to supplement expert reports and testimony under Fed. R. Civ. P. 26(e)(2). *See generally In re Quigley Co., Inc.*, 437 B.R. 102, 150 (Bankr. S.D.N.Y. 2010) (expert report must be supplemented under Rule 26(e)(2) where facts or conclusions change). They would be doing this nonetheless, so it is no concession on their behalf.

39. Additionally, the proposed discovery process effectively positions the Debtors as a conduit through which all the relevant and necessary factual information will flow. While this would afford the Debtors the luxury of preparing expert reports concurrently with their ongoing review of factual productions for relevance and privilege, the Committee would not be afforded that benefit because it would not only analyze the adequacy of the factual discovery as it trickles in piecemeal, but it would be operating on an incomplete factual record which it would not have been able to adequately assess by the deadline. Expert reports would be due almost four and a half months before the Debtors would even finish their production.

40. If the Court believes that beginning to evaluate the experts at this stage would be helpful, then the Committee would suggest an alternative path: evaluating the credibility and reliability of the experts' methodologies. Where it would be impractical to draft expert reports at this point given the necessity for factual information, an expert's methodology is largely independent of the facts that round out expert conclusions. The Committee has contended and continues to believe that the Debtors' expert methodology does not pass muster and should not be relied upon in the Estimation. Should the Committee be correct, significant swaths of fact discovery could become unnecessary and the path to Estimation could become quicker.

CONCLUSION

The Motion should be denied, and the Estimation should be terminated immediately. In the alternative, the Court should instruct the parties to meet and confer in good faith to formulate a more appropriate case management order, including discovery plan, for the Estimation.

WHEREFORE, the Committee respectfully requests that the Court deny the relief sought by the Motion.

Dated: Charlotte, North Carolina
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