

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re	:	Chapter 11
ALDRICH PUMP LLC, <i>et al.</i> , ¹	:	Case No. 20-30608 (LMJ)
Debtors.	:	(Jointly Administered)

**DEBTORS' REPLY IN SUPPORT OF MOTION TO AMEND CASE
MANAGEMENT ORDER FOR ESTIMATION OF ASBESTOS CLAIMS**

Aldrich Pump LLC ("Aldrich") and Murray Boiler LLC ("Murray"), as debtors and debtors in possession (together, the "Debtors"), file this reply: (1) in response to *The Official Committee of Asbestos Personal Injury Claimants' Objection to the Debtors' Motion to Amend Case Management Order for Estimation of Asbestos Claims* [Dkt. 2595] (the "ACC Objection") filed by the Official Committee of Asbestos Personal Injury Claimants (the "ACC"), (2) in response to *Maune Raichle Hartley French & Mudd LLC's Objection to the Debtors' Motion to Amend Case Management Order for Estimation of Asbestos Claims* [Dkt. 2596] (the "Maune Objection"),² and (3) in further support of the *Debtors' Motion to Amend Case Management Order for Estimation of Asbestos Claims* [Dkt. 2562] (the "Motion to Amend CMO").³ In support of this Reply, the Debtors respectfully state as follows:

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 The Maune Objection expressly states that it is not addressing the actual issues before the Court in connection with the Motion to Amend CMO. See Maune Obj. ¶ 1. As a result, it is unclear why the Court should consider the Maune Objection at all.

³ Capitalized terms not otherwise defined herein have the same meanings given to them in the Motion to Amend CMO.



INTRODUCTION

In the Motion to Amend CMO, the Debtors propose a deadline for written discovery in the estimation proceeding as requested by Court at the January 30, 2025 hearing. The proposed deadline is consistent with discussions with the Court at that hearing as to the time it likely will take to collect the extensive claims files requested by the ACC from the Debtors' national coordinating counsel and local counsel firms across the United States in connection with resolved asbestos claims. The Debtors are now in a position to propose such a deadline given that the ACC finally agreed, just days before the January 30 hearing, to a claims file protocol that provides how and what the Debtors would collect that would ultimately comprise the claim files production. The timeline the Debtors propose is consistent, and in most ways faster, than the timelines for claims file production in the other North Carolina asbestos bankruptcy cases filed prior to the Debtors' cases.

In the Motion to Amend the CMO, the Debtors went further, however. They proposed that the parties use the time during the claims file collection and production process productively to also issue their Initial Expert Reports on the Debtors' asbestos liability. Production of these expert reports will likely advance the progress of these cases and narrow issues in dispute between the parties. The ACC's professed methodology for estimating the Debtors' liability is based on the Debtors' historical settlements in the tort system; and the ACC has, and has had for several years, the Debtors' claims database providing that historical settlement history. Time records of Legal Analysis Systems, Inc. ("LAS"), the ACC's expert for estimation, show that it has been working on the ACC's estimate of the Debtors' asbestos liability since 2021.⁴ Thus, completion of the ACC's Initial Expert Report in the near term should be readily achievable.

⁴ See *Future Asbestos Claimants' Representative's Response to the Debtors' Motion to Amend Case Management Order for Estimation of Asbestos Claims* [Dkt. 2597] at 10-11.

In response, the ACC's Objection offers little more than a diatribe against even conducting an estimation of the Debtors' liabilities, an issue which was decided long ago.⁵ This follows a consistent pattern during these cases whereby the ACC has been attempting to either sidestep or terminate estimation since it was first ordered as statutorily mandated in these cases by Judge Whitley in 2022. The ACC also acts as if estimation is novel to these cases, even though it has been ordered also in Bestwall and DBMP, was ordered in Garlock, and was ordered in numerous solvent and insolvent mass tort cases beforehand.

The ACC also uses its objection to try to create the misimpression that claims file discovery has not already occurred because the Debtors have been delaying its production.⁶ The reality is precisely the opposite. The Debtors have been literally chasing the ACC for more than two years seeking agreements on the necessary parameters to allow for production of claims files — first on a claims file sample responsive to the discovery served by the ACC; and second on a claims file collection protocol to determine the documents and sources relating to the cases in the claims file sample that would be collected. See section I, *infra*. Since, among other things, both protocols exist in Bestwall and/or DBMP as precedent, it should not have taken nearly this long to reach resolution. But, unfortunately, this has been a feature of the ACC's strategy on estimation: drag out the process and then argue that since it is taking too long estimation is fruitless and must be abandoned.

⁵ See Order Authorizing Estimation of Current and Future Mesothelioma Claims [Dkt. 1127] (the "Estimation Order"). The Estimation Order is a final, non-appealable order. The ACC Objection appears to be, in part, bringing a procedurally improper motion for reconsideration of that order, without asserting any grounds for reconsideration under Bankruptcy Rule 9024.

⁶ See, e.g. ACC Obj. ¶ 20 ("The Debtors' proposed timeline enables the Debtors to continue to delay production of essential information . . .").

Finally, the ACC accuses the Debtors of attempting to intentionally prejudice the ACC in both the Debtors' proposed written discovery deadline and its Initial Expert Report proposal.⁷ As to the former, the one-year deadline is simply meant as a deadline for when the Debtors will complete the collection and production of all requested claims files from Debtors' national coordinating counsel and local counsel firms located throughout the United States. To the extent the ACC believes there are deficiencies in the Debtors' production, they can raise them like any other litigant can throughout that process. Likewise, to the extent the ACC does not think the 60 day period to file motions to compel after completion of the claims file production in the Proposed Second Amended Estimation CMO is adequate, the Debtors are willing to entertain a reasonable enlargement of that period or, if the Court prefers, a deadline could be set for the production of claims files rather than for written discovery as a whole. As to the latter complaint, the Debtors' extensive claims files do not inform the ACC's historical settlement methodology to estimate the Debtors' asbestos liability. And in the highly unlikely instance that the ACC finds that the information being discovered somehow does inform their methodology, the Proposed Second Amended Estimation CMO provides the ACC the right to supplement its reports with anything learned in the claims file discovery process. Finally, of course, the ACC will have every right to submit a rebuttal to the Debtors' Initial Expert Report after receiving any supplemental report related thereto on a schedule to be set at a later time.

While the ACC asserts that these cases are "not just about the numbers," the cases would be greatly informed by the parties' position on the Debtors' asbestos liabilities, something that has been completely lacking from the ACC to date. The Debtors frankly do not understand why, almost five years into these cases, the ACC still refuses to take a position on the amount of the

⁷ See e.g., ACC Obj. at 3, 5-6.

Debtors' asbestos liability. Instead, the ACC simply wants to drop estimation and an exchange of numbers and essentially, in a complete information vacuum, start an expensive, lengthy, and distracting competing plan process in which claimants would cast ballots without any basis upon which to determine the adequacy of their treatment under the plans. But, as Judge Beyer found in Bestwall, Judge Whitley suggested in these cases, and should be apparent in any event, no plan, regardless of the proponent, can properly be evaluated without an estimation (or settlement) of the Debtors' asbestos liability (see section IV, *infra*). Estimation should, as a result, be the sole focus of the parties in these cases, and the Motion to Amend CMO attempts to achieve that focus promptly.

ARGUMENT

I. Estimation Should Be the Sole Focus of These Chapter 11 Cases.

1. In response to the Court's request to set a written discovery deadline, the ACC's response instead is to argue that estimation should be abandoned. But estimation was ordered by Judge Whitley in 2022 and has been underway since the latter part of that year after Judge Whitley entered an estimation case management order on August 2, 2022.⁸ In approving estimation in these cases, Judge Whitley did not just find that estimation would be helpful. He found that by statute it is mandatory. See Tr. of Jan. 27, 2022 Hr'g [Dkt. 976] at 09:19-10:21 ("... estimation is mandatory. We went through this in both Garlock and in the DBMP case. 502(c) says what it says.").⁹

⁸ See [Dkt. 1302].

⁹ Contrary to the ACC's allegations (ACC Obj., § I.), Judge Whitley also found that estimation is not providing an advisory opinion. See Tr. of Jan. 27, 2022 Hr'g [Dkt. 976] at 12:5-7 ("I don't think this is an advisory opinion. If it is, it's one contemplated by Congress and the statute. There are proper purposes for estimation.").

2. As Judge Whitley also noted, estimation is not novel here. It has been ordered in the Bestwall case by Judge Beyer and in the DBMP case.¹⁰ It was ordered by Judge Hodges in the Garlock case.¹¹ In fact, as Judge Whitley also noted in approving estimation in these cases, court estimations under section 502(c) have been used for decades in this Circuit in mass tort cases. See, e.g., A.H. Robins Co., Inc. v. Piccinin, 788 F.2d 994, 1012-13 (4th Cir. 1986); In re A.H. Robins Co., Inc., 880 F.2d 694, 698-700 (4th Cir. 1989).¹² Court estimations, of course, also have been ordered for a long time in mass tort cases in other jurisdictions across the country for the same reason that estimation was ordered here.¹³ As these courts have recognized, estimation can further the plan confirmation process, narrow the issues in a case and can be instrumental in promoting settlement. In re USG Corp., 290 B.R. 223, 225 (Bankr. D. Del. 2003) (in ordering estimation, court notes that estimation would provide a "framework within which the parties can litigate [their] differences to a Court-imposed result or compromise them based upon the parties' expectation of a predictable outcome"). Indeed, in contested cases like these, estimation often is the only effective device to address the central dispute in the case—the amount of funding sufficient to satisfy a debtor's asbestos liability through a section 524(g) trust.¹⁴

¹⁰ See Order Authorizing Estimation of Current and Future Mesothelioma Claims [Dkt. 1577] In re Bestwall LLC, No. 17-31795 (Bankr. W.D.N.C. Jan. 19, 2021) (the "Bestwall Estimation Order"); Order Authorizing Estimation of Current and Future Mesothelioma Claims [Dkt. 1239], In re DBMP LLC, No. 20-30080 (Bankr. W.D.N.C. Nov. 29, 2021).

¹¹ Order for Estimation of Mesothelioma Claims [Dkt. 2102], In re Garlock Sealing Techs. LLC, No. 10-31607 (Bankr. W.D.N.C. Apr. 13, 2012), attached as Exhibit C to [Dkt. 833].

¹² See Tr. of Jan. 27, 2022 Hr'g [Dkt. 976] at 09:23-10:10 ("Not only does the statute contemplate it, but the Robins case and Robins-Piccinin contemplate it and stated that the duty to estimate wasn't permissive, but it was mandatory when the statute has been met Our Circuit contemplates this and other estimation proceedings have been conducted in other asbestos cases.").

¹³ See, e.g., In re G-I Holdings, Inc., 323 B.R. 583, 598-600 (Bankr. D.N.J. 2005); In re Federal-Mogul Global, Inc., 330 B.R. 133, 154 (D. Del. 2005); Case Management Order for the Estimation of Asbestos Liabilities [Dkt. 9301], In re W.R. Grace & Co., No. 01-1139 (Bankr. D. Del. Aug. 31, 2005).

¹⁴ Bestwall Estimation Order ¶ 8 ("Absent agreement on that point, some determination must be made about the Debtor's aggregate liability to current and future claimants for purposes of evaluating the Debtor's amended plan of reorganization.").

3. In its request to simply abandon estimation, the ACC argues that estimation is taking too long and insinuates that the Debtors have been intentionally delaying the production of their claims files to the ACC. The reality is the opposite. The Debtors moved rapidly in seeking the discovery they needed for estimation, in 2020 they, in tandem with the FCR, sought a bar date and PIQ process. This was held up only because the ACC at the time determined it wanted to litigate the Debtors' first day request for an extension of the automatic stay/preliminary injunction, relief that to date had been uniformly granted in asbestos mass tort cases and already had been approved by Judge Beyer in the Bestwall case. That litigation, which the ACC lost, took almost a year, during which time Judge Whitley stayed the bar date and PIQ process.¹⁵

4. Simultaneously with entry of Judge Whitley's order approving estimation, the Debtors also commenced the process of obtaining estimation-related discovery from various asbestos trusts. This process also was held up by objections from the ACC [Dkt. 1162] (objecting to the Debtors' trust discovery), as well as from the trusts (almost certainly prodded by the plaintiffs' firms that control the trusts' advisory committees).¹⁶ This resulted in nearly a year of litigation in both this Court and other courts around the country in the jurisdictions where the trusts were located.¹⁷ Ultimately the Debtors were successful in defeating all these objections.

¹⁵ Judge Whitley ultimately approved the Debtors' and FCR's bar date and PIQ request in April 2022, again despite opposition from the ACC. See [Dkt. 502] (objecting to the bar date and PIQ process).

¹⁶ See, e.g., [Dkt. 1161] (Paddock Enterprises LLC's objection to trust discovery motion); *Third-Party Asbestos Trusts' Motion to Quash Subpoenas and in Support of Stay* [Dkt. 1], No. 22-05116 (D.N.J. Aug. 19, 2022); *Third-Party Asbestos Trusts' Motion to Quash or Modify Subpoenas* [Dkt. 1], No. 22-00308 (D. Del. July 25, 2022).

¹⁷ This included litigation in multiple adversary proceedings before this Court, as well as Delaware, Michigan, and New Jersey, in addition to attendant appeals related thereto. A full list of the trust discovery orders and stipulated dismissals related to this litigation is located in Exhibit A to the *Case History and Status Report of Aldrich Pump LLC and Murray Boiler LLC* [Dkt. 2378].

5. Like the Debtors, the ACC has collected a large mass of material in obtaining discovery relating to estimation. As noted in the Motion to Amend CMO, the Debtors produced 167,000 pages of documents, along with its PACE claims database, which details the entire asbestos-related claims history of the Debtors. Essentially the only thing the ACC does not have is the claims file discovery it insists it must have. And the reason the ACC does not have this discovery is not because the Debtors have delayed producing it, but because (a) the claims file discovery, as originally propounded, was overbroad, and (b) the ACC has repeatedly failed to timely engage and work to reach resolution on a claims file sample and a collection protocol (despite constant efforts by the Debtors), both steps the ACC was well aware, given their counsels' experience in both Bestwall and DBMP, would be necessary precursors to the production of claim files.¹⁸

6. An agreement on a claims file sample was necessary to determine on which of the tens of thousands of the Debtors' resolved mesothelioma claims the parties would collect documents to ultimately analyze for purposes of estimation. The Debtors first proposed a sample to the ACC in December 2022. The parties then met and conferred, including exchanging various proposals, in January and February 2023 and appeared close to reaching an agreement in March 2023.¹⁹ Those negotiations were then halted when the ACC announced that any agreement on sampling was contingent on the Court only allowing the Debtors to receive a

¹⁸ *Agreed Order With Respect to Custodial Attorney Email Search Protocol* [Dkt. 2953], In re Bestwall LLC, No. 17-31795 (LTB) (Bankr. W.D.N.C. Apr. 21, 2023); *Agreed Order With Respect to Estimation Discovery Matters* [Dkt. 2862], In re Bestwall LLC, No. 17-31795 (LTB) (Bankr. W.D.N.C. Jan. 23, 2023); *Agreed Order with Respect to Resolved Claims Sampling For Purposes of Estimation Discovery* [Dkt. 2506], In re DBMP LLC, No. 20-30080 (JCW) (Bankr. W.D.N.C. June 7, 2023); Tr. of Nov. 7, 2024 Hr'g [Dkt. 2993] at 55:15-16, In re DBMP LLC, No. 20-30080 (AAE) (Bankr. W.D.N.C.) (Counsel to DBMP LLC, discussing the progress of estimation in that case: "October [2023], we reached agreement on an initial collection and production agreement.").

¹⁹ See E-mail from Natalie D. Ramsey to C. Michael Evert, Jr. (Mar. 28, 2023, 7:35 AM CST), attached hereto in Exhibit A.

ten percent sample of the separate trust discovery it had sought.²⁰ But, the trust discovery and the claims file discovery were apples and oranges, having nothing to do with each other. After extensive litigation (including an evidentiary hearing on June 6, 2023 with expert testimony regarding the appropriateness of sampling trust discovery), Judge Whitley agreed with the Debtors that sampling was inappropriate for the trust discovery. The Debtors then reengaged with the ACC on July 13, 2023, ten days after Judge Whitley's ruling. The ACC asked for yet another month to consider what to do, but at the same time expressed that it was "optimistic" the parties could reach agreement by the August 2023 omnibus hearing.²¹ After additional meet and confer emails, by late August only one open issue remained to which the ACC needed to respond. But the ACC did not respond on that issue until two months later, on October 17, 2023. The Debtors responded to the ACC's proposal ten days later on October 27, 2023. The ACC ultimately agreed to the October 27 proposal a month later, on November 29, 2023. This allowed the claims file sampling order ultimately to be entered on December 28, 2023.

7. The Debtors drafted an extensive claims file protocol and provided it to the ACC in March 2024. The Debtors proposed necessary modifications based on the claims file protocols that had been previously agreed to by the same ACC lawyers in Bestwall and DBMP based on differences as to how the debtors in the three cases defended claims in the tort system. Notwithstanding the Debtors' repeated requests for a response thereafter, the ACC did not even respond to the Debtors' proposal until July 2024, over three months later.²² The parties then spent July through September engaged in negotiations over the terms of the protocol and related

²⁰ Id.

²¹ See E-mail from Natalie D. Ramsey to C. Michael Evert, Jr. (July 13, 2023, 10:52 AM CST), attached hereto in Exhibit B.

²² See E-mail from Davis L. Wright to Morgan R. Hirst (July 3, 2024, 10:20 AM CST), attached hereto in Exhibit C.

502(d) Order, including multiple meet and confers and the exchange of multiple drafts of the same. At a meet and confer in early October 2024, however, the ACC suddenly informed the Debtors that they wanted to table all discussions on the collection protocol and the 502(d) Order.²³ The Debtors did not agree to simply stop discussions and ultimately convinced the ACC to re-engage, but, as a result, the ACC did not respond to the remaining outstanding differences between the parties, which by that point were actually fairly minor, until the end of November, almost two months later. Thereafter, it took nearly two months (to late January 2025), and more repeated cajoling from the Debtors, for the ACC to simply agree to minor edits to the collection protocol that had been largely agreed to by late November 2024.

8. Since the estimation process, as a result of the delays described above, is now well behind where the Debtors believe it really should be at this point, the Debtors strongly suggest that the parties now should be singularly focused on estimation and move forward on completing estimation-related tasks as expeditiously as possible. The Debtors' proposal in the Motion to Amend CMO that Initial Expert Reports be provided in the near term is consistent with this approach.

II. The Debtors' CMO Proposal Will Not Prejudice the ACC in the Preparation of Its Estimation Case, But Will Instead Allow For the More Productive Use of Time in the Next Phase of Estimation.

9. The Motion to Amend CMO does not prejudice the ACC in any way, and the ACC's suggestion to the contrary is wrong.

10. The ACC is well aware that until the claims file protocol was agreed to in January, the Debtors were not in a position to collect any claims files, let alone produce them, since it was unclear what they would be collecting and who they would be collecting it from.

²³ See E-mail from Morgan R. Hirst to Davis L. Wright (Oct. 7, 2024, 9:52 AM CST), attached hereto in Exhibit D.

And as the timeline in section I, *supra*, demonstrates, the delay in reaching a claims file protocol falls at the feet of the ACC.

11. Nothing about the proposed schedule prejudices the ACC moving forward. Contrary to the suggestion in its objection, the ACC is not "squeezed" by the one-year written discovery deadline. The written discovery deadline proposed in the Proposed Second Amended Estimation CMO was meant to simply put an end date by which the Debtors shall have produced all the claims file information. To the extent the ACC does not believe it has all the discovery it is entitled to, it can certainly file a motion to compel, which the proposed amended case management order provides can be filed up to 60 days after the proposed Written Discovery Deadline.²⁴ If the ACC believes it needs a longer period of time to file any discovery-related motion practice after the deadline for completion of claims file production, the Debtors are certainly willing to entertain a reasonable enlargement of that time. If the Court prefers to simply convert the March 27, 2026 written discovery deadline in the Proposed Second Amended Estimation CMO to a deadline for the production of claims files, the Debtors are also agreeable to that. But the ACC proposed none of this, or anything else, to the Debtors prior to filing its objection. Simply claiming the Debtors' proposed schedule prejudices it, failing to meet and confer to offer any alternatives, and then arguing this provides a basis to abandon estimation altogether is no answer at all.

12. Second, the ACC's complaints about the proposal to exchange Initial Expert Reports are not only misguided, but also reveal the ACC's true aim here – to once again put off ever providing a position on the Debtors' actual asbestos liability, the central issue in these cases. It is important to remember that the claims file discovery relates to a single, albeit

²⁴ See Proposed Second Amended Estimation CMO ¶ 6.

critical issue the Garlock court identified — suppression of evidence by claimants and their counsel in the tort system. The ACC's claims file discovery relates to claims that were all resolved prior to the bankruptcy cases, not the current and future claims that are actually being estimated here.²⁵ Those claims files have no relevance to any other issue in estimation other than alleged evidence suppression in the tort system and have no relevance to the estimation theory the ACC has long espoused that the Debtors' liability for current and future claims should be based solely on their historical settlement history. As to that theory, the ACC has, and has had for years, all the discovery it needs to produce its estimate. Indeed, the ACC has had the Debtors' PACE database, which contains all of the Debtors' historical claims information, since 2021. Further, the ACC's expert, LAS, has clearly been working on its estimate based on that theory, as demonstrated by its bills submitted in these cases. In short, the fact that the ACC does not yet have the claims file discovery in no way prevents the ACC from providing an Initial Expert Report in the time proposed by in the Motion to Amend CMO.

13. More fundamentally, nothing about the submission of Initial Expert Reports under the Proposed Second Amended Estimation CMO could possibly prejudice the ACC because: (a) the proposal permits the supplementation of any such report with any information obtained after the entry of the CMO (which would necessarily include any claims files produced) and (b) the motion contemplates the submission of rebuttal expert reports at a time that will be later set by the Court.

²⁵ The ACC's claims file discovery requests are broad and will potentially involve millions of pages of legal files from dozens of law firms. The ACC justifies the breadth of its requests by claiming it "must know what information the Debtors sought—and what information the Debtors had in their possession—at the time they settled those claims." ACC Obj. at 4. During negotiations on the claims file protocol, the Debtors suggested that the documents and information in the possession of the Debtors and their national coordinating counsel should be sufficient to satisfy the ACC's purported need for such information. The ACC refused to accept that position and the parties ultimately agreed to collection from local jurisdictional counsel as well. The Debtors' proposed timeline for discovery could be substantially reduced if the ACC's demand for claims file discovery from local counsel firms was withdrawn.

14. Quite the opposite of prejudicing the ACC, the proposal to submit Initial Expert Reports actually provides the ACC far more time to prepare its case for estimation. Indeed, exchanging initial expert reports during the written discovery period will allow the parties to make any necessary modifications that they believe are necessary as a result of issues disclosed in the others' expert reports. As such, there is no possible prejudice the ACC could suffer by the submission of these reports.

III. Disclosing Initial Expert Reports Benefits These Chapter 11 Cases Outside of the Estimation Proceeding.

15. While the Debtors' proposal for Initial Expert Reports will help speed the estimation process, it also has benefits outside of estimation. Even though these cases are very nearly in their fifth year, the Debtors have no idea what the ACC believes the amount of the Debtors' asbestos liability to be, nor what trust funding it wants in a plan. Meanwhile, the *Joint Plan of Reorganization of Aldrich Pump LLC and Murray Boiler LLC* [Dkt. 831] (the "Proposed Plan"), which the Debtors' negotiated with the FCR, and that would establish a \$545 million section 524(g) trust, has been sitting on file since September 2021. The parties' differences as to the amount of the Debtors' asbestos liability is the crucial issue in these cases, and it is time that an understanding of those differences move forward.

16. At this point, all interested parties, as well as the Court, should have access to the liability estimates from the remaining key party, the ACC. Allowing the \$545 million Proposed Plan proffered by the Debtors and the FCR to sit on the table without any comparison undercuts case progress. Producing Initial Expert Reports in accordance with the Proposed Second Amended Estimation CMO by contrast will allow the parties and the Court to gain significant context as to the extent of the dispute with the ACC regarding the appropriate levels of trust funding in these cases.

17. The ACC asserts that these cases are not "just about the numbers."²⁶

While there certainly will be other plan issues to discuss, the Debtors would suggest that a trust funding amount still remains the central issue in the cases.²⁷ If that issue is resolved, other plan issues can and will follow, but the focus of the parties, again, should be a determination of the Debtors' asbestos liability. Disclosure of the Initial Expert Reports will provide clarity and inform the Court, key parties, and the current claimants themselves as to the status of the major issue in these cases and potential paths ahead.

IV. A Competing Plan Process Prior to Estimation Would be Wasteful, Wholly, Ineffective, and Distract the Parties From Focusing on Estimation.

18. Both the ACC Objection and the Maune Objection propose dropping estimation and starting a competing plan process.²⁸ However, as noted above and repeatedly supported by courts, including in this District, absent agreement among the parties, estimation of the Debtors' aggregate asbestos liability is necessary **before** any plan, no matter the proponent, can be adequately evaluated by claimants. Without an estimation of the Debtors' liability, neither the Court nor claimants or other parties in interest, as they vote on or consider a plan, can determine if the plan's proposed distributions to asbestos claimants are reasonable and appropriate.²⁹

19. While the ACC to date has not meaningfully elaborated on its opposition to the Proposed Plan, nor the plan's proposed funding amount, the Debtors anticipate that, if the

²⁶ ACC Obj. ¶ 9.

²⁷ While the ACC and Maune offer certain views with respect to the ultimate confirmability of the Debtors' Proposed Plan, any such arguments are premature and distract from the narrow issue before the Court—an appropriate deadline for written discovery.

²⁸ ACC Obj. at 3; Maune Obj. ¶ 2.

²⁹ The ACC asserts that the Debtors are seeking a "discount" in payment of their asbestos liabilities. ACC Obj. at 5, ¶¶ 15, 17. But the Debtors are leaving it to this Court to assess the proper amount of those liabilities based on all the evidence. It is the ACC that continually seeks both to avoid such an independent review and to avoid producing expert evidence to support a position on the amount of those liabilities.

Proposed Plan were solicited, the ACC would recommend that current claimants vote against it. However, absent estimation, claimants would have no real means by which to evaluate the Proposed Plan's \$545 million funding amount. If the Court ultimately estimates the Debtors' asbestos liability to be more than \$545 million, claimants would conclude that the Proposed Plan is inadequately funded, and the Debtors and FCR would have to reevaluate the Proposed Plan.

20. But, if the estimation process ultimately determines that the Debtors' asbestos liability is lower than \$545 million, claimants may determine that the Proposed Plan is acceptable. The prospect of an estimation determination that is lower, and in fact meaningfully lower, than the \$545 million in the Proposed Plan is certainly possible given the similarities between these Chapter 11 Cases and Garlock, which had a very similar asbestos litigation history and essentially the same asbestos containing products.³⁰ In Garlock, the court estimated the debtor's asbestos liability (including future liability) at \$125 million. See In re Garlock Sealing Techs., LLC, 504 B.R. 71, 97 (Bankr. W.D.N.C. 2014). Should this Court enter an estimation opinion that is similar to Garlock, claimants could view the Proposed Plan, with its \$545 million in proposed trust funding, favorably.³¹ The Proposed Plan not only would be greatly in excess of the estimation, but the claimants in Garlock agreed to a lower \$480 million plan and that plan

³⁰ Additional discussion of the similarities between these Chapter 11 Cases and Garlock is located in the *Case History and Status Report of Aldrich Pump LLC and Murray Boiler LLC* [Dkt. 2378].

³¹ The ACC asserts that the estimation in Garlock was "irrelevant" to the resolution in that case. ACC Obj. ¶ 11. As the FCR notes in its support of the Motion to Amend CMO ([Dkt. 2597] at 12), the ACC's expert in Garlock (the same expert the ACC has retained here) estimated Garlock's asbestos liability at between approximately \$1.0 and \$1.2 billion. Given that the Garlock court's estimation of the liability was \$125 million and the ultimate settlement of Garlock's liability was \$480 million, the ACC's position that estimation had no impact on resolution in that case is simply not credible. And Garlock was fully solvent upon the resolution of its liability at the agreed upon plan number. *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* [Dkt. 5444] at 8-10, In re Garlock Sealing Techs. LLC, No. 10-31607 (Bankr. W.D.N.C. July 29, 2016).

had to pay 10 more years of claims than will the Proposed Plan (since Garlock filed for bankruptcy 10 years earlier than the Debtors).

21. The Debtors anticipate that if the ACC proposes a competing plan that incorporates a 524(g) trust and a proposed funding amount, it will propose a number significantly higher than \$545 million. Absent estimation in advance, however, it would not be known whether such an ACC plan would be "fair and equitable" as required by section 1129(b)(2)(C) of the Bankruptcy Code. If the ACC were to seek cram-down of such a plan over the objection of the Debtors and the holders of equity interest in the Debtors, the ACC would be required to prove that the plan is fair and equitable as to equity interest holders, which includes satisfying the corollary to the absolute priority rule that no senior class be paid more than in full. See, e.g., In re Breitburn Energy Partners LP, 582 B.R. 321, 350 (Bankr. S.D.N.Y. 2018) ("An unwritten corollary to the absolute priority rule is that a senior class cannot receive more than full compensation for its claims."); In re Idearc Inc., 423 B.R. 138, 170–71 (Bankr. N.D. Tex. 2009) ("The corollary of the absolute priority rule is that senior classes cannot receive more than a one hundred percent (100%) recovery for their claims.").³² Therefore, even if the ACC convinced current creditors to vote for such a plan, it would be meaningless without a prior estimation of the Debtors' asbestos liabilities to determine whether the proposed plan funding is legally supportable and the plan thus confirmable.

22. Ultimately, then, without estimation claimants do not have the ability to properly evaluate a plan's proposed funding, and it would not be clear that the plan is confirmable in any event. Solicitation of competing plans in such a situation would therefore

³² See also In re Brewery Park Assocs., L.P., 2011 WL 1980289, at *10–14 (Bankr. E.D. Pa. Apr. 29, 2011) (denying proposed cram down plan because plan would pay a class more than 100%); In re Exide Tech., 303 B.R. 48, 60–61 (Bankr. D. Del. 2003) (same); In re MCorp Financial, Inc., 137 B.R. 219, 235 (Bankr. S.D. Tex. 1992) (same), appeal dismissed, 139 B.R. 820 (S.D. Tex. 1992).

result in an extraordinary waste of time, energy, and resources for no reason. Such a process also would distract significantly from what should be the sole focus of these Chapter 11 Cases — which is to proceed to an estimation that can provide the requisite context for any later proposed plan.

23. For this reason, when the ACC in Bestwall proposed to solicit its plan well prior to any estimation of Bestwall's asbestos liability, Judge Beyer declined to permit that solicitation to commence, and, instead, reiterated what the Debtors assert here — that the parties needed instead to focus their efforts to get the case to an estimation before decisions on a plan could be made.³³ Judge Whitley, in fact, made the same point in approving estimation in these cases over the same objection of the ACC that it asserts here — that the Debtors instead should simply be required to solicit their plan.³⁴

CONCLUSION

For all of the foregoing reasons set forth herein, the Motion to Amend CMO should be granted.

³³ See Tr. of Oct. 22, 2020 Hr'g at 17:24–18:07 [Dkt. 1435], In re Bestwall LLC, No. 17-31795 (LTB) (Bankr. W.D.N.C.) ("... I think the only way forward for the case at this point is estimation and my hope is that going through that process will ultimately lead the parties to a consensual resolution. I think it has to. So in light of the Court's ruling about estimation, I should go ahead and tell you that I think it would be premature to rule on the solicitation motion and disclosure statement and believe any ruling on those matters should be continued to some point beyond the conclusion of the estimation hearing . . .").

³⁴ See Tr. of Jan. 27, 2022 Hr'g [Dkt. 976] at 12:15-13:3 (Judge Whitley: "As to the argument about the unfair advantage on the procedural posture of having a plan that hasn't moved forward and now being asked to estimate in conjunction with that, I don't see it that way for a variety of reasons . . . normally, in an asbestos case if you're going to estimate, you file the motion first, you do the estimation in advance of, of confirmation proceedings, and the others afterwards. Absent agreement on a plan, it would seem to me that estimation will be a logical next step . . .").

Dated: March 24, 2025
Charlotte, North Carolina

C. Michael Evert, Jr.
Clare M. Maisano
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SPECIAL ASBESTOS LITIGATION
COUNSEL FOR DEBTORS AND
DEBTORS IN POSSESSION

Respectfully submitted,

/s/ John R. Miller, Jr.
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John R. Miller, Jr. (NC 28689)
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-and-

Brad B. Erens (IL Bar No. 06206864)
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ATTORNEYS FOR DEBTORS AND
DEBTORS IN POSSESSION

EXHIBIT A

E-mail from Natalie D. Ramsey to C. Michael Evert, Jr. (Mar. 28, 2023, 7:35 AM CST)

From: Ramsey, Natalie D. <NRamsey@rc.com>
Sent: Tuesday, March 28, 2023 7:35 AM
To: C. Michael Evert, Jr.; Hirst, Morgan R.; Erens, Brad B.; Cahow, Caitlin K.
Cc: Jonathan P. Guy; Debra L. Felder; James Wehner; Wright, Davis L.; Enright, Michael; Todd E. Phillips; Jeanna Rickards Koski; Katy Zendeh; Smith, Annecca H.
Subject: RE: [External]RE: Aldrich - sample - CORRECTED EMAIL BELOW -- PLEASE USE THIS ONE

Michael,

Thank you for your below email.

As you know, our agreement on a sample was negotiated in the context of the Court's order providing for the Debtors to receive a 10% sample in connection with its trust discovery. Should the Debtors be successful in expanding the scope of their trust discovery, it will be necessary to modify the sample design. Therefore, we believe it necessary to await the Court's decision on Thursday before we can conclude our negotiation on a sample.

With respect to our prior discussions, your email reflects one major point of disagreement. In paragraph 7 of your email, you have proposed that the Debtors would draw its examples of claims misconduct from not only the claims sample, but also "additional claims identified and discovered consistent with Paragraph 9" of the CMO. The Debtors' proposed retention of their ability to review all of the information in files to which only they have access (and the attendant potential for cherry picking alleged exemplar files from outside the sample that they believe support their theory of the case, while simultaneously restricting the Committee to the sample), would place the Committee at a significant disadvantage at estimation.

In addition, we provide some clarifications below to the sample discussions to date to ensure that we are all on the same page (again, subject to change depending on the Court's trust discovery ruling).

- We understand that the total number of sampled claims would be 1,200 paid, 200 dismissed without payment for a total of 1400 mesothelioma claims **both asserted and resolved** after January 1, 2014. In addition, we understand that there is 1 verdict in the Debtors' litigation history, which verdict pre-dates 2014, but which the parties agree should be included in the sample.
- The Committee will provide a proposal for sampling the 200 dismissed without payment claims to be included in the sample.
- The Committee's experts will need to understand how the simple random sample will be drawn.

Please let us know if you have any questions and/or if we should speak in advance of Thursday's hearing.

Best regards, Natalie

EXHIBIT B

E-mail from Natalie D. Ramsey to C. Michael Evert, Jr. (July 13, 2023, 10:52 AM CST)

From: Ramsey, Natalie D. <NRamsey@rc.com>
Sent: Thursday, July 13, 2023 10:52 AM
To: C. Michael Evert, Jr.
Cc: Hirst, Morgan R.; Erens, Brad B.; Cahow, Caitlin K.; Jonathan P. Guy; Debra L. Felder; James Wehner; Wright, Davis L.; Enright, Michael; Todd E. Phillips; Jeanna Rickards Koski; Katy Zende; Smith, Annecca H.
Subject: Re: [External]RE: Aldrich - sample - CORRECTED EMAIL BELOW -- PLEASE USE THIS ONE

This Message Is From an External Sender

If you are concerned about the message's content, highlight the email in your inbox and click "Report Suspicious" in the Outlook ribbon -or- contact 6Help.

Thanks Michael. I intended to give you a call on this when I land today in Charlotte in about an hour. I believe we are scheduled to report to the court tomorrow on this. It will be difficult to respond this afternoon because we will need to consult with the committee's experts. May I suggest that we ask the court for another month in light of the fact that the trust discovery order was just recently entered and we learned yesterday that it is unlikely that the trusts will seek to appeal? I am optimistic that we can reach agreement by the August omnibus hearing date. Thank you, Natalie

Sent from my iPhone

EXHIBIT C

E-mail from Davis L. Wright to Morgan R. Hirst (July 3, 2024, 10:20 AM CST)

From: Wright, Davis L. <DWright@rc.com>
Sent: Wednesday, July 3, 2024 10:20 AM
To: Hirst, Morgan R.; Ramsey, Natalie D.; jguy@orrick.com; dfelder@orrick.com; Fix, Katherine M.; Carney, David E.; Smith, Annecca H.; James Wehner; Katy Zendeh
Cc: Erens, Brad B.; C. Michael Evert, Jr.; Clare M. Maisano; Cahow, Caitlin K.; Hart, Robert F.; Jack Miller; C. Richard Rayburn, Jr.; Cody, Mark A.
Subject: [External]Re: Aldrich/Estimation Discovery
Attachments: Aldrich_Murray Draft Claims File Discovery Agreement-29948574-v4 copy.docx; REDLINE - Aldrich_Murray Draft Claims File Discovery Agreement-29948574-v4 to 29948574-v1.pdf

Morgan,

Attached please find the Committee's comments to the estimation discovery protocol. Please let me know when you would like to discuss.

Thanks,
Davis

Davis Lee Wright

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From: Wright, Davis L. <DWright@rc.com>
Sent: Monday, July 1, 2024 4:27 PM
To: Hirst, Morgan R. <mhirst@jonesday.com>; Ramsey, Natalie D. <NRamsey@rc.com>; jguy@orrick.com <jguy@orrick.com>; dfelder@orrick.com <dfelder@orrick.com>; Fix, Katherine M. <KFix@rc.com>; Carney, David E. <dcarney@rc.com>; Smith, Annecca H. <ASmith@rc.com>; James Wehner <jwehner@capdale.com>; Katy Zendeh <KZendeh@capdale.com>
Cc: Brad B. Erens <bberens@jonesday.com>; Michael Evert (CMEvert@ewhlaw.com) <CMEvert@ewhlaw.com>; Clare M. Maisano <cmmaisano@ewhlaw.com>; Cahow, Caitlin K. <ccahow@jonesday.com>; Hart, Robert F. <rhart@jonesday.com>; Jack Miller <jmiller@rcdlaw.net>; C. Richard Rayburn, Jr. <r-rayburn@rcdlaw.net>; Cody, Mark A. <macody@jonesday.com>
Subject: Re: Aldrich/Estimation Discovery

Morgan,

We have our comments and will send them around latest tomorrow morning.

Thanks,
Davis

Davis Lee Wright

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From: Hirst, Morgan R. <mhirst@jonesday.com>

Sent: Monday, July 1, 2024 4:21:54 PM

To: Wright, Davis L. <DWright@rc.com>; Ramsey, Natalie D. <NRamsey@rc.com>; jguy@orrick.com <jguy@orrick.com>; dfelder@orrick.com <dfelder@orrick.com>; Fix, Katherine M. <KFix@rc.com>; Carney, David E. <dcarney@rc.com>; Smith, Annecca H. <ASmith@rc.com>; James Wehner <jwehner@capdale.com>; Katy Zendehe <KZendehe@capdale.com>

Cc: Brad B. Erens <bberens@jonesday.com>; Michael Evert (CMEvert@ewhlaw.com) <CMEvert@ewhlaw.com>; Clare M. Maisano <cmmaisano@ewhlaw.com>; Cahow, Caitlin K. <ccahow@jonesday.com>; Hart, Robert F. <rhart@jonesday.com>; Jack Miller <jmiller@rcdlaw.net>; C. Richard Rayburn, Jr. <rrayburn@rcdlaw.net>; Cody, Mark A. <macody@jonesday.com>

Subject: RE: Aldrich/Estimation Discovery

CAUTION:

EXTERNAL EMAIL

Hi Davis:

Following up on the emails below and my voice mail last Monday, June 24. As you know, the Debtors provided a draft claims file collection protocol back on March 28 (a copy of that email, with the draft claims file collection protocol, is attached). We have followed up inquiring as to any comments the ACC might have numerous times (April 11, May 8, May 21, and June 4). You have told me on a number of occasions that you would have comments back to us "shortly" or "next week" or "by the end of the week." You told the Court at the April 25 hearing that the ACC would be providing comments "as quickly as possible." Nevertheless, as we enter the month of July, we have still not received any comments.

We obviously want, and believe the Court expects, that the parties get estimation moving. The claims file collection protocol has been a key part of that process in the other cases, and we believe it is a key part in this case. We would ask that the ACC send any comments back on the protocol by July 10 so we may assess those comments and be in a position to negotiate it shortly thereafter. Absent meaningful engagement, at some point in the very near future we are going to be left with no other choice than to pursue this issue through motions practice. Obviously, all of us, including the Court I am sure, would prefer to avoid that time and expense.

As always, we are happy to discuss.

Morgan R. Hirst

Partner

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mhirst@jonesday.com

From: Hirst, Morgan R.

Sent: Tuesday, June 4, 2024 2:35 PM

To: Wright, Davis L. <DWright@rc.com>; Ramsey, Natalie D. <NRamsey@rc.com>; jguy@orrick.com; dfelder@orrick.com; Fix, Katherine M. <KFix@rc.com>; Carney, David E. <dcarney@rc.com>; Smith, Annecca H. <ASmith@rc.com>; James Wehner <jwehner@capdale.com>; Katy Zendehe <KZendehe@capdale.com>

Cc: Erens, Brad B. <bberens@JonesDay.com>; Michael Evert (CMEvert@ewhlaw.com) <CMEvert@ewhlaw.com>; Clare M. Maisano <cmmaisano@ewhlaw.com>; Cahow, Caitlin K. <ccahow@Jonesday.com>; Hart, Robert F. <rhart@jonesday.com>; Jack Miller <jmiller@rcdlaw.net>; C. Richard Rayburn, Jr. <rrayburn@rcdlaw.net>

Subject: RE: Aldrich/Estimation Discovery

Davis:

What's the status? Let us know- thanks.

Morgan R. Hirst

Partner

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mhirst@jonesday.com

From: Wright, Davis L. <DWright@rc.com>

Sent: Tuesday, May 21, 2024 2:39 PM

To: Hirst, Morgan R. <mhirst@JonesDay.com>; Ramsey, Natalie D. <NRamsey@rc.com>; jguy@orrick.com; dfelder@orrick.com; Fix, Katherine M. <KFix@rc.com>; Carney, David E. <dcarney@rc.com>; Smith, Annecca H. <ASmith@rc.com>; James Wehner <jwehner@capdale.com>; Katy Zendehe <KZendehe@capdale.com>

Cc: Erens, Brad B. <bberens@JonesDay.com>; Michael Evert (CMEvert@ewhlaw.com) <CMEvert@ewhlaw.com>; Clare M. Maisano <cmmaisano@ewhlaw.com>; Cahow, Caitlin K. <ccahow@Jonesday.com>; Hart, Robert F. <rhart@jonesday.com>; Jack Miller <jmiller@rcdlaw.net>; C. Richard Rayburn, Jr. <rrayburn@rcdlaw.net>

Subject: Re: Aldrich/Estimation Discovery

Morgan,

We are coordinating on our side and should be in a position to get something back to you by the end of next week.

Thanks,

Davis

Davis Lee Wright

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From: Hirst, Morgan R. <mhirst@JonesDay.com>
Sent: Tuesday, May 21, 2024 3:35 PM
To: Ramsey, Natalie D. <NRamsey@rc.com>; Wright, Davis L. <DWright@rc.com>; jguy@orrick.com <jguy@orrick.com>; dfelder@orrick.com <dfelder@orrick.com>; Fix, Katherine M. <KFix@rc.com>; Carney, David E. <dcarney@rc.com>; Smith, Annecca H. <ASmith@rc.com>; James Wehner <jwehner@capdale.com>; Katy ZendeH <KZendeH@capdale.com>
Cc: Brad B. Erens <bberens@JonesDay.com>; Michael Evert <CMEvert@ewhlaw.com> <CMEvert@ewhlaw.com>; Clare M. Maisano <cmmaisano@ewhlaw.com>; Cahow, Caitlin K. <ccahow@Jonesday.com>; Hart, Robert F. <rhart@jonesday.com>; Jack Miller <jmiller@rcdlaw.net>; C. Richard Rayburn, Jr. <rrayburn@rcdlaw.net>
Subject: RE: Aldrich/Estimation Discovery

CAUTION:

EXTERNAL EMAIL

Hi Natalie:

Just following up here. Thanks.

Morgan R. Hirst
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mhirst@jonesday.com

From: Ramsey, Natalie D. <NRamsey@rc.com>
Sent: Wednesday, May 8, 2024 10:52 AM
To: Hirst, Morgan R. <mhirst@JonesDay.com>; Wright, Davis L. <DWright@rc.com>; jguy@orrick.com; dfelder@orrick.com; Fix, Katherine M. <KFix@rc.com>; Carney, David E. <dcarney@rc.com>; Smith, Annecca H. <ASmith@rc.com>; James Wehner <jwehner@capdale.com>; Katy ZendeH <KZendeH@capdale.com>
Cc: Erens, Brad B. <bberens@JonesDay.com>; Michael Evert <CMEvert@ewhlaw.com> <CMEvert@ewhlaw.com>; Clare

M. Maisano <mmaisano@ewhlaw.com>; Cahow, Caitlin K. <ccahow@Jonesday.com>; Hart, Robert F. <rhart@jonesday.com>; Jack Miller <jmiller@rcdlaw.net>; C. Richard Rayburn, Jr. <rrayburn@rcdlaw.net>

Subject: RE: Aldrich/Estimation Discovery

Morgan,

Apologies for the delay. We are working on a redline which we hope to send back next week, at which point we propose to schedule a call to discuss the protocol.

Best regards, Natalie

From: Hirst, Morgan R. <mhirst@JonesDay.com>

Sent: Wednesday, May 8, 2024 11:28 AM

To: Ramsey, Natalie D. <NRamsey@rc.com>; Wright, Davis L. <DWright@rc.com>; jguy@orrick.com; dfelder@orrick.com

Cc: Brad B. Erens <bberens@JonesDay.com>; Michael Evert (CMEvent@ewhlaw.com) <CMEvent@ewhlaw.com>; Clare

M. Maisano <mmaisano@ewhlaw.com>; Cahow, Caitlin K. <ccahow@Jonesday.com>; Hart, Robert F.

<rhart@jonesday.com>; Jack Miller <jmiller@rcdlaw.net>; C. Richard Rayburn, Jr. <rrayburn@rcdlaw.net>

Subject: RE: Aldrich/Estimation Discovery

CAUTION:

EXTERNAL EMAIL

Hi Natalie/Davis:

Hope all is well with both of you. We wanted to check in on the draft claims file discovery protocol that we sent at end of March (and reattached here) to see if you had any comments. Let us know (and Jonathan and Debbie- feel free to comment as well, though I think Jonathan had signed off shortly after we sent it). Happy to discuss on a call as well. Thanks all.

Morgan R. Hirst

Partner

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From: Hirst, Morgan R. <mhirst@JonesDay.com>

Sent: Thursday, March 28, 2024 2:09 PM

To: Ramsey, Natalie D. <NRamsey@rc.com>; Wright, Davis L. <DWright@rc.com>; jguy@orrick.com; dfelder@orrick.com

Cc: Erens, Brad B. <bberens@JonesDay.com>; Michael Evert (CMEvent@ewhlaw.com) <CMEvent@ewhlaw.com>; Clare

M. Maisano <mmaisano@ewhlaw.com>; Cahow, Caitlin K. <ccahow@Jonesday.com>; Hart, Robert F.

<rhart@jonesday.com>; Jack Miller <jmiller@rcdlaw.net>; C. Richard Rayburn, Jr. <rrayburn@rcdlaw.net>

Subject: Aldrich/Estimation Discovery

Natalie/Davis/Jonathan/Debbie:

As discussed, attached please find a draft of the Agreement as to Claims File Discovery Collection for your review and comment. Please pass on to your colleagues who need to see. A few notes:

- a. Note that we highlighted the sections concerning a 502(d) order. Unlike DBMP, we have insurance, and many of our insurers may have been involved in the defense of some of the "Agreed Claims." As a result, some of the documents that may be subject to a proposed 502(d) order could involve privileges which the insurers share. Hence, the insurers will need to sign off on any 502(d) order in this case. The Debtors have engaged with the insurers concerning such a 502(d) order, and the insurers are getting up to speed on the issue. We will keep you advised.
- b. As we discussed briefly on our call, these Debtors had a somewhat different defense structure than DBMP, and we have tried to suggest appropriate modifications as a result. Once you have an opportunity to digest this draft, we are glad to discuss and provide further information.
- c. Likewise, we seemed to be in a different place than DBMP in terms of productions already made by the Debtors, so we modified the applicable section accordingly. Again, glad to discuss after you digest.

In addition, during our last call with Davis, you raised the potential for agreeing to hold the estimation discovery deadlines in abeyance, given that you reached a similar agreement with the Debtors in DBMP. We have since had a chance to review the transcript of the DBMP hearing on the issue as well as the filed Order evidencing the agreement. Given the similar state of play in this case, we agree with you that such an extension is appropriate and called for under the circumstances. To that end, attached is a draft of a proposed order on this issue modeled after the order entered in DBMP. If the Order meets with your approval, we would like to advise Judge Whitley of our agreement at the April hearing. As a result, please advise us if this Order is acceptable at your earliest convenience.

We understand that digesting and finalizing the Claims File Discovery Collection Agreement will be a bit more involved, so we look forward to hearing from you on our draft after you have had the chance to review it in detail.

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EXHIBIT D

E-mail from Morgan R. Hirst to Davis L. Wright (Oct. 7, 2024, 9:52 AM CST)

From: Hirst, Morgan R. <mhirst@jonesday.com>
Sent: Monday, October 7, 2024 9:52 AM
To: Wright, Davis L.; C. Michael Evert, Jr.; Clare M. Maisano
Cc: Fix, Katherine M.; Carney, David E.; Ramsey, Natalie D.
Subject: RE: [External]Aldrich - DBMP Agreement re Estimation Discovery (final w attachments)

Davis:

Good talking to you last week. During the call, you indicated that the Committee would like to table, for at least a few weeks, any further discussions on the estimation claims file protocol and the potential 502(d) order.

As you know, these are documents that have been the subject of extensive negotiations for the past six months. Further, they are key agreements needed for the Debtors to move forward with the collection and production of claims files, documents which the ACC has asserted are critical to estimation.

Of course, we can't force you to negotiate (we wish we could!). However, our efforts thus far have substantially narrowed the issues:

- On the 502(d) order, we believe the parties were essentially in agreement, as our remaining change was simply to try to address one largely non-substantive language issue the Committee had raised.
- On the claims file protocol, there is basically one open issue between the parties: whether Debtors' local defense counsel will be required to search for emails beyond what is in their hard copy/electronic claims files. The Debtors' position is that email collection from the local attorneys should not be required, as it will be incredibly burdensome and will provide little if any additional relevant information that has not already been disclosed via either: (a) the physical claims files collected from local counsel and (b) the email collected from Debtors' in-house counsel and National Coordinating Counsel, many of which are likely to include correspondence with the local counsel. The Committee's position is otherwise. The Debtors have proposed a compromise where we search our local defense counsel e-mail systems for e-mails to and from the Plaintiffs' firms in regard to the defense of claims in the sample. This would add substantial burden to our search, but would at least go to the core of what you want (i.e., to ensure you are aware of all that was disclosed by the claimants).

While we can debate the merits of the parties' positions, it should be fairly easy to determine whether or not the parties can actually agree or not. As a result, the Debtors don't see any reason to halt negotiations. Even if the Committee, as you have recently implied, is considering seeking some modification of the current estimation path, there is no reason for the Debtors to further be delayed in collection of the claims files in the sample. That is, the Debtors should get on with the claims file collection and production process because it is likely a necessary next step in estimation. And of course, agreeing to these protocols is a necessary step to allow the Debtors to determine what it is they will need to collect.

As a result, the Debtors would ask that we continue to meet and confer and attempt to hopefully complete the negotiations in the next two weeks. This would give us an opportunity to use the October status to apprise the Court of where we are, what, if any, disagreements remain, and a plan to resolve any such disagreements.

I look forward to hearing the views of the Committee.

Morgan R. Hirst

Partner

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