

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re

ALDRICH PUMP LLC, *et al.*,

Debtors.

Chapter 11

Case No. 20-30608 (LMJ)

(Jointly Administered)

**STATEMENT OF SANDER L. ESSERMAN IN RESPONSE TO THE FUTURE
CLAIMANTS' REPRESENTATIVE'S OBJECTION TO THE ACC'S MOTION
TO RECONSIDER THE ORDER AUTHORIZING THE FCR TO RETAIN
AND EMPLOY THE BRATTLE GROUP, INC.**

Sander L. Esserman, in his capacity as the court-appointed future claimants' representative in the cases of *In re Bestwall LLC* and *In re DBMP LLC*, files this statement in response to the Objection To The ACC's Motion To Reconsider The Order Authorizing The FCR To Retain And Employ The Brattle Group, Inc. [Dkt No. 2720] filed by Joseph W. Grier, III, the future claimants' representative in the above-captioned cases (the "Aldrich FCR").

INTRODUCTION

Mr. Esserman is not a party in this bankruptcy case and takes no position on the merits of the underlying issue regarding whether the Aldrich FCR should be permitted to retain The Brattle Group as his estimation expert. However, in his objection, the Aldrich FCR needlessly makes incorrect statements and *ad hominem* attacks regarding Mr. Esserman's service as the FCR in *Bestwall* and *DBMP*. Although these cases are separate and proceeding before different judges, they all



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raise similar issues and are all pending in this district. Thus, Mr. Esserman feels compelled to respond and correct the record.¹

STATEMENT

In his role as FCR, Mr. Esserman seeks to protect the interests of future claimants. In cases such as *Bestwall* and *DBMP*, where it is undisputed that current and future claimants would be paid in full outside of bankruptcy, this means protecting the right of future claimants to be paid in full the same amount they would have received if the bankruptcies had never been filed.

The Aldrich FCR incorrectly accuses Mr. Esserman of following a strategy of “dismissal, disruption, delay.” (Objection, p. 7). Nothing could be further from the truth. Mr. Esserman has never filed, or joined in, any motion to dismiss in either *Bestwall* or *DBMP*. Mr. Esserman objected to estimation because he wanted to *avoid* needless delay.² As an alternative to a lengthy estimation process, Mr. Esserman and the committee tried to move the *Bestwall* case towards a conclusion by filing a joint plan that provided for a § 524(g) trust that would pay future claimants in full while preserving Georgia-Pacific’s ability to challenge individual claims.³ *Bestwall*

¹ In an attempt to avoid the need for this filing, counsel for Mr. Esserman requested that counsel for the Aldrich FCR correct the misstatements contained in the Objection.

² See Future Claimants’ Representative’s Objection to Motion of the Debtor for Estimation of Current and Future Mesothelioma Claims, *In re Bestwall LLC*, Case No. 17-31795, Dkt. No. 936 at 3 (Bankr. W.D.N.C. Aug. 16, 2019) (“[E]stimation would create, rather than prevent, undue delay in the administration of the Debtor’s estate.”)

³ See Chapter 11 Plan Jointly Proposed by the Future Claimants’ Representative and the Official Committee of Asbestos Claimants, *In re Bestwall LLC*, Case No. 17-31795, Dkt. No. 1172 (Bankr. W.D.N.C. May 1, 2020).

rejected that plan and objected to any further consideration of the plan until completion of estimation.⁴

Mr. Esserman's concerns that estimation would lead to delay have proven to be valid. In *Bestwall*, Mr. Esserman and the committee were forced to file multiple motions to compel, and in response to those motions, the debtor is still producing documents responsive to document requests served more than four years ago. The debtor in *DBMP* has yet to commit to a deadline to substantially complete its production of documents responsive to document requests served more than two years ago. That delay is not the fault of Mr. Esserman.

The extensive document productions in *Bestwall* and *DBMP* are necessary because of the "evidence suppression" theory asserted by the debtors. As Mr. Esserman recently explained in *Bestwall*, an estimation process that does not involve an attempt to relitigate previously-settled cases could have occurred within twelve months.⁵ However, because the debtors insist on arguing that their past settlements were inflated due to alleged evidence suppression, Mr. Esserman has a fiduciary obligation to conduct discovery regarding those allegations, especially where those allegations are being made for the express purpose of limiting the recoveries of future claimants. That discovery has included the painstaking review of hundreds of

⁴ See Debtor's Objection To The Disclosure Statement, Amended Plan And Solicitation Procedures Proposed By The Official Committee Of Asbestos Personal Injury Claimants And The Future Claimants' Representative, *In re Bestwall LLC*, Case No. 17-31795, Dkt. No. 1338 (Bankr. W.D.N.C. Sept. 4, 2020).

⁵ See The Official Committee of Asbestos Claimants' and the Future Claimants' Representative's Response to Debtor's Brief In Support Of Fact Discovery Deadline *In re Bestwall LLC*, Case No. 17-31795, Dkt. No. 3524 at 10 (Bankr. W.D.N.C. Oct. 10, 2024).

thousands of documents to evaluate what the debtor and its teams of law firms and in-house counsel knew or should have known when they settled thousands of asbestos personal injury claims over the past 30 years.

The Aldrich FCR's criticism of fees incurred in *Bestwall* also ignores that the cases are in different stages. It should be no surprise that fees incurred are higher in *Bestwall*, where Mr. Esserman has taken steps both to investigate the Debtor's allegations of evidence suppression in the tort system and obtain an estimate of the Debtor's future liability, than in *Aldrich*, where the Aldrich FCR agreed to a settlement with the Debtor less than a year after being appointed and prior to receiving the information that the Aldrich FCR now states is necessary to forecasting an estimate of the Debtor's future liability.⁶

It should also not be a surprise that Mr. Esserman and the committees in *Bestwall* and *DBMP* are aligned in their efforts to oppose the debtors' attempts to limit claimant recoveries. Indeed, courts routinely recognize that future claimants' representatives share a common interest with current claimants' committees when it comes to maximizing the amount available for claimants. *See e.g., In re Leslie Controls Inc.*, 437 B.R. 493, 502 (Bankr. D. Del. 2010). The fact that Mr. Esserman is aligned with the committees on issues where they have a long-recognized common interest does not mean that Mr. Esserman lacks independence. In both *Bestwall* and *DBMP*, Mr. Esserman has not participated in motions or arguments asserted by the

⁶ See Objection, p. 17 (noting that estimation will depend on information that had not been produced at the time the Aldrich FCR agreed to a settlement with the Debtor).

committees where they presented issues that did not directly impact the rights of future claimants.

Mr. Esserman will continue to be a zealous advocate for the interests of future claimants in *Bestwall* and *DBMP* consistent with his fiduciary duties.

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/s/ Felton E. Parrish

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