

**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' LIMITED RESPONSE TO
MOTION OF THE OFFICIAL COMMITTEE OF ASBESTOS
PERSONAL INJURY CLAIMANTS TO SUBSTITUTE COMMITTEE MEMBERS**

Aldrich Pump LLC ("Aldrich") and Murray Boiler LLC ("Murray"), as debtors and debtors in possession (together, the "Debtors"), hereby respond to the motion of the Official Committee of Asbestos Personal Injury Claimants (the "Committee") to substitute eight Committee members [Dkt. 2769] (the "Motion"). The Debtors note the extreme tardiness of the Motion, highlight that delay's relevance to the Committee's actions in these cases to date, and also respectfully suggest that now would be a good time to consider the issue of Committee governance in these Chapter 11 Cases going forward.

RESPONSE

1. The Motion, filed over five years after the Petition Date, seeks to substitute eight of the Committee's eleven original members. Mot. at 1. Unbeknownst to the Debtors until recently, however, six of these eight Committee members passed away more than four years ago,

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.



within the first year of these Chapter 11 Cases.² Not only did the Committee fail to timely replace a majority of its membership, for years it also failed to notify the Court, the Office of the United States Bankruptcy Administrator, the Debtors, the Future Claimants' Representative (the "FCR"), or any other stakeholders of this extensive absence of Committee membership until the issue was raised at the July 2025 hearing. Further, the Motion reveals nothing about the proposed members' ability to serve nor their familiarity with these Chapter 11 Cases.

2. This makes clear what has always been the Debtors' impression – the actual Committee members³ have little, if any, role in the Committee's operations and decision-making process.⁴ Instead, the Committee is controlled by the various law firms who represented plaintiffs in the tort system against the Debtors. In fact, in these Chapter 11 Cases counsel for the Committee has even referred to these law firms as the Committee members, even though they are not.⁵ These law firms have an agenda, which has been made clear in these cases, but that agenda may not be in the best interests of the class of current claimants that the Committee is authorized to represent.

² Mr. Panagiotopoulos, Mr. Hamlin, Mr. Fowles, Mr. Villanueva, Mr. Shiel, and Mr. Overton passed away within a year of the June 2020 Petition Date. Id. at ¶¶ 8-13, 18-23. Two of these six members (Mr. Shiel and Mr. Villanueva) passed away within the first two months of their July 2020 appointment. Id.

³ As previously noted by the FCR, Mr. Overton, co-chair of the Committee, disclosed in a tort system deposition taken four months after his appointment that he did not even know he was on the Committee. See The Future Asbestos Claimants' Representative's Opposition to the Motion to Dismiss on Behalf of Robert Semian and Other Clients of MRHFM [Dkt. 1779] at 16 n. 50, Exhibit C (Overton deposition transcript excerpt).

⁴ In fact, even after the passing of both Committee co-chairs in September 2020 and January 2021 (Mot. at ¶¶ 6, 9, 23), Committee counsel reported several meetings with or communications with "committee co-chairs." See e.g., Thirteenth Interim Fee Application of Robinson & Cole LLP, as Counsel to the Official Committee of Asbestos Personal Injury Claimants, for Payment of Interim Compensation and Reimbursement of Expenses Incurred for the Period June 1, 2024 through September 30, 2024 [Dkt. 2476], Sched. A-1 at 5, 6, 14; Sched. A-3 at 5, 13; Sched. A-4 at 4, 5 (at least eleven time entries indicating communications with Committee co-chair, including 1.3 hour meeting).

⁵ See Mar. 3, 2022 Hr'g Tr. [Dkt. 1049] at 34:19-23 (Counsel to FCR: "You heard [Committee counsel] saying five committee members were on the [meet and confer about the bar date and personal injury questionnaires]. That was a slip of the tongue. There were no committee members on that call. There were five law firms on that call, the same law firms that dominate all these committees.").

3. For instance, as the FCR has pointed out, counsel for the Committee has stated that one of its primary focuses in estimation is to ensure that the Committee protects the law firms' reputations from allegations, such as were made and proven in Garlock, that the firms engaged in evidence suppression in the tort system.⁶ But why would the actual members of the Committee care about defending the actions taken by plaintiff law firms in the course of their representation of other clients? Instead, the Committee members and the class of current claimants they represent presumably just want to know how much they are going to be paid, and when. Similarly, the Committee seems to believe that the \$545 million trust that was negotiated between the Debtors and the FCR is not enough money (although the Committee to date has never indicated what amount of trust funding would be sufficient).⁷ But surely \$545 million is more than enough to cover current claimants, who likely only comprise roughly 20% of the Debtors' asbestos liability and would be paid first by the trust.⁸ Concerns about the amount of trust funding, therefore, would seem to be more of an issue for future claimants and their designated representative, the FCR (who supports the proposed \$545 million in trust funding). To the extent tort law firms serving as counsel to Committee members are focused on the needs of future claimants, it appears such concern is driven by a desire to protect the current asbestos-litigation model, along with its historical contingent tort system fee.⁹

⁶ See Jan. 26, 2023 Hr'g Tr. [Dkt. 1599] at 38:25; 39:1-10 (Natalie Ramsey, counsel for the Committee, in response to the Court's question as to why precision is needed for an estimation number, stated "The, the difficulty from the claimant perspective . . . and I, I want to be very transparent about this – is that in addition to reaching a low number, Judge Hodges made some very critical determinations about the, the, the way that the plaintiffs and the tort lawyers behaved in the tort system And that is the responsibility that we bear, is to not let that happen again on our watch.").

⁷ Because the proposed \$545 million settlement negotiated by the Debtors and the FCR was not reached until after the passing of six Committee members, it does not appear a Committee majority has ever even considered the proposal.

⁸ See Jan. 28, 2021 Hr'g Tr. [Dkt. 575] at 139:14-18 (Committee counsel: "The real issue here is the futures. As [counsel to the FCR] said, the currents are, are, you know, a small percentage of the money that is going to be required in order to fully pay all of the asbestos claims against these debtors.").

⁹ See infra note 11.

4. Likewise, because the law firms serving as counsel to members of the Committee are exclusively tort system lawyers, they stand to benefit from a return of these claims to the tort system in ways that their clients do not. If the Debtors form a trust and claimants are paid by essentially filing documentation with the trust akin to a proof of claim, what role is left for the tort system lawyers? Can they continue to justify up to 40% contingency fees for such work? Will the "advertising firms" that originally find plaintiffs through television ads continue to refer those clients to the tort firms and split the contingency fees, or will these advertisers simply handle the submission of trust claims without the tort system lawyers and, as a result, collect all applicable fees?

5. While the lawyers for the current claimant firms presumably see these as major issues, the class of current claimants who the Committee represents should not. In fact, as noted by several courts, bankruptcy trusts typically are highly beneficial to claimants, as they make recoveries more equitable, efficient, and remove the stress and cost of litigation. As the Third Circuit, for instance, has stated:

[Asbestos] trusts appear to have fulfilled Congress's expectation that they would serve the interests of both current and future asbestos claimants and corporations saddled with asbestos liability. 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. Empirical research suggests the trusts considerably reduce transaction costs and attorneys' fees over comparable rates in the tort system. . . . In sum, section 524 trusts are the only national statutory scheme extant to resolve asbestos litigation through a quasi-administrative process.¹⁰

6. The Fourth Circuit has taken note of the conflict between the interests of claimants and the law firms that control the asbestos committees. In its decision affirming the

¹⁰ In re Federal-Mogul Glob. Inc., 684 F.3d 355, 362 (3d. Cir. 2012).

preliminary injunction against asbestos suits against non-debtor affiliates in Bestwall, the Circuit noted:

It is not clear why Claimant Representatives' counsel have relentlessly attempted to circumvent the bankruptcy proceeding, but we note 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.¹¹

7. During the time when the Committee was acting with only a minority of its members, either because the actual members were not at all involved in the process and/or because they had passed away, the Committee made multiple key strategic decisions in these Chapter 11 Cases, including: pursuing substantive consolidation and fraudulent transfer claims that the Debtors suggest are merely indirect ways to attempt to dismiss the cases; objecting to the Debtors' motion to establish a \$270 million qualified settlement fund for the benefit of claimants [Dkt. 891] (November 2021); and, most importantly, affirmatively seeking dismissal of these Chapter 11 Cases [Dkt. 1756] (May 2023). What the Committee has **not done** during this timeframe is also worthy of note. During this time the Committee resisted attempts to consensually resolve these Chapter 11 Cases by refusing to meaningfully participate in plan negotiations and by opposing both mediation [Dkt. 1371] (October 2022) and estimation [Dkt. 892] (November 2021), even though a consensual plan could result in prompt payment for their own constituency of current claimants. The actions taken or, alternatively, not taken have effectively prevented the payment of the entire class of current claimants for which Committee members serve as fiduciaries.

¹¹ In re Bestwall LLC, 71 F.4th 168, 184 (4th Cir. 2023); see also Bestwall LLC v. Official Committee of Asbestos Claimants of Bestwall, LLC, ---F.4th---, 2025 WL 2177391, at *10 n.2 (4th Cir. Aug. 1, 2025) (J. Agee, concurring) (inquiring whether Committee-imposed delays in Bestwall "begs the question . . . as to whether the delay relates to valid claims or the desire for perceived higher attorneys' fees should the claims be removed and adjudicated outside the bankruptcy").

8. As a result of the foregoing, now that the issue of Committee membership is before the Court, the Debtors suggest it also is an appropriate time to focus on issues of Committee governance. The Committee has adopted a strategy of dismissal, directly or indirectly, or at least delay in these cases, to the exclusion of all other options. But this "Dismissal or Bust" strategy hardly seems to be in the best interests of current claimants as a class. Judge Whitley noted this point several times. For instance, he previously called out the Committee's exclusive dismissal focus¹² and questioned whether claimants might prefer receiving a payment to resolve their pending claims versus being mired in continuous bankruptcy litigation. See Oct. 28, 2021 Hr'g Tr. [Dkt. 869] at 39:5-6 ("Points and principle are great, but at the end of the day the, the victims probably would rather be paid."); Mar. 16, 2021 Hr'g Tr. [Dkt. 1049] at 191:24-192:3 ("If there is really a likelihood that a number could be arrived at that would pay all the claimants . . . it might be well to let those other [cases] be the test case and work out the number and get everyone paid in this one.").

9. The concern that asbestos committees are being run solely by tort system law firms and not by any actual claimants has been echoed by judges in other mass tort bankruptcies. In Cyprus Mines, a mass tort talc bankruptcy case pending in Delaware, Judge Silverstein faced a similar perceived misalignment between the motives of committee counsel and committee members. There, counsel for certain claimants argued that there was a conflict between committee counsel and committee members resulting in committee counsel serving "by proxy" and necessitating the modification of the claimant committee.¹³ While Judge Silverstein

¹² See Jan. 27, 2022 Hr'g Tr. [Dkt. 976] at 37:3-7 (Judge Whitley: "Apart from trying to dismiss the case or litigate the, the corporate restructuring, that's about all the ACC has been willing to do so far."); see also *Order Denying Motions to Dismiss* [Dkt. 2047] at 61 ("[A]t every opportunity [the ACC] have sought to force dismissal of these cases.").

¹³ In re Cyprus Mines Corp., 2021 WL 2105427, at *1 (Bankr. D. Del. May 18, 2021).

ultimately denied the motion, she would not "suspend reality and ignore the role plaintiff law firms play in a mass tort bankruptcy case." Id. at *3. She specifically referenced certain indicators that a committee was being solely controlled by law firms, including – as is the case here – a multi-year lag between certain committee members' deaths and the committee's request to amend the committee, noting that "[t]he lag in time suggests that [] Committee counsel was not aware of the death of two of its members." Id. at *4. She also noted that:

[w]hy this 'committee by proxy' universe has evolved, I can only guess. And, I won't speculate here. But, it was suggested [by committee counsel] at argument it is because these are complex cases and the claimants have to rely on their individual counsel for bankruptcy experience. Mass tort cases are certainly unique and undoubtedly present complex and complicated issues. But, from the perspective of committee member participation, mass tort cases are no more or less complex than other type of bankruptcy case.

10. Judge Silverstein went on to conclude that, "[b]ecause of the apparent conflation between committee members and their individual counsel, I feel compelled to remind the Cyprus Committee members, their individual counsel and Committee counsel of what I believe are first principles," including:

Committee members owe a fiduciary duty to their constituents. They must actively participate in committee meetings and make decisions, while they may be assisted by their individual counsel, committee members cannot abdicate their role in favor of their counsel and their counsel do not sit 'by proxy' or otherwise on creditor committees.

...

Committee counsel must communicate with and receive direction from actual committee members.

...

Law firms representing members of the Cyprus Committee and the Imerys TCC must be mindful of any positional conflicts they may have and act accordingly and pursuant to all appropriate ethical standards. And, those law firms should be wary that they are not unintentionally taking on fiduciary duties in these mass tort cases to

clients other than their own.¹⁴

11. Notably, Judge Silverstein also "direct[ed] Cyprus Committee counsel to provide a copy of this ruling to the Committee members and have a specific discussion with them about it." Id. at *5. She also directed "Cyprus Committee counsel to provide a copy of this ruling to all counsel who represent individual members of their committee who participate in Cyprus Committee meetings." Id.

12. The points raised by Judge Silverstein apply equally here, and the Debtors respectfully submit that the instant Motion provides an appropriate time to focus on issues of Committee governance in these Chapter 11 Cases. These cases have been prolonged by the lawyer-controlled Committee's sole focus on delay and dismissal and an absolute refusal to engage in negotiations to resolve the cases. If this is what the Committee *members* want and believe is in the best interests of the class of current claimants for which they act as fiduciaries, then that is the position of the Committee. But if this is what the law firms (who are not Committee members) want in order to advance their own interests, that defect in the governance of these Chapter 11 Cases with respect to the Committee should be addressed and remedied.

13. The Debtors look forward to discussing these issues with the Court at the hearing on the Motion on August 28, 2025.

RESERVATION OF RIGHTS

14. The Debtors have previously served discovery upon the Committee concerning the operation of the Committee, including the participation of its constituency in the decision-making and conduct of the Committee. To date, the Committee has objected and refused to respond to that discovery. The Debtors reserve all rights to pursue such discovery and to otherwise challenge

¹⁴ Id. at **4-5.

actions taken, in the past and future, by the Committee.

Dated: August 21, 2025
Charlotte, North Carolina

Respectfully submitted,

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