

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

In re	:	
	:	
	:	Chapter 11
DBMP LLC, ¹	:	
	:	
Debtor.	:	No. 20-30080 (JCW)
	:	
	:	

OBJECTION OF THE OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS AND THE FUTURE CLAIMANTS’ REPRESENTATIVE TO EMERGENCY MOTION OF THE DEBTOR TO CONTINUE HEARINGS ON AND BRIEFING SCHEDULE FOR THE ASBESTOS COMMITTEE’S AND FUTURE CLAIMANTS’ REPRESENTATIVE’S MOTIONS FOR (I) STANDING, (II) SUBSTANTIVE CONSOLIDATION AND (III) CERTAIN DISCOVERY

The Official Committee of Asbestos Personal Injury Claimants (the “ACC”) and the Future Claimants’ Representative (the “FCR”) in the above-titled chapter 11 case, by and through their respective undersigned counsel, hereby submit this Objection to the *Emergency Motion to Continue Hearings on and Briefing Schedule for the Asbestos Committee’s and Future Claimants’ Representative’s Motions for (I) Standing, (II) Substantive Consolidation, and (III) Certain Discovery* [ECF No. 1026] (the “Continuance Motion”) filed by DBMP LLC (the “Debtor” or “DBMP”). For the reasons that follow, the Court should deny the Continuance Motion.

PRELIMINARY STATEMENT

1. There is no emergency here. Moreover, the Debtor and CertainTeed’s request for an indefinite postponement of the Joint Motions (as defined below) recently filed by the ACC and FCR is an inappropriate litigation stratagem. As such, the Debtor’s motion should be denied.

¹ The last four digits of the Debtor’s taxpayer identification number are 8817. The Debtor’s address is 20 Moores Road, Malvern, Pennsylvania 19355.

2. With the conclusion of the preliminary injunction phase of this case, the asbestos claimants' representatives on one hand and the Debtor and CertainTeed on the other have different views about what should be tackled next. The ACC and FCR assert that resolving the critical issues brought to light during the year-long preliminary injunction proceeding represents the best path forward in this case. These issues include

- (i) investigating and litigating the fraudulent transfer case;
- (ii) addressing the inequities and structural subordination of asbestos victims resulting from the prepetition divisional merger of CertainTeed; and
- (iii) curing the inappropriate assertions of privilege.

The Debtor and CertainTeed, to the contrary, desire a lengthy and costly examination of asbestos creditor claims in the form of an "estimation." As more fully explained in the ACC's and FCR's oppositions to the Debtor's motion for estimation, the estimation and the related Rule 2004 discovery proposed by the Debtor will not advance the case, but will delay resolution of it, and are also rife with practical and legal pitfalls. And critically, as this Court has already recognized, no § 524(g) plan can be confirmed in this case without a supermajority vote of current asbestos claimants.

3. Collectively, the motions from CertainTeed and the Debtor and from the asbestos claimants' representatives constitute alternative approaches and should be considered together.

4. There is adequate time for considering them more or less simultaneously. There is only one estimation motion scheduled for October 4 and only one estimation-related motion scheduled for October 5. There is thus time for the ACC and FCR's motions to be heard during those two full court days. Accordingly, the ACC and FCR propose that the October 4 and October 5 dates be used not just for the estimation motions but also be used for the ACC and FCR's threshold motions on the fundamental issues in this case.

FACTUAL BACKGROUND

5. On August 23, 2021, the ACC and FCR filed four joint motions (collectively, the “**Joint Motions**”): (1) Motion of the Official Committee of Asbestos Personal Injury Claimants and the Future Claimants’ Representative to Compel Discovery Pursuant to the Crime-Fraud Exception and / or Waiver of the Attorney Client Privilege and Work Product Protection [ECF No. 1006] (the “**Crime-Fraud Motion**”); (2) Motion of the Official Committee of Asbestos Personal Injury Claimants and the Future Claimants’ Representative for Entry of an Order (I) Granting Leave, Standing, and Authority to Investigate, Commence, Prosecute, and to Settle Certain Causes of Action, and (II) to Conduct Relevant Discovery [ECF No. 1008] (the “**Standing Motion**”); (3) Plaintiffs’ Motion for Entry of an Order Substantively Consolidating the Estate of DBMP LLC with CertainTeed LLC or, in the Alternative, for an Order Reallocating the Asbestos Liabilities of the Debtor to CertainTeed LLC [ECF No. 1005; No. 3:21-ap-03023, ECF No. 2] (the “**Substantive Consolidation Motion**”);² and (4) Motion for an Order Authorizing and Directing the Production of Documents Pursuant to Bankruptcy Rule 2004 [ECF No. 1002] (the “**Rule 2004 Motion**”).

6. Pursuant to Federal Rule of Bankruptcy Procedure 9006 and the Case Management Order [ECF No. 27], the ACC and FCR noticed the Crime-Fraud Motion and Rule 2004 Motion for hearing on September 16, 2021, with responses due by September 7, 2021. The Standing Motion and Substantive Consolidation Motion were noticed for a status conference on September 16, with responses also due on September 7, 2021. By agreement of the parties and the Court, the September 16, 2021 omnibus hearing was moved to September 17, 2021.

² The Substantive Consolidation Motion sets forth the factual and legal basis for the relief requested in the Complaint for Entry of an Order Substantively Consolidating the Estate of DBMP LLC with CertainTeed LLC or, in the Alternative, Reallocating the Asbestos Liabilities of the Debtor to CertainTeed LLC [No. 3:21-ap-03023, ECF No. 1] (the “**Substantive Consolidation Complaint**”).

7. The parties met and conferred on Monday, August 30, 2021 at 6:00 p.m. with respect to the Joint Motions. Although the parties discussed the deadlines and a potential postponement, no agreement was reached.

8. In response to a request by the Debtor at the meet and confer to share any suggested proposals for scheduling, on Tuesday, August 31, 2021, the ACC and FCR communicated the following proposal to the Debtor regarding the Joint Motions:

Further to our discussion yesterday with respect to certain of the papers currently set to be heard at the September 17 omnibus hearing (*i.e.* standing, substantive consolidation, crime-fraud, and Rule 2004), and in an effort to afford the Debtor and CertainTeed additional time as a courtesy, the ACC and FCR propose that all four pending motions be continued to October 4-5 (and can be heard by Judge Whitley at the same time as the Debtor's motion for estimation and any estimation-related shaping motions). We will, of course, work with you on a rational briefing schedule for those motions based on the October 4-5 dates. In exchange, the ACC and FCR would ask the Debtor and CertainTeed to agree that they will not seek to continue the motions at issue to a date later than October 4-5.³

9. Later that day, the Debtor responded and inquired as to how the ACC and FCR proposed handling what the Debtor described as "9 or more motions set for those 2 days."⁴ The Debtor followed up its email communication on Thursday, September 2, 2021, offering two alternatives: (1) the ACC and FCR agree to suspend the deadlines and set status conferences on the motions at issue for September 17 or (2) the ACC and FCR agree to extend the September 7 objection deadline to September 9. The Debtor explained that

Although you have told us your intent is not to "jam" us, your proposal would do just that. Adding all these hearings to the agenda for two days of hearings that already include at least five contested motions is unworkable and would require us to devote substantial time to these new motions in the midst of an agreed schedule in place for all the other pending motions (including the 2 discovery motions set for September 17.⁵

³ Email from T. Phillips to G. Gordon, et al. (Aug. 31, 2021, 7:13 PM EDT) (attached hereto as **Exhibit 1**).

⁴ Ex. 1, Email from G. Gordon to T. Phillips, et al. (Aug. 31, 2021, 8:50 PM EDT).

⁵ Ex. 1, Email from G. Gordon to T. Phillips, et al. (Sept. 2, 2021, 3:18 PM EDT).

10. The ACC responded on Thursday, September 2, 2021, clarifying that “the ACC presently anticipates 1 or maybe 2 estimation-related motions that would impact the October 5 hearing date, and we are only aware of 1 motion (motion for estimation) being heard on October 4.”⁶

11. Later that day, the ACC followed up with an additional communication reiterating that there would be plenty of time to hear the ACC and FCR’s motions on October 4-5 and agreeing to extend the objection deadline to September 9:

We disagree with the assumptions in your email and believe that there is plenty of time on October 4-5 (two full days) for our motions to be heard. But if you disagree you should file what you need to file. As we mentioned earlier today, we do not expect more than 1 or 2 motions relating to estimation to be heard on October 5. With respect to your request for a September 9 deadline for your objections, that is fine with us although we remain available to discuss a further extended briefing schedule based on hearing the motions on the October 4-5 dates (we certainly do not want to jam anyone or impact the upcoming Labor Day holiday and High Holy Days).⁷

12. On September 2, 2021, the Debtor filed the Continuance Motion. The Continuance Motion seeks to indefinitely continue the hearings and deadlines on the Joint Motions. Continuance Motion at 11.

13. After the Debtor filed the Continuance Motion, the Debtor requested a hearing before the September 9, 2021, response date. The Court notified the parties that no hearing dates were available the week of September 5, 2021. The Court thereafter accepted the ACC’s proposal to hear the Continuance Motion on September 17, 2021, and extend the response deadline for the Joint Motions to September 20, 2021.

⁶ Ex. 1, Email from T. Phillips to G. Gordon, et al. (Sept. 2, 2021, 3:34 PM EDT).

⁷ Email from T. Phillips to G. Gordon, et al. (Sept. 2, 2021, 6:46 PM EDT) (attached hereto as **Exhibit 2**).

14. Also on September 3, 2021, the ACC and FCR filed the Official Committee of Asbestos Personal Injury Claimants’ and the Future Claimants’ Representative’s Conditional Motion to Establish a Two-Step Protocol for Estimating the Debtor’s Asbestos Liabilities [ECF No. 1031] (the “**Estimation Shaping Motion**”). That motion is ten pages in length and contains no declarations. The crux of the brief conditional motion is that if the Court decides to proceed with a contested estimation, an initial estimation proceeding of limited duration, discovery, and expense to the estate should proceed in the first instance. No other estimation-related “shaping” motions have been or will be filed prior to the October 4-5, 2021 hearing days.

15. The Court currently has two full days set aside on October 4-5, 2021, for hearings on the Motion of the Debtor for Estimation of Current and Future Mesothelioma Claims [ECF No. 948] and the Estimation Shaping Motion.

ARGUMENT

I. THE DEBTOR AND CERTAINTEED’S FOCUS ON THE ESTIMATION AND RELATED DISCOVERY MOTIONS SHOULD NOT COME AT THE EXPENSE OF MOVING THE CASE FORWARD

16. In its Continuance Motion, the Debtor asserts that “the parties should focus on adjudicating the Estimation Motion and Debtor Discovery Motions [the latter of which are slated for hearing on October 21-22, 2021], along with the related motions of the Claimant Representatives, without the burden and distraction of responding to the . . . [Joint] Motions at the same time.” Continuance Motion at 10. The Debtor also states that “the Estimation Motion and the Debtor Discovery Motions are critical to moving this case forward to a successful resolution.”

Id. CertainTeed has adopted the Debtor’s arguments.⁸

⁸ Notably, CertainTeed joins in the arguments set forth in the Continuance Motion. *See* Joinder of CertainTeed LLC to Emergency Motion of the Debtor to Continue Hearings on and Briefing Schedule for the Asbestos Committee and Future Claimants’ Representative’s Motions for (I) Standing, (II) Substantive Consolidation and (III) Certain Discovery, ECF No. 1028 (“**CertainTeed Joinder**”).

17. Of course, the ACC and FCR have a fundamentally different view about what will move the case forward to a successful resolution. Unlike estimation, which will not result in the final determination of any issues whatsoever, the Joint Motions will resolve key issues raised by the Court in its Findings and Conclusions⁹:

Crime-Fraud Motion. During his deposition, former employee Amiel Gross directly contradicted and undermined the testimony of various officers, employees and other witnesses for the Debtor and its affiliates, and laid a sufficient foundation to determine that the crime-fraud exception applies to the Debtor’s claims of attorney-client privilege and protection based on the work-product doctrine. And as this Court recently held, DBMP and CertainTeed offered “selective testimony” on several key issues, but then “interposed attorney client and work product privilege assertions to block a fulsome inquiry . . . about these matters.” *See* Findings and Conclusions ¶ 95. The Court concluded that “DBMP and new CertainTeed cannot have it both ways” and indicated that a waiver of the privilege “might have been found” if that issue had been fully litigated. *Id.* ¶ 98. The ACC and FCR now seek to fully litigate that issue.

Standing Motion. On behalf of the Debtor’s estate and its creditors, the ACC and FCR seek standing with respect to potential causes of action related to the corporate transactions that created the Debtor and current CertainTeed and precipitated the commencement of the Debtor’s bankruptcy case. This Court recently invited the Standing Motion after recognizing that the Debtor cannot be expected to pursue claims challenging the 2019 corporate restructuring and propriety of the resulting bankruptcy case (collectively, the “**Corporate Restructuring**”). *See, e.g.,* Findings and Conclusions ¶ 228. In addition, the ACC and FCR also seek to conduct non-duplicative Rule 2004 examinations, including of certain third parties, to fully investigate the subject transactions without the necessity of seeking further *ex parte* Court approval for the issuance of Rule 2004 requests and subpoenas.

⁹ “**Findings and Conclusions**” refers to the Court’s Findings of Fact and Conclusions of Law Regarding Order: (I) Declaring that the Automatic Stay Applies to Certain Actions Against Non-Debtors, (II) Denying Motion of the Official Committee of Asbestos Personal Injury Claimants to Lift the Stay, and Alternatively, (III) Preliminarily Enjoining Such Actions [ECF No. 972].

Substantive Consolidation Motion. Through the Corporate Restructuring, CertainTeed and DBMP have sought to isolate their asbestos liabilities from profitable operating businesses and to single out asbestos victims for unfair and discriminatory treatment by breaking former CertainTeed into separate corporate entities that the ACC and FCR now seek to consolidate. Because their claims are stayed, asbestos victims are unable to obtain compensation in the civil justice system for the harm inflicted on them by CertainTeed. In ruling on the preliminary injunction, this Court noted that the divisional merger appears to have “had a material, negative effect on the asbestos creditors’ ability to recover on their claims. Thus, an action to contest the merger and its exclusive allocation of all of Old CertainTeed’s asbestos claims to DBMP, appears to be a viable cause.” Findings and Conclusions ¶ 172. In contrast to its asbestos victims, current CertainTeed is outside of bankruptcy and is paying its (non-asbestos) unsecured creditors in the ordinary course of business. CertainTeed is also free to pay its equity holders ahead of asbestos claimants, potentially to the tune of hundreds of millions of dollars. The purpose of substantive consolidation is to ensure the equitable treatment of all creditors. Substantive consolidation will rescind the structural subordination of asbestos creditors that the Debtor and its cohorts have put in place through the Corporate Restructuring, ensuring that asbestos creditors will once again be *pari passu* with other unsecured creditors and have priority over equity holders, as the Bankruptcy Code provides. Alternatively, the ACC and FCR seek to reallocate the Debtor’s asbestos liabilities to CertainTeed.

Rule 2004 Motion. As set forth above, the ACC and FCR seek to substantively consolidate the Debtor with CertainTeed. The ACC and FCR intend to provide notice of the Substantive Consolidation Motion to all of CertainTeed’s creditors, as certain cases have suggested must be done.¹⁰ In order to accomplish this, the ACC and FCR need the names and addresses of such creditors, and accordingly seek entry of the Order, pursuant to Bankruptcy Rule 2004 and Local Rule 2004-1, authorizing and directing the production of documents by CertainTeed, identifying the names and addresses of CertainTeed’s creditors, and to the extent known, counsel for such creditors.

¹⁰ For example, the Ninth Circuit has held that the party moving for substantive consolidation of a debtor’s bankruptcy estate with the estate of a non-debtor must provide notice of the motion to the creditors of the putative consolidated non-debtor. See *Leslie v. Mihranian (In re Mihranian)*, 937 F.3d 1214 (9th Cir. 2019). In fact, the majority of courts that have addressed this issue require giving notice to a non-debtor’s creditors prior to substantive consolidation. See, e.g., *SE Prop. Holdings, LLC v. Stewart (In re Stewart)*, 571 B.R. 460, 473 (Bankr. W.D. Okla. 2017); *Mukamal v. Ark Capital Grp., LLC (In re Kods)*, No. 13-40134-LMI, 2015 WL 222493, at *2 (Bankr. S.D. Fla. Jan. 14, 2015); *Fid. & Deposit Co. of Md. v. U.S. Bank N.A. (In re Kimball Hill, Inc.)*, No. 13 C 07146, 2014 WL 5615650, at *4 (N.D. Ill. Nov. 4, 2014); *United States v. AAPC, Inc. (In re AAPC, Inc.)*, 277 B.R. 785, 789 (Bankr. D. Utah 2002); *Raslavich v. Ira S. Davis Storage Co. (In re Ira S. Davis, Inc.)*, No. 92-14259S, 1993 WL 384501, at *4 (E.D. Pa. Sept. 22, 1993); *Boston Valuation Grp., Inc. v. Hall (In re Tremont Place Realty Tr.)*, 159 B.R. 624, 625 n.1 (Bankr. D. Mass. 1993); *In re Julien Co.*, 120 B.R. 930, 935 (Bankr. W.D. Tenn. 1990).

18. As the brief summaries above make clear, these motions are, in fact, “critical to moving this case forward.”¹¹ The ACC and FCR thus propose that the Joint Motions be heard on October 4 and 5, 2021, at the same time as the estimation and estimation-related motions.

II. THERE IS SUFFICIENT TIME FOR THE JOINT MOTIONS ON OCTOBER 4-5, 2021

19. It is indisputable that there is available time on October 4-5 for the Court to hear the Joint Motions. Indeed, the Court has allocated two full hearing days on October 4-5, 2021, for estimation-related motions, and there are only two such motions at issue. It is simply unreasonable for the Debtor to take the position that the parties can only argue one motion per full court day. It is also inefficient.

20. In addition, the ACC and FCR (in an effort to avoid disrupting holidays and complicating the Court’s calendar) have already accommodated the Debtor’s request for additional time: (1) by agreeing to move the hearing date from September to October 4-5; and (2) by providing an extension for responsive papers to the Joint Motions to September 20, 2021. With that objection date in mind, the ACC and FCR contemplate filing reply briefs on or about September 27, 2021, which would give the Court at least one week for review before the October 4 hearing date.¹²

¹¹ The Debtor states that “the Claimant Representatives’ Motions raise complex issues, and request certain relief that is extraordinary and as to which there is little or no guidance from the Fourth Circuit Court of Appeals,” and “the parties should have an opportunity to engage in meaningful discussions regarding these requests; the Debtor should be afforded an appropriate amount of time to consider and fully respond to the motions; and the Court should be afforded sufficient time to fully consider the positions of the parties.” Continuance Motion at 8-9. *See also* CertainTeed Joinder at 2-3. Importantly, neither the Debtor nor CertainTeed shed any light on the alleged complexities. But by the September 20, 2021 (the current due date for written responses), the Debtor and CertainTeed will have had four weeks to prepare responses to the motions. And by the October 4-5, 2021 hearing, the Debtor and CertainTeed will have had seven weeks to prepare for the hearing. In addition, regardless of whether the Debtor and CertainTeed are correct about the Fourth Circuit’s guidance with respect to the motions at issue, the ACC is unaware of legal authority supporting the idea that if the Fourth Circuit has not specifically weighed in on a matter, that matter should be postponed indefinitely.

¹² With respect to substantive consolidation, the ACC and FCR understand that an answer or similar pleading/motion is now presently due in late October (pursuant to waivers of service). Given that fact, and the possibility that the ACC may seek discovery to respond to any opposition filed with respect to the Substantive Consolidation Motion, which

21. Given the above, the ACC proposes the following schedule over the two early October court days to accommodate the Joint Motions¹³:

October 4, 2021 (Day 1)

- 9:30 a.m. – 1:00 p.m.: Motion for Estimation (3.5 hrs)
- 2:00 p.m. – 5:00 p.m.: Crime-Fraud Motion (3 hrs)

October 5, 2021 (Day 2)

- 9:30 a.m. – 11:30 a.m.: Estimation “Shaping” Motion (2 hrs)
- 11:30 a.m. – 1:00 p.m., 2:00 p.m.– 5:00 p.m.: Standing Motion, Rule 2004 Motion, and Status Conference on Substantive Consolidation (4.5 hrs)

22. The ACC submits that the above schedule is not only reasonable but constitutes an efficient and thoughtful path forward.

III. CONTRARY TO THE DEBTOR AND CERTAINTEED’S PROTESTATIONS AND OFFERS OF TOLLING AGREEMENTS, THE STANDING MOTION IS RIPE FOR ADJUDICATION NOW

23. By the time the Court hears the Continuance Motion, the ACC and FCR will have just over four months, until January 23, 2022, to complete their investigation and commence Chapter 5 causes of action. *See* 11 U.S.C. § 546(a). In addition, to the extent applicable, the two-year toll of non-bankruptcy causes of action will expire. *See* 11 U.S.C. § 108. Accordingly, an indefinite delay is unwarranted and prejudicial to the Debtor’s estate and its creditors.

24. The Debtor and CertainTeed contend that the issues raised in the Standing Motion are “complex,” but, as noted above, provide no explanation as to the nature of the purported complexity. The Debtor and its professionals actively participated in the Corporate Restructuring. The Debtor and its professionals therefore cannot investigate the Corporate Restructuring and the

would impact the reply deadline and any hearing thereto, the ACC and FCR propose that the Substantive Consolidation Motion (and related adversary proceeding) proceed as a status conference on October 5, 2021.

¹³ The ACC and FCR offer these time breakdowns as an example of a workable proposal, but defer to the Court’s judgment on the appropriate order, length, and number of breaks, etc.

Debtor's own corporate parent(s), affiliates or other parties.¹⁴ In light of those circumstances, the Court invited the ACC and FCR to file a Standing Motion.¹⁵ The ACC and FCR submit the issues involving standing could not be clearer.

25. The Debtor and CertainTeed assert that the Standing Motion should be delayed indefinitely and that there is no prejudice to the ACC and FCR because they are willing to enter into tolling agreements.¹⁶ But tolling agreements have little to do with standing. Indeed, a tolling agreement necessarily entails that the parties to that agreement can terminate it on notice to the other parties if they choose to do so. Here, the Debtor and CertainTeed do not want a tolling agreement so much as they wish to indefinitely delay the issue of standing under the guise of entering into tolling agreements. The ACC and the FCR are perfectly willing to consider any proposal with respect to tolling agreements, but irrespective of whether such tolling agreements are entered into, the ACC and FCR should have standing so as to be able to terminate the tolling agreements if they desire to do so, as is the norm. However, to have tolling agreements indefinitely delay the standing issue is inefficient and will only serve to delay the case.

¹⁴ See Hr'g Tr. 75:12-14, Jan. 27, 2020 (Debtor's counsel advised the Court that "the debtor's not going to do that. We wouldn't be in a position to do that. The claimants [also] wouldn't want us to do that.").

¹⁵ See Findings and Conclusions ¶ 228 ("In the meantime, and if they deem it provident, the . . . [Movants] may seek authority to pursue the causes of action challenging the merger and allocations on behalf of the Estate, meaning all asbestos claimants. For if the current proceedings have proven anything, it is this: to the extent that such claims lie, the Debtor is in no position to file or prosecute them . . .").

¹⁶ Some courts have held that tolling agreements in this context are ineffectual as § 546(a) is a statute of repose that may not be tolled. See, e.g., *Martin v. First Nat'l Bank of Louisville (In re Butcher)*, 829 F.2d 596, 600 (6th Cir. 1987) ("If a complaint seeking to avoid a . . . fraudulent transfer is not filed in accordance with section 546(a), a bankruptcy court has no jurisdiction to hear the action."), *abrogated on other grounds, Bartlick v. U.S. Dep't of Labor*, 62 F.3d 163 (6th Cir. 1995); *Off. Comm. of Unsecured Creditors of Millers Cove Energy Co. v. Audus (In re Millers Cove Energy Co.)*, 179 B.R. 77, 85 (Bankr. E.D. Tenn. 1995) (same); see also *Frascatore v. Sec'y of Hous. & Urb. Dev. (In re Frascatore)*, 98 B.R. 710, 718-19 (Bankr. E.D. Pa. 1989) ("[W]e have considerable doubt as to whether the two-year period set forth in § 546(a) . . . can be disposed of Rather, we believe that the wording of this statute may render it a so-called 'statute of repose', which is non-waivable."); *Judson v. Int'l Terminal Operating Co. (In re Oro Import Co.)*, 52 B.R. 357, 359 (Bankr. S.D. Fla. 1985) ("If a complaint is not timely filed in accordance with . . . [section 546(a)], a bankruptcy court has no jurisdiction to hear the complaint."), *rev'd on other grounds*, 69 B.R. 6 (S.D. Fla. 1986).

CONCLUSION

WHEREFORE, the ACC and FCR respectfully request entry of an order (i) denying the Continuance Motion; (ii) setting the Crime-Fraud Motion, Standing Motion, and Rule 2004 Motion for hearing on October 4-5 and the Substantive Consolidation Motion and related adversary proceeding for a status conference on October 4-5; and (iii) granting such other relief as may be just and proper.

Respectfully submitted,

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Dated: September 14, 2021