Docket #2786 Date Filed: 8/21/2025

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

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

THE FUTURE ASBESTOS CLAIMANTS' REPRESENTATIVE'S
RESPONSE TO THE ACC'S MOTION TO SUBSTITUTE COMMITTEE MEMBERS

Joseph W. Grier, III, the representative for future asbestos claimants in the above-captioned cases (the "FCR"), through counsel, hereby files this *Response* to the *Motion of the Official Committee of Asbestos Personal Injury Claimants* (the "ACC") *to Substitute Committee Members* (the "Motion to Substitute" or "Motion") [Dkt. No. 2769].

PRELIMINARY STATEMENT

While it appears routine on its face, this Motion is anything but. Its resolution could well determine whether thousands of dying victims of asbestos disease will receive compensation in their lifetimes for their injuries, or not at all. To date, the obstacle has not been Debtors' unwillingness to satisfy their liabilities, a lack of support from the largest creditor constituency, or any effort to push forward an untested plan and trust that has not already been accepted by all parties, approved by the Court, and proven to be successful. Rather, these cases are stalled due to the relentless opposition of a small bloc of non-creditor law firms who control the ACC.

It is well-established that "the individuals constituting a committee should be honest, loyal, trustworthy and without conflicting interests, and with undivided loyalty and allegiance to their constituents . . . [and] [c]onflicts of interest on the part of the representative persons or committees are . . . not to be tolerated." *In re Johns–Manville Corp.*, 26 B.R. 919, 925 (Bankr. S.D.N.Y. 1983).

Those wise words of the renowned Judge Lifland from more than forty years ago—in the asbestos bankruptcy that started it all—apply with no less force here today.

The ACC, by its Motion, now seeks to substitute new committee members for those original members who have died from their asbestos diseases in the past two to five years. The lateness of the Motion, combined with the striking lack of progress in these cases after five years, requires consideration of the following statutory question: whether the proposed reconfigured committee, without change, will be able to adequately represent the class of currently ill asbestos claimants. *See* 11 § U.S.C. 1102(a)(4) (requiring adequate representation).

The FCR is concerned that it will not.[1] The FCR emphasizes that he has no objection, standing alone, to any valid claimant sitting on the ACC. The FCR wants to see all asbestos creditors paid in full as soon as possible so they receive compensation for their injuries and does not want to delay these cases another day. But the problem lies with a small group of powerful national asbestos law firms who make decisions for the ACC, by proxy, aligned with their own personal and business interests. Accordingly, remedial measures—well within the Court's discretion to impose—appear warranted to ensure adequate representation of the classes of claimants in these cases.

FACTUAL BACKGROUND

On June 30, 2020, shortly after the Debtors filed for bankruptcy protection, the Bankruptcy Administrator moved to appoint a committee of asbestos claimants.[2] The resulting ACC consisted of the following individual members (the "Committee Members") and their respective counsel (the "ACC Firms"):

1. Jerry Lynn Fowles (Brayton Purcell, LLP)

[1] The multi-year delay in the ACC's Motion, by itself, raises questions as to how the ACC operated as a chapter 11 creditors' committee until now.
[2] *Aldrich*, Dkt. 147.

2. Panagiotis "Pete" Panagiotopoulos (Cooney & Conway)
3. Ray Hager (Dean Omar Branham Shirley, LLP)
4. Richard J. Shiel, Sr. (Goldberg Persky White, P.C.)
5. Richard and Calvena Sisk (Kazan, McClain, Satterley & Greenwood)
6. Joseph Hamlin (Maune Raichle Hartley French & Mudd, LLC)
7. John Talmage Gambill (Motley Rice LLC);
8. Robert Overton (Shepard Law)
9. Richard R. Villanueva (Simmons Hanly Conroy LLC);
10. Barbara Korte o.b.o. Donald Korte (SWMW Law, LLC);
11. Steven W. Bomzer (Weitz & Luxenberg, P.C.)

Most of the original Committee Members died in 2020 and 2021.[3] The last committee member that the ACC proposes a substitute for died two years ago in 2023.[4] It is accepted that mesothelioma victims rarely live more than two years after diagnosis. The intervening years are brutal for the asbestos victims and their families, with related crushing medical costs.

Meanwhile, many of the same law firms appear on committees across multiple asbestos bankruptcy cases. By way of example, six of the ACC Firms in these cases sit on the *Bestwall* committee, seven on the *DBMP* committee, five on the *Garlock* committee, five on the *Kaiser* committee, and four on the *Paddock* committee.[5] This pattern (control by a small group of national asbestos firms) has been repeated for decades across dozens of asbestos cases.[6]

Since its creation, ACC counsel have embarked on a campaign to dismiss, derail, and disrupt these proceedings. As discussed below, those efforts have included, among other things, opposing the Debtors' motion for estimation of prepetition asbestos claims; opposing the request by the Bankruptcy Administrator and the FCR for mediation; repeatedly moving to dismiss; and seeking relief from the automatic stay.

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[3] *See Motion to Substitute* at ¶¶ 7-23.
[4] *Id.*, ¶ 17.
[5] *Aldrich*, Dkt. 1779-1 (*Chart of with Similarities between Aldrich/Murray, Bestwall, DBMP, Garlock, Kaiser Gypsum, Paddock, and LTL Management*).
[6] *See The More Things Change: Bankruptcy Trust Reform and the Status Quo in Asbestos Litigation*, 85 Def. Couns. J. 4 (2020) (discussing, at p. 12, the domination of the nation's leading asbestos plaintiff firms and identifying the top five firms that appear in multiple asbestos cases).

In 2021, in the *Bestwall* case, Judge Beyer cautioned that counsel, rather than their clients, might be calling the shots—noting that she "strongly suspect[ed]" that Maune Raichle, rather than nine claimants it represented, was the "driving force" behind certain sanctionable conduct.[7] Five years into this case, the record here echoes Judge Beyer's concerns, demonstrating a sustained pattern of law firm-driven, proxy decision-making, and disregarding the best interests of the creditor class.

During the July 24, 2025 hearing in this case, the FCR noted that, despite the deaths of multiple original ACC members, no formal substitutions had been made, raising a basic governance concern about who was making committee decisions.

On July 25, 2025, in response to requests from both the Bankruptcy Administrator and the FCR, the ACC confirmed to the parties and the Bankruptcy Administrator that it would file a substitution motion in time for the August 28, 2025 hearing. Mindful of the Court's guidance that "the parties make every effort to approach future disputes in a straightforward, respectful, and measured manner," the FCR asked that the ACC carefully consider potential disabling law firm conflicts in choosing new committee creditor members.[8] Thereafter, on August 7, 2025, the ACC filed the Motion to Substitute which, as proposed, would keep the ACC Firms in place representing the new Committee Members.

LEGAL STANDARDS

Section 1102(a)(4) provides that "on request of a party in interest and after notice and hearing, the court may order the United States trustee to change the membership of a committee appointed under this subsection, if the court determines that the change is necessary to ensure

[7] *See In re Bestwall LLC*, Case No. 17-31795, Dkt. 2095 ¶ 7 (Bankr. W.D.N.C. Sept. 23, 2021).
[8] *See* Dkt. 2747, *Order Denying Official Committee of Asbestos Personal Injury Claimants' Motion to Reconsider* (July 31, 2025).

adequate representation of creditors or equity security holders." 11 U.S.C. § 1102(a)(4).[9] Further, the Court may enter orders under Section 105(a), as appropriate, to facilitate these provisions "or to prevent an abuse of process." 11 U.S.C. § 105(a).

The Code does not define "adequate representation." But courts have considered multiple practical factors when making that determination. *See In re ShoreBank Corp*., 467 B.R. 156, 161–62 (Bankr. N.D. Ill. 2012). Those factors include: (i) the ability of the committee to function; (ii) the nature of the case; (iii) the standing and desires of the various constituencies; (iv) the possibility that different classes would be treated differently under a plan and need representation; and (v) the motivation of the movant. *Id*. (citing, *e.g., In re Enron Corp*., 279 B.R. 671, 685 (Bankr. S.D.N.Y. 2002)). Included in this analysis is whether committee members or their counsel have conflicts of interest—that is, whether there is "specific evidence that the committee member or members with the conflict have breached or are likely to breach their fiduciary duties." *Id*. (collecting cases).

It is well-established that Committee Members and their representatives owe fiduciary duties to the creditor class. *See A.H. Robins Co. v. Piccinin,* 788 F.2d 994, 1015 (4th Cir. 1986) (holding a "Committee is not authorized to represent the individual interests of any claimant, as distinguished from the general interests of all claimants[.]"); *Westmoreland Hum. Opportunities, Inc. v. Walsh*, 246 F.3d 233, 256 (3d Cir. 2001) ("We have construed § 1103(c) as implying a fiduciary duty on the part of members of a creditor's committee … toward their constituent members'); *see also In re Johns–Manville Corp*., 26 B.R. 919, 925 (Bankr. S.D.N.Y. 1983) ("[T]he individuals constituting a committee should be honest, loyal, trustworthy and without conflicting interests, and with undivided loyalty and allegiance to their constituents … Conflicts of interest on

[9] These cases proceed under the Bankruptcy Administrator (the "BA") program, not the U.S. Trustee. In this Court, the BA typically moves for appointment of unsecured creditors' committees, subject to the Court's discretion. Section 1102's strictures still govern.

the part of the representative persons or committees are … not to be tolerated."); *In re Haskell-Dawes, Inc*., 188 B.R. 515, 522 (Bankr. E.D. Pa. 1995) ("[T]he creditors appointed to the creditors' committee have a fiduciary obligation to act in the interests of the members whom they represent .... This duty prohibits members of the creditors' committee from using their position to advance their own individual interests.").

These same duties extend to counsel for any individual Committee Member. *In re Dow Corning Corp*., 194 B.R. 121, 135 (Bankr. E.D. Mich. 1996), *rev'd*, 212 B.R. 258 (E.D. Mich. 1997) ("[A]llowing attorneys [as opposed to individual creditors] to serve on committees in . . . [a representative] capacity places them in the unacceptable position of concurrently serving two masters with contrary interests."). *See also* Kenneth N. Klee & K. John Shaffer, Creditors' Committees Under Chapter 11 of the Bankruptcy Code, 44 S.C. L. Rev. 995, 1011 (1993) ("[A] representative or agent may be disqualified from serving on a creditors' committee due to the agent's conflicting loyalties to his or her own client's particular interests and to the constituency of the creditors' committee as a whole.").

Further, counsel may not take decisions on behalf of Committee Members without first consulting with them and fully appraising them of the consequences of such decisions. *In re Cyprus Mines Corp*., Case No. 21-10398 (LSS), Dkt. 302 at 9-10 (Bankr. D. Del. May 18, 2021) (Judge Silverstein of Delaware, challenging the practice of law firms sitting on committees by proxy); *see* discussion *infra* at 10.

ARGUMENT

The FCR, a party in interest, respectfully submits that adequate representation of the class of currently ill claimants appears absent. 11 U.S.C. § 1102(a)(4). An official creditors' committee exists to represent that class and to negotiate and formulate a confirmable Plan. *See* 11 U.S.C. §§ 1102(a)(1), (b)(1); 1103(c)(3). In asbestos cases, Section 524(g) supplies the basis for achieving

that result through a trust that pays valid claims promptly and treats similarly situated claimants similarly. 11 U.S.C. § 524(g)(2)(B)(i)–(ii).

Thus, Committee Members must act loyally and exclusively for the benefit of the entire class of current claimants—*i.e.*, by engaging in good faith on the terms, funding, and procedures of a confirmable Section 524(g) plan.[10] No member of an asbestos committee (or their counsel), can, consistent with their fiduciary duty to the class, advance positions that are antithetical to that result. Where, as here, the ACC Firms' litigation posture obstructs the pathway to class compensation under Section 524(g), protects their own interests by seeking to shield them from scrutiny, and contradicts their positions in similar cases, their conduct departs from the "adequate representation" that Section 1102 requires. As such, corrective relief is warranted.

A. The Claimants the ACC Firms Purport to Represent Have Not Been "Calling the Shots"

The constituencies that are suffering from the lack of progress in these cases are the classes of valid current and future asbestos claimants. They are being deprived the benefit of full-pay, prompt compensation even though that outcome is easily attainable, as in *Paddock* and *Garlock*. What makes this alarming is that the currently ill constituency may not know that immediate relief is available here. This is because the record before the Court shows a persistent pattern of proxy decision-making in which the ACC Firms formulate and execute the strategy for the creditor class consistent with their interests, without the informed, robust participation that Section 1102 presupposes.[11]

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[10] 11 U.S.C. § 524(g)(2)(B)(ii)(V) ("the trust will operate through mechanisms . . . that provide reasonable assurance that the trust will value, and be in a financial position to pay, present claims and future demands that involve similar claims in substantially the same manner.").

[11] Fiduciary misalignment has plagued the interests of asbestos creditor classes since *Johns-Manville*. *See* S. Todd Brown, *Section 524(g) Without Compromise: Voting Rights and the Asbestos Bankruptcy Paradox*, 2008 Colum. Bus. L. Rev. 841, 855-6, 902-04 (2008) (detailing how plaintiffs' lawyers have exercised substantial control over trust claim qualification criteria, settlement values, key appointments, and trust governance provisions to preserve their influence); *see also, e.g., In re Congoleum Corp.*, 426 F.3d 675, 693 (3d Cir. 2005) ("As this case demonstrates, leaving

This "proxy" concern is neither abstract nor speculative. On the contrary, it has been demonstrated time and again in these proceedings. For example, in sworn testimony, Robert Overton, who was appointed to the ACC in June 2020 (now sadly deceased), testified that he was unaware of his appointment or of the committee's role.[12] See Dkt. 1779 (Ex. C) (citing Nov. 9, 2020 Dep. Tr., *Overton v. Armstrong Int'l, Inc.*, No. 20-1482 (Mass. Super. Ct.) at 329:9–15; 378:11–24; 379:1–6, 12–16, 20–22; 380:2–5). Of course, a fiduciary who does not know that he is a fiduciary cannot discharge duties of loyalty and care to the creditor class.

Nor was that an isolated event. Rather, the overall record in these cases is consistent. For example, while it is common for committee counsel to coordinate with members' individual counsel, the billing narratives of lead ACC counsel (Robinson+Cole) do not reflect direct committee member participation, *e.g.,* meeting with Mr. Overton on a particular date to discuss a

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the procedures for allocation of resources predominantly in the hands of private, conflicting interests has led to problems of fair and equal resolution. The need for counsel with undivided loyalties is more pressing in cases of this nature than in more familiar conventional litigation. Correspondingly, the level of court supervision must be of a high order.").

[12] Nov. 9, 2020 Depo. Tr., *Robert Overton vs. Armstrong Int'l, Inc.*, No. 20-1482 (Mass. Super. Ct. Dept of the Trial Court) at 329:9-15; 378:11-24; 379:1-6, 12-16, 20-22; 380: 2-5. During the deposition, when Mr. Overton was asked about his appointment to the ACC in *Aldrich/Murray*, his answers were as follows:

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

proposed motion to dismiss.[13] Nor have we identified any reimbursement requests by individual committee members for committee-related work. The FCR, for his part, has had some interactions with the ACC Firms but none with a Committee Member, including in connection with the Court-ordered mediation. Indeed, the FCR questions whether the Plan negotiated between the FCR and the Debtors (with funding totaling $545 million, significantly larger than the *Garlock* trust, which is paying valid claims in full) was shared with the Committee Members, especially considering that six of the eleven Committee Members died before the agreement was reached in September 2021, and are only now being replaced.[14] Plus there is the troublesome fact that at least one Committee Member swore under oath that he did not know the Aldrich/Murray ACC existed, let alone what role it played or what his fiduciary duties may have been.

Other bankruptcy judges have identified episodes where asbestos plaintiff firms, rather than actual clients, were "calling the shots." As noted above, in *Bestwall*, Judge Beyer expressed concern that Maune Raichle, which represents claimants on the *Aldrich, Bestwall*, and *Paddock* ACCs, was likely directing litigation strategy rather than its clients, observing that "while the Court has no direct evidence, it strongly suspects the nine claimants did not direct the effort to contest the Court's PIQ Order by filing the Illinois Lawsuit … [and] the Maune Raichle firm … likely is the driving force behind the Illinois litigation." *In re Bestwall LLC*, Case No. 17-31795, Dkt. 2095 ¶ 7 (Bankr. W.D.N.C. Sept. 23, 2021). Because the *Bestwall* Court's hands were "tied," it reluctantly sanctioned *both* the claimants and Maune Raichle. *Id.*

Likewise, in Delaware, Judge Silverstein cautioned that firms representing committee members "must be mindful of any positional conflicts they may have and act accordingly and

[13] The billing records do reveal, however, regular meetings with the committee law firms, the law firm co-chairs, and unidentified "committee members," likely also law firms given, among other things, the fact that the committee hasn't had full creditor membership for years.
[14] *See* Dkt. 2769 at ¶¶ 9, 11, 13, 19, 21, 23.

pursuant to all appropriate ethical standards," and further warned that those firms "should be wary that they are not unintentionally taking on fiduciary duties in these mass tort cases to clients other than their own." *In re Cyprus Mines Corp.,* Case No. 21-10398 (LSS), Dkt. 302 at 9–10 (Bankr. D. Del. May 18, 2021); *see also Westmoreland Hum. Opportunities, Inc. v. Walsh*, 246 F.3d 233, 256 (3d Cir. 2001) ("A committee member violates its fiduciary duty by pursuing a course of action that furthers its self-interest to the potential detriment of fellow committee members.").

The Fourth Circuit has taken note of the ACC Firms in these cases placing their interests ahead of the classes of claimants. In affirming key *Bestwall* orders, the Fourth Circuit described the ACC Firms' tactics as "relentless[] attempt[s] to circumvent the bankruptcy proceeding," while noting that "aspirational greater fees that could be awarded to the claimants' counsel in the state-court proceedings is not a valid reason to object to the processing of the claims in the bankruptcy proceeding…."). *In re Bestwall LLC*, 71 F.4th 168, 184 (4th Cir. 2023), *cert. denied sub nom. Off. Comm. of Asbestos Claimants v. Bestwall LLC*, 144 S. Ct. 2519 (2024), and *Esserman v. Bestwall LLC*, 144 S. Ct. 2520 (2024). As recently as August 1, 2025, Judge Agee's concurrence in the Fourth Circuit opinion denying the ACC's latest motion to dismiss in *Bestwall* noted anew: "But in the eight years this case has been pending, it is the [ACC] that has filed multiple challenges that have impeded progression to a plan and confirmation hearing…. That begs the question, as we previously noted in *In re Bestwall LLC*, as to whether the delay relates to valid claims or a desire for perceived higher attorneys' fees should the claims be removed and be adjudicated outside of bankruptcy? Perhaps future review will answer that question."[15]

On this record, with years of absent, unidentified committee members, the concomitant practice of proxy decision-making, and the failure to progress these cases, the Court, without more,

[15] *Bestwall LLC v. Off. Comm. of Asbestos Claimants of Bestwall, LLC*, No. 24-1493, 2025 WL 2177391, at *10 n.2 (4th Cir. Aug. 1, 2025).

may question whether the true best interests of the class are being advanced in these cases. But there is more.

B. The ACC Firms' Relentless Push to Exit Bankruptcy is Driven by External Interests.

From day one, the ACC's categorical, organizing principle has been to dismiss divisional merger cases in North Carolina (but not elsewhere), by any means possible. But that litigation posture runs headlong into the ACC's statutory function under Section 1102(b)(1), which includes participating in the formulation of a Plan and advising the constituency about that Plan.[16] In asbestos cases, Section 524(g) goes further, structuring relief around a plan and trust that will pay similarly situated claims similarly and fairly. Functionally, Section 524(g) trusts operate as global settlement frameworks, and yet, the statute preserves the jury trial rights of any claimant who is unhappy with the trust's offer. *A.H. Robins v. Piccinin*, 788 F.2d 994, 1012 (4th Cir. 1986); 28 U.S.C. § 1411. Once a trust is established, claimants prefer the predictability and speed of payments made via a Section 524(g) trust. Indeed, the FCR and his counsel are personally unaware of a single instance where a claimant sought recourse to the tort system when a trust settlement was available.

[16] *See, e.g., Retail Marketing Company v. Northwest National Bank* (*In re Mako, Inc.*), 120 B.R. 203, 212 (Bankr. E.D. Okla. 1990) (creditors' committee is intended to be integrally involved in formulation of Chapter 11 Plan to optimize the return to the class); *In re Map Int'l, Inc.*, 105 B.R. 5, 6 (Bankr. E.D. Pa. 1989) (members of committee may not "use their positions . . . to advance only their individual interests"); *see also, e.g., In re Allegheny Int'l, Inc.*, 139 B.R. 336, 345-46 (W.D. Pa. 1992) (services rendered by attorney for committee must be in interest of those represented as a group, in order for those services to be compensable); *In re Whittaker, Clark & Daniels, Inc.*, No. 23-13575, Dkt. 957 (committee objection to appointment of official committee of unsecured creditors, on grounds that these creditors primarily consist of law firms who face inherent conflicts arising from their representation of the debtors, noting that committee members owe fiduciary duties to all creditors represented by that committee) (citing *Westmoreland Hum. Opportunities, Inc. v. Walsh*, 246 F.3d 233, 256 (3d Cir. 2001); *In re Cyprus Mines Corp.* No. 21-10398 (LSS), 2021 WL 2105427 (Bankr. D. Del. May 18, 2021) (claimants represented by Kazan, McClain, Satterley, & Greenwood ("Kazan McClain"), which sits on the *Aldrich* ACC, arguing the same point to Judge Silverstein, seeking an independent committee on the grounds that the *Cyprus* ACC could not adequately represent the general unsecured creditors, as most members were represented by firms that also represented *Imerys* TCC members, and the *Cyprus–Imerys* settlement left those members conflicted given counsel's prior approval of that agreement).

As Judge Whitley correctly observed in denying the ACC's motion to dismiss these cases, "[t]he benefits to all parties of resolving mass tort asbestos liability in a bankruptcy proceeding are numerous." Dkt. 2047 at 41 (emphasis added) (citing *In re Federal-Mogul Global, Inc*., 684 F.3d 355, 362 (3d Cir. 2012) ("In particular, observers have noted the trusts' effectiveness in remedying some of the intractable pathologies of asbestos litigation, especially given the continued lack of a viable alternative providing a just and comprehensive resolution.").[17] The Fourth Circuit has recognized that Section 524(g) of the Bankruptcy Code "promote[s] the equitable, streamlined, and timely resolution of claims in one central place compared to the state tort system, which can and has caused delays in getting payment for legitimate claimants."). *In re Bestwall LLC*, 71 F.4th 168, 183 (4th Cir. 2023).

And yet the record demonstrates a sustained strategy by the ACC to exit bankruptcy at all costs. Rather than negotiate the terms of a Plan, those ACC Firms have prioritized dismantling the Chapter 11 process itself. They resisted mediation as the BA requested, opposed the bar date and PIQ, fought estimation and trust discovery, even objected to creation of a $270 million qualified settlement fund earmarked for claimants, and then pivoted to serial lift-stay motions and dismissal bids (all denied). *See, e.g.*, *Aldrich* PI Order, 2021 WL 3729335, at *37–*38 (preliminary injunction "necessary" to allow a Section 524(g) reorganization to proceed); Dkt. 994 (QSF approval); Dkt. 1127 (authorizing estimation of both current and future asbestos claims); Dkts. 1240, 170 (granting trust discovery); Dkt. 1608, 1726 (ordering mediation procedures); Dkt. 2047 at 61–63 (denying dismissal and finding Debtors and not the ACC have attempted to move these

[17] Again quoting Judge Whitley, "[e]ven for solvent or non-distressed debtors, it would appear mutually advantageous to employ a trust mechanism to pay the claims of victims who prefer these more expeditious procedures to pursuing their claims in the tort system. Potentially, a plan/trust might offer "evergreen" trust funding by the debtor and its allies to ensure all claims are paid in full. Or an "opt out'" right could preserve the right to litigate in the tort system for those claimants who prefer that course. Thus, even for a solvent and "non-distressed" asbestos debtor and its creditors, there may be advantages to be obtained in Chapter 11." Dkt. 2047 at 41.

cases forward). The Fourth Circuit has already cautioned against this same playbook in *Bestwall*, 71 F.4th 168, 184 (4th Cir. 2023).

Why, then, has the ACC sought to subvert bankruptcy at every turn? If the answer is the prospect for greater fees for the ACC Firms, then the Fourth Circuit has made clear that those hopes are "not a valid reason to object to the processing of the claims in the bankruptcy proceeding." *Id.* With one exception, the law firms always settled their claims against the Debtors, yet quixotically they still resist the statutory mechanism that would deliver prompt, class-wide payment. *See Aldrich*, Dkt. 5 (Informational Brief) at 30-31; Adv. Pro. 20-03041, Dkt. 279, Ex. F (Bankr. W.D.N.C. Jun. 4, 2021). Whether or not the Law Firms are motivated by fees (*i.e.*, the carrot), the ACC's conduct has left current claimants—including every committee member they represent—uncompensated by the Debtors while they lived. That outcome cannot be reconciled with the committee's mandate to "adequate[ly] represent" the class.

C. The ACC's Stated Aim, Consistent with their Pecuniary Interests, is to Avoid Adverse Findings Against Plaintiffs' Firms

The ACC has been transparent as to another reason why they want to escape Chapter 11: to avert judicial findings about the ACC Firms' underlying conduct in the tort system (*i.e.*, to avoid the stick). There is no need to speculate on this point. *See* Jan. 26, 2023 Hr'g Tr., at 38:25; 39:1-10, Dkt. 1599 (Counsel for the ACC stating it is motivated to avoid "some very critical determinations about the, the, the way that the plaintiffs and the tort lawyers behaved in the tort system . . . And that is a responsibility that we bear, is to not let that happen again on our watch.").

Judge Whitley emphasized in *DBMP*, in which seven firms appearing in these cases also sit on that ACC: "[I]t is possible that the Matching Claimants are simply a representation of the tort firms themselves protecting their pecuniary interests" and "someone acknowledged [in *Aldrich*] that part of this was the fear that they were going to get tarred with the, with the *Garlock*

brush[,] that[], of making nondisclosures." Feb. 9, 2023 Hr'g Tr., at 92:22-25, 93:1-6, *DBMP*, Case No. 20-30080, Dkt. 2280.

And most recently, ACC counsel again candidly described "the risk . . . that, like Judge Hodges in *Garlock*, the Court is presented with and asked to make findings of . . . wrongdoing [or] misconduct. That's the risk and that is what we are in a position of trying to avoid." Mar. 27, 2025 Hr'g Tr. at 38:15-18.

In *Garlock*, Judge Hodges determined that plaintiff firms routinely withheld exposure evidence when settling with Garlock, denying exposure to bankrupt manufacturers' products at the time, only to file claims for their clients against those same trusts after settlement. *In re Garlock Sealing Techs., LLC*, 504 B.R. 71, 84 (Bankr. W.D.N.C. 2014).[18] Judge Hodges found:

> [T]he fact that each and every one of them contains such demonstrable misrepresentation is surprising and persuasive. More important is the fact that the pattern exposed in those cases appears to have been sufficiently widespread to have a significant impact on Garlock's settlement practices and results. *Id.* at 85.

Judge Hodges described the law firms' conduct as forming a "startling pattern of misrepresentation." *Id.* at 86.

Garlock later brought RICO actions against four firms, three of which sat on the *Garlock* ACC, alleging that they presented instances of conflicting work histories and suborned perjury to conceal their clients' exposures to pipe-covering insulation produced by the companies that went bankrupt in the early 2000s.[19] Then in *Garlock Sealing Tech., LLC v. Shein*, District Court Judge

[18] *See generally* Lester Brickman, *Civil RICO: An Effective Deterrent to Fraudulent Asbestos Litigation?*, 40 Cardozo L. Rec. 2301 (2019); Honorable Peggy L. Ableman, *The Garlock Decision Should Be Required Reading for All Trial Court Judges in Asbestos Cases*, 37 Am. J. Trial Advoc. 479 (2014); Lester Brickman, *Fraud and Abuse in Mesothelioma Litigation*, 88 Tul. L. Rev. 1072 (2014); Roger Parloff, *The $200 Billion Miscarriage of Justice*, Fortune, Mar. 4, 2002; U.S. Dep't of Justice, Statement of Interest Urging Transparency in the Compensation of Asbestos Claims (Dec. 28, 2020).

[19] *Garlock Sealing Techs., LLC v. Shein Law Ctr., Ltd*., No. 3:14-cv-137, 2015 WL 5155362 (W.D.N.C. Sep. 2, 2015); *Garlock Sealing Techs., LLC v. Simon Greenstone Panatier Bartlett*, No. 3:14-cv-00116, 2015 WL 5148732 (W.D.N.C., Sep. 2, 2015); *Garlock Sealing Techs., LLC v. Belluck & Fox, LLP*, No. 3:14-cv-118, 2015 WL 1022279

Mullen denied the law firms' motion to dismiss, holding that the conduct alleged "goes well past the kind of routine litigation activities that . . . courts have found inadequate to state a claim under RICO." *Garlock Sealing Techs., LLC v. Shein*, No. 3:14-CV-137, 2015 WL 5155362, at *3 (W.D.N.C. Sept. 2, 2015).[20]

The story does not end with *Garlock*. In *Bestwall*, a case further along procedurally than these cases, the debtors recently proffered to the Court that "[t]here is a widespread practice, in the Debtor's resolved claims, of plaintiffs and their lawyers failing to disclose and acknowledge alternative exposure evidence used to make Trust claims."[21] The *Bestwall* debtor has sought discovery on this point from multiple law firms, many of which sit on the ACC here.[22] The FCR is not in a position to evaluate whether *Bestwall's* allegations warrant the pursuit of a RICO complaint similar to those pursued in *Garlock*.

As recently as July 23, 2025, the New York Supreme Court issued a ruling in *Petro v. Mario & DiBono Plastering Co. Inc. et al*, which may help explain the Law Firms' concerns that this Court not identify further evidence of suppression.[23] There, the Court ordered a new trial after finding that plaintiff's current lawyers failed to timely disclose critical evidence that could have materially affected the outcome of a $28.5 million asbestos verdict: the existence of 35 settlements from plaintiff's previous asbestosis claims.[24] The Court determined that this undisclosed

(W.D.N.C. Mar. 9, 2015); Complaint, *Garlock Sealing Techs., LLC, v. Waters & Kraus, LLP*, No. 3:14-cv-00130, 2015 WL 1022291 (W.D.N.C. Mar. 9, 2015).

[20] The Garlock RICO cases were never adjudicated on the merits; rather, they were voluntarily dismissed in conjunction with the Garlock bankruptcy settlement.

[21] *Bestwall*, Debtor's Objection to the Official Committee of Asbestos Claimants' Amended Motion in Limine regarding the Debtors' "Evidence Suppression" Theory ["Bestwall Objection"], at p. 5, para. 4.b., Dkt. 3683. The Bestwall Objection, pp. 11-14, discusses other courts which have recognized the important of alternative exposure evidence, which are beyond the scope of this Response.

[22] *Bestwall*, Notice of Serving Subpoenas to Produce Documents, Information, or Objects, Dkt. 3444 (identifying multiple firms, including many ACC Law Firms).

[23] *See Petro v. Mario & DiBono Plastering Co. Inc. et al.*, No. 190324/2020, 2025 WL 2062216 (N.Y. Sup. Ct., N.Y. Cnty. July 23, 2025). This case concerned, in part, an ACC Law Firm, Weitz and Luxenberg. The relevance of the decision is to show the real-world monetary impact of such allegations.

[24] *Id.*

information was "directly relevant" to the issue of apportionment and would likely have been material to liability allocation and damages; and thus, granted the defendants' motion to set aside the verdict under New York law.[25]

The FCR currently takes no position as to whether evidence suppression persisted by any firm post-*Garlock*. What matters for the Section 1102(a)(4) inquiry, however, are the incentives at play: the ACC Firms have substantial personal and pecuniary interests in foreclosing factual findings that could, at a minimum, reflect poorly on their own historical practices. Those interests are misaligned with the interests of the class of current claimants.

Accordingly, the concern over adverse findings is real, has been acknowledged, and at minimum creates the appearance of a conflict that materially limits the ability of the ACC Firms and the Committee Members to advance the class's interests. *In re Congoleum Corp*., 426 F.3d 675, 688–93 (3d Cir. 2005) (recognizing actual, concurrent conflicts, rejecting broad/ineffective waivers, and requiring strict scrutiny of prepetition arrangements and repeat-player relationships in mass-tort restructurings).[26]

D. The ACC Firms' Positional Conflicts Further Undercut the Notion of Adequate Representation

The same ACC Firms also have taken irreconcilable positions across materially similar asbestos bankruptcies involving solvent debtors that completed prepetition restructurings or otherwise had the wherewithal to pay asbestos creditors in full. In *Garlock*, they supported—and overwhelmingly voted for—a consensual plan (with $480 million in funding), and the resulting trust has paid valid claims in full, promptly and fairly. In *Kaiser*, they likewise backed a plan, by

[25] *Id* (citing CPLR § 5015(a)(3)).
[26] *See also* North Carolina Rule of Professional Conduct 1.7(a)(2), identifying a concurrent conflict of interest where "the representation of one or more clients may be materially limited by the lawyer's responsibilities to another client, a former client, or a third person, *or by a personal interest of the lawyer*." (Emphasis added).

100% of votes, that paid claimants in full through insurance and, critically, embedded robust safeguards against suppression of exposure evidence.[27] In *Bestwall*, by contrast, they advanced a plan without comparable protections; and in both *Bestwall* and *Aldrich* they have repeatedly pursued dismissal, directly and indirectly, branding the cases illegal, unconstitutional, or fraudulent—culminating in the denial of five separate motions to dismiss.[28] In *DBMP*, however, they made no dismissal bid. And in *Paddock*, they urged swift confirmation as fair, lawful, and in claimants' best interests, voting 99.97% in favor of a $610 million trust to compensate victims of Kaylo insulation—the last "Big Dusty" that manufactured a friable, highly toxic amosite product.[29]

Adverse positions also surface within these cases. In *Aldrich*, for example, Maune Raichle sought stay relief for an individual client, Mr. Semian, to press a one-off tort action while simultaneously representing Mr. Hamlin, a committee member whose fiduciary duty runs to the class (*i.e.*, to obtain prompt and fair compensation for all claimants). Mr. Hamlin could not have commented on the merits of that strategy: he sadly died in December 2020, just months after his appointment.[30]The Court denied stay relief, and Maune has appealed, again. On multiple occasions, both Maune and the ACC have told the Court that they will accept no plan of reorganization under any terms from a solvent debtor—even where a plan would mirror structures they previously embraced in *Garlock, Paddock,* and *Kaiser*.

The ACC Firms' contradictory positions cannot be squared with the best interests of current claimants. How can a firm that sat on the *Paddock* committee urge that court to confirm a $610

[27] *In re Kaiser Gypsum Co., Inc*., No. 16-31602 (JCW), 2021 WL 3215102, at *7, 13 (W.D.N.C. July 28, 2021) (plan pays general unsecured claims in full and Kaiser has unlimited access to insurance), aff'd, 60 F.4th 73 (4th Cir. 2023); *see also id.,* Dkt. 2481, Ex. I.A. 19 at § 5.10 (Bankr. W.D.N.C. Sep. 24, 2020) (trust distribution procedures requiring a claims audit, and providing that if the audit reveals that fraudulent information has been provided to the trust, it may "penalize any claimant or claimant's attorney by rejecting the [claim] or by other means[.]".
[28] See *In re Bestwall, LLC*, Case No. 17-31795, Dkt. 891 (Bankr. W.D.N.C. July 29, 2019); *Bestwall*, Dkt. 1546 (Dec. 22, 2020); *Bestwall*, Dkt. 3288 (Feb. 21, 2024); *Aldrich*, No. 20-30608, Dkt. 2047 (Bankr. W.D.N.C. Dec. 28, 2023).
[29] *Paddock*, No. 20-10028, Dkt. 1406, ¶ 19 (May 26, 2022).
[30] See Dkt. 2060.

million trust as legal, fair, reasonable, and urgently needed for claimants, yet argue the exact opposite in these cases? How can those same firms refuse even to consider a proposed $545 million trust here when, years earlier, they accepted less for claims arising from the same encapsulated, chrysotile gasket exposures compensated by the *Garlock* trust?

The ACC Firms now steering the ACC—and that approved the *Garlock* and *Paddock* plans and trusts—likely have already submitted claims for workers with occupational gasket exposures and additional exposure to highly toxic, ubiquitous, friable Kaylo insulation. Valid claims in those cases have been paid. By contrast, in these cases the same claimant profiles are left uncompensated. That outcome cannot be justified as reflecting the best interests of the class; it aligns instead with counsel's own litigation posture and their stated desire to shield themselves from the consequences of their conduct.

In sum, these dynamics present exactly the kind of concurrent and personal-interest conflicts that courts policing mass-tort bankruptcies have flagged repeatedly: conflicts that are incompatible with the fiduciary duties owed by to the entire class of current claimants, and that warrant remedial action to restore adequate, conflict-free representation.

CONCLUSION

The present record demonstrates valid concerns that the proposed Committee Members will, absent appropriate governance measures, be unable to provide "adequate representation" for the class of currently ill creditors.

WHEREFORE, for the reasons stated above, the FCR respectfully requests that the Court enter an Order granting relief as the Court deems just and proper to restore adequate, conflict-free representation of the class of current claimants.

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Charlotte, North Carolina

Respectfully submitted,

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