

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

In re DBMP LLC, ¹ Debtor.	Chapter 11 Case No. 20-30080 (JCW)
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**DEBTOR’S REPLY IN SUPPORT OF MOTION FOR
ESTIMATION OF CURRENT AND FUTURE MESOTHELIOMA CLAIMS**

DBMP LLC (the “Debtor” or “DBMP”) hereby files this Reply in support of the *Motion of the Debtor for Estimation of Current and Future Mesothelioma Claims* [Dkt. 948] (the “Estimation Motion”)² and in response to (a) the *Objection of the Official Committee of Asbestos Personal Injury Claimants to Motion of the Debtor for Estimation of Current and Future Mesothelioma Claims* [Dkt. 1042] (the “ACC Objection”) and (b) the *Future Claimants’ Representative’s Objection to Motion of the Debtor for Estimation of Current and Future Mesothelioma Claims* [Dkt. 1040] (the “FCR Objection” and, together with the ACC Objection, the “Objections”).

INTRODUCTION

1. The Debtor has stated from the beginning of this Chapter 11 Case that it intends to confirm a consensual section 524(g) plan of reorganization that would establish and fund a trust to fairly and equitably resolve and pay current and future asbestos-related claims. To that end, the Debtor has attempted to initiate discussions with the Asbestos Committee and the

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 Capitalized terms not otherwise defined herein have the meanings given to them in the Estimation Motion.

FCR since they were appointed. But the Claimant Representatives have not accepted any of the Debtor's multiple invitations to discuss a consensual resolution of this case.

2. Accordingly, estimation is the next logical step to move this case forward and promote eventual consensus. Estimation will address the central issue in this Chapter 11 Case—the extent of the Debtor's liability for current and future asbestos claims—and assist the parties and the Court with a path towards a successful conclusion to this case.

3. The Claimant Representatives' misplaced objections to estimation generally are founded upon inaccurate assumptions or groundless and inflammatory assertions regarding the Debtor's alleged intent. For example, the Claimant Representatives wrongly argue that estimation will cause delay. But precisely as contemplated by section 502(c) of the Bankruptcy Code, estimation will avoid the extraordinary and undue delay (and burden upon the Court and parties) that would be caused by any attempt to individually liquidate asbestos claims. And it will focus the parties and the Court on the issue that is central to this case in a manner that will promote progress in resolving this core issue. This is why courts in asbestos cases routinely order estimation under section 502(c) to determine the aggregate amount of claims.

4. Estimation has proven to be the key event in facilitating the confirmation of a consensual plan under section 524(g) in numerous asbestos mass tort cases. Pursuing estimation for such a purpose is unquestionably proper. Moreover, as stated in the Estimation Motion, estimation will provide the Court with information to determine whether any proposed plan of reorganization satisfies the applicable confirmation standards, including (a) the "best interests of creditors" test under 11 U.S.C. § 1129(a)(7)(A)(ii) and (b) whether the section 524(g) injunction is "fair and equitable" to future demand holders "in light of the benefits provided" to the trust under 11 U.S.C. § 524(g)(4)(B)(ii). Such an estimation is within the core jurisdiction of this Court. The best way to avoid delay is to begin the estimation process promptly.

5. Notwithstanding the benefits of estimation, the Claimant Representatives illogically insist that estimation is not necessary because their own recently commenced litigation will encourage consensus.³ That litigation promises to be time-consuming and costly (two of the Claimant Representatives' primary complaints with respect to the proposed estimation), will frustrate progress in this Chapter 11 Case and, critically, will not even address, much less foster the resolution of, the Debtor's liability for asbestos claims.⁴ Rather than addressing the central issue in the Chapter 11 Case, the litigation seeks to focus on the funding of the case. It will not enhance the estate, which already has access to an uncapped funding agreement with New CT (the "Funding Agreement"), nor will it advance the development of a plan.

6. Finally, the Claimant Representatives falsely charge that estimation is part of a "litigation tactic" meant to "maroon" asbestos claimants and obtain a "discount" on the resolution of asbestos claims. As set forth plainly in the Estimation Motion and reiterated herein, the Debtor seeks estimation both to move the case forward and provide the Court with information it will need to confirm a consensual plan. The Debtor is *not* seeking to "harass[]," "discipline" or "punish" asbestos claimants.⁵ Nor is the Debtor seeking a "discount." Rather, it is clear that the Debtor and the Claimant Representatives have disparate views of the Debtor's liability for asbestos claims, and the Debtor simply seeks an impartial estimate of its aggregate liability from this Court.

³ The Claimant Representatives recently filed requests to substantively consolidate the Debtor with CertainTeed LLC ("New CT"), Adv. Pro. No. 21-03023 (the "Substantive Consolidation Adversary Proceeding"); Dkt. 1005; Adv. Pro. No. 21-03023, Adv. Pro. Dkt. 2 (the "Substantive Consolidation Motion"), and for standing to investigate and prosecute estate causes of action [Dkt. 1008] (the "Standing Motion").

⁴ As is set forth in detail in the Debtor's objection to the Standing Motion [Dkt. 1072] (the "Standing Objection"), it is estimation, not the prosecution of estate claims (and certainly not the prosecution of any estate claims in the absence of an estimation), that has pushed section 524(g) cases toward resolution. Standing Obj. ¶¶ 35-40.

⁵ Many of the Claimant Representatives' allegations focus on the discovery sought by the Debtor in connection with estimation. The Debtor has separately responded to these baseless allegations in the replies in support of the Debtor's Discovery Motions [Dkts. 947, 949].

Such an estimation is appropriate, and any determination by the Court will be rendered only after both the Debtor and the Claimant Representatives have had a full and fair opportunity to present their respective cases. Further, the Claimant Representatives and their constituencies retain all of the protections provided to them in the Bankruptcy Code. Notably, a confirmed plan under section 524(g) is only possible if (a) the requirements of that section are satisfied, including acceptance by at least 75% of current claimants, (b) fulfillment of the requirements of section 1129 and (c) approval by this Court and the District Court.

7. This Court should proceed with estimation to assist (a) the parties in formulating a plan and (b) this Court and the District Court in confirming one.

BACKGROUND

8. From the outset of this Chapter 11 Case, the Debtor has consistently worked toward achieving a consensual section 524(g) plan to fairly and equitably resolve current and future asbestos-related claims. The Debtor's goal, if achieved, will benefit all claimants by establishing a trust governed by agreed-upon trust distribution procedures that will process and pay claims quickly and efficiently without the cost and uncertainty of litigation in the tort system. Nevertheless, the Claimant Representatives have repeatedly charged that the Debtor's objective in this case is the exact opposite: to harm and ultimately underpay asbestos claimants. That charge is in large measure directed at the 2019 Corporate Restructuring that formed the Debtor, which the Claimant Representatives have expended significant time and resources investigating and challenging, including in connection with the Debtor's request for a preliminary injunction.

9. On August 10, 2021, the Court entered its decision granting the Debtor's motion for a preliminary injunction (or, alternatively, a determination that the automatic stay applies). *See Findings of Fact and Conclusions of Law* [Dkt. 972; Adv. Pro. 20-03004, Dkt. 343]

(the “Injunction Findings and Conclusions”), and the related *Order* [Dkt. 973; Adv. Pro. 20-03004, Dkt. 344] (together with the Injunction Findings and Conclusions, the “Injunction Decision”).

10. Less than two weeks after the Injunction Decision, the Claimant Representatives filed the Standing Motion, the Substantive Consolidation Adversary Proceeding, the Substantive Consolidation Motion and two other related motions, Dkts. 1002 and 1006.⁶ These pleadings continue the Claimant Representatives’ challenge to the 2019 Corporate Restructuring and cite largely to certain preliminary findings of the Court related thereto in the Injunction Decision. The Standing Motion and the Crime Fraud Motion are set to be heard on October 4 and 5, 2021 by agreement of the parties and as approved by the Court. The Substantive Consolidation Motion, which was filed in both the main case and the Substantive Consolidation Adversary Proceeding, is set for a status conference on those same days.

11. Following the Injunction Decision and the Claimant Representatives’ filings, the Debtor filed the *Motion of the Debtor for an Order Authorizing It to Enter Into Second Amended and Restated Funding Agreement* [Dkt. 1051] (the “Funding Agreement Motion”) and the *Motion of the Debtor for an Order Authorizing It to Enter Into Tolling Agreement* [Dkt. 1069] (the “Tolling Agreement Motion”) to (a) provide further assurance to the Claimant Representatives and the Court that the intent in implementing the 2019 Corporate Restructuring was not to harm claimants and that the Funding Agreement will achieve that intended purpose⁷ and (b) preserve any estate claims related to or arising from the 2019 Corporate Restructuring, which claims are

⁶ *Motion for an Order Authorizing and Directing the Production of Documents Pursuant to Bankruptcy Rule 2004* [Dkt. 1002]; *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* [Dkt. 1006] (the “Crime Fraud Motion”).

⁷ The Funding Agreement ensures that all of the assets available to the Debtor’s creditors prior to the 2019 Corporate Restructuring remain available to them, and the amendments to the Funding Agreement clarify that the promised benefits of the Funding Agreement will be available and enforceable by the estate for the benefit of stakeholders.

still being investigated by the Claimant Representatives. The Funding Agreement Motion and the Tolling Agreement Motion are set to be heard on October 14, 2021.

12. In the midst of all this, the Debtor has been focused on advancing issues relevant to determining the central issue of its asbestos liability in this case. Over a year ago, in August 2020, the Debtor filed its Discovery Motions to obtain basic information about the claims asserted against the estate and to evaluate whether past settlements (which the Claimant Representatives argue are a proxy for liability) were tainted by claimants' failure to disclose exposures to the products of bankrupt defendants. The Discovery Motions, after many delays, are fully briefed and set to be heard on October 21 and 22, 2021. In July 2021, the Debtors filed the Estimation Motion and a proposed plan of reorganization that could form the basis of a consensual resolution of this case [Dkt. 944] (the "Debtor's Plan").

ARGUMENT

I. ESTIMATION IS NECESSARY AND SERVES A LEGITIMATE PURPOSE.

13. Estimation is necessary to avoid undue delay in addressing the Debtor's liability for current and future asbestos claims; it is the central issue in this Chapter 11 Case. The Claimant Representatives' arguments that estimation is contrary to law and not necessary here are not supported by law or fact.

14. Estimation serves a legitimate purpose. The FCR argues that the "Debtor seeks to use estimation for an improper purpose" and as a "litigation tactic" to "deprive asbestos claimants of due process and leverage them into accepting a lower recovery." FCR Obj. at 1, 5.⁸ Similarly, the Asbestos Committee contends that the Debtor's reasons for seeking an estimation

⁸ The FCR makes this allegation without any evidence and without ever engaging in a single settlement discussion with the Debtor despite the open invitation to do so. Further, in an estimation, the Court will hear the arguments and evidence provided by all parties. It is unclear why the FCR believes that an estimation process in this Court will neither afford the parties due process nor result in a fair outcome.

are “vague” and that the Debtor’s actual motivation is “to subject the asbestos creditors to harassment, expense and delay.” ACC Obj. ¶¶ 4, 7. These accusations are false⁹ and, to the contrary, the estimation sought here is for a proper purpose.

A. Because Estimation Will Prevent Undue Delay, It Is Mandatory.

15. As set forth in the Estimation Motion, estimation is necessary here to prevent undue delay. The Objections misapply the standard governing estimation under section 502(c). *See* Estimation Mot. ¶¶ 23-30. Asbestos claims against the Debtor are undeniably contingent, unliquidated, and disputed. If liquidation of such claims would “unduly delay the administration of the estate,” the allowed amount of claims must be estimated. That is why courts in asbestos cases routinely order estimation under section 502(c) to determine the aggregate amount of claims. *See id.* And section 524(g) is not a bar to an estimation of the aggregate amount of the Debtor’s asbestos liability. *See* ACC Obj. ¶ 13 (asserting that section 524(g) provides an alternative path for allowance and liquidation of asbestos claims); FCR Obj. at 17 (same).¹⁰ The Debtor agrees with the FCR that individual asbestos claims will not be allowed or liquidated through estimation; that is a process that will be undertaken after confirmation of a plan of reorganization and pursuant to agreed-upon trust distribution procedures. But understanding the

⁹ In support of many of their allegations, the Claimant Representatives cite to the deposition of Mr. Amiel Gross. *See, e.g.*, FCR Obj. at 5-6; ACC Obj. ¶¶ 1 n.3; 35 n.21. However, the citations utilized by the Claimant Representatives are all based upon what Mr. Gross “believed” or “understood,” not his personal knowledge. Mr. Gross’ testimony stands in stark contrast to substantial evidence produced in connection with the preliminary injunction proceeding, including the testimony of multiple witnesses with actual knowledge of the matters testified to by Mr. Gross. The Debtor has addressed Mr. Gross’s testimony in detail in its objection to the Crime Fraud Motion. *See* Dkt. 1071 at 6-15 (Bankr. W.D.N.C. Sept. 23, 2021).

¹⁰ The FCR appears to argue that section 502(c) of the Bankruptcy Code is fundamentally inconsistent with estimating future claims given the existence of section 524(g) of the Bankruptcy Code. FCR Obj. at 16 n.43. But such an argument is not supported by the case law that has developed regarding estimation in asbestos cases and would not be supported by Fourth Circuit law establishing when a claim is deemed to arise. *See, e.g., In re Garlock Sealing Techs, LLC*, 504 B.R. 71, 95 (Bankr. W.D.N.C. 2014) (estimating present and future claims); *In re Eagle-Picher Indus., Inc.*, 189 B.R. 681, 682-83 (Bankr. S.D. Ohio. 1995) (estimating current and future asbestos claims against the debtor and valuing such future claims “as of the filing date of the petition”); *Grady v. A.H. Robins Co., Inc.*, 839 F.2d 198 (4th Cir. 1988) (finding that a claim arises at the time the debtor’s tortious conduct occurs, even if the claimant’s injury has not yet manifested).

amount of the Debtor's estimated liability for asbestos claims *in the aggregate* is essential to a resolution of this case and reaching agreement on the proper funding of a section 524(g) trust.

16. The Claimant Representatives also complain of delay, but this Court has recognized that delay is not confined to bankruptcy, given the sometimes extraordinary delays associated with the tort system. *See* Injunction Findings and Conclusions ¶¶ 225, 226; *see also infra* at ¶¶ 17, 46. The Court also has found that a section 524(g) trust could provide a more efficient means of resolving asbestos claims. *See* Injunction Findings and Conclusions ¶¶ 225, 226.

17. Courts have long recognized that the tort system is not equipped to fairly and timely address mass asbestos claims. *See Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 821 (1999); *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 598-99 (1997); *In re Dow Corning Corp.*, 211 B.R. 545, 597 (Bankr. E.D. Mich. 1997) (noting the “impossibility of individually trying 2,298 asbestos cases”); *see also* Estimation Mot. ¶ 26; *infra* ¶ 46. By contrast, many courts have observed that resolving asbestos claims through a section 524(g) trust has considerable benefits to claimants. *See In re Bestwall LLC*, 606 B.R. 243, 257 (Bankr. W.D.N.C. 2019) (“a section 524(g) trust will provide all claimants—including future claimants who have yet to institute litigation—with an efficient means through which to equitably resolve their claims”); *In re Federal-Mogul Glob., Inc.*, 684 F.3d 355, 362 (3d Cir. 2012) (noting the effectiveness of asbestos trusts “in remedying some of the intractable pathologies of asbestos litigation”); *see also* Expert Report of Charles E. Bates, PhD (Oct. 13, 2020) [Adv. Pro. No. 20-03004, Dkt. 238 Ex. 1] (the “Bates Report”) ¶ 51 (providing that a fairly funded section 524(g) trust will better serve asbestos claimants—including future claimants—by assuring that “comparable claimants receive similar amounts, making the processing and payment of claims by the trust superior to the lottery-like outcomes experienced in the tort system.”).

18. At the time of its bankruptcy filing, the Debtor faced more than 60,000 pending asbestos claims. *See* Estimation Mot. ¶ 30. Because of this large number of claims, an aggregate estimation is needed to *avoid* delay. Accordingly, estimation pursuant to section 502(c) is necessary and appropriate.

B. Estimation Will Enable the Parties to Formulate and Confirm a Consensual Plan of Reorganization.

19. From the inception of this case, the Debtor has sought to formulate and confirm a consensual section 524(g) plan that will fairly and equitably compensate asbestos claimants. Estimation is the next logical step toward achieving that goal.¹¹ It will address the central issue in this Chapter 11 Case—the Debtor’s liability for current and future asbestos claims—and assist the parties and the Court with a path forward.¹²

20. The Asbestos Committee argues that estimation is “senseless” and there is no need to engage in an estimation because the parties are sophisticated and capable of forming their own estimates of the Debtor’s liability using information already available. ACC Obj. ¶¶ 5-6. But the Debtor lacks the information it needs to develop a reliable estimate and knows nothing about any estimates the Claimant Representatives’ experts may have prepared.

¹¹ Pursuant to 28 U.S.C. § 157(b)(2)(B), the “estimation of claims or interests for the purposes of confirming a plan under chapter 11” is a core proceeding.

¹² The Claimant Representatives allege that estimation here will simply lead to an advisory opinion, ACC Obj. ¶ 12; FCR Obj. at 9, but this argument (if accepted) would prevent any court in an asbestos bankruptcy from undertaking an estimation proceeding. *See In re Eagle-Picher Indus.*, 189 B.R. at 682 (Bankr. S.D. Ohio 1995) (“All of the parties herein understand that the purposes of estimation of asbestos claims are, first, so that a proper allocation of plan funding assets can be made as between the unsecured creditors and the PI Trust created by the plan, and, second, whether there is any equity available for equity security holders.”). And in fact, such a position is contrary to the one previously taken by the official committee of asbestos claimants, represented by some of the same counsel, in *Bestwall*. *See Obj. to Estimation Mot.*, Dkt. 937 ¶ 31, No. 17-31795 (LTB) (Bankr. W.D.N.C. Aug. 16, 2019) (stating that “[e]stimation in a section 524(g) case has historically been conducted to give parties and the Court guidance on issues such as allocating the debtor’s assets among different groups of creditors, assessing the amount of contribution necessary by a third-party to be afforded relief under 524(g), and analyzing compliance with the best interest criteria for confirmation” and “[a]ll of [estimation’s] purposes were purely informational—the non-binding analysis permitted the parties to negotiate a consensual resolution.”).

21. As stated in the Debtor's Discovery Motions, the Debtor requires information from asbestos claimants and asbestos bankruptcy trusts to complete the analyses that will enable it to produce a reliable estimate of its legal liability for asbestos claims and respond to the Claimant Representatives' settlement-based estimation methodology. Estimation Mot. ¶ 34; Ex. D, Declaration of Charles E. Bates, PhD, ¶¶ 16-36 (explaining need for information sought from asbestos claimants including, among other things, the amount of pending claims and exposure to the Debtor's and other manufacturers' products); *id.* ¶¶ 37-42 (explaining need for information sought from asbestos bankruptcy trusts in assessing withholding of exposure evidence by claimants). The Debtor's requests do not contemplate "years of claim-by-claim discovery," ACC Obj. ¶ 7, and instead, are targeted to obtain necessary information that is currently unavailable to the Debtor or to update information that is dated. This information should be readily available to the requisite counterparties as described in the Debtor's briefing relating to the Discovery Motions.

22. Further, discovery in connection with estimation will not be one-sided. *See* ACC Obj. ¶ 6. As demonstrated by estimation proceedings in other cases, including in *Bestwall*, the Claimant Representatives themselves are expected to actively engage in discovery. The discovery marshaled during the estimation process, including expert discovery, will aid the Court and *all* of the parties in better understanding the merits and value of the asbestos claims asserted against the Debtor and to develop a reasonable estimate that can form a basis for the negotiation, formulation and confirmation of a consensual plan of reorganization.

23. Additionally, contrary to the Claimant Representatives' assertions, ACC Obj. ¶ 7-9; FCR Obj. 5-7, estimation is not being used to "punish" asbestos creditors or deprive them of due process. Rather, here, "an estimation of asbestos liability for the limited purposes of plan formulation is a fruitful endeavor because it promotes the speed and efficiency goals of the Bankruptcy Code, while not implicating the procedural rights of the individual claimants." *In re*

Federal-Mogul Glob., Inc., 330 B.R. 133, 154-55 (D. Del. 2005); *see also supra* ¶ 17 (discussing benefits to current and future asbestos claimants from a section 524(g) trust).¹³

24. Apart from gathering information to be used by the parties in the negotiation and formulation of a plan, an estimate of the aggregate allowed amount of asbestos claims also will provide the Court with information it will need to confirm a section 524(g) plan of reorganization. *See* Estimation Mot. ¶¶ 37-38. The Asbestos Committee asserts that estimation is not necessary to determine whether the “best interest” test is satisfied, but it does not dispute that the test would need to be met and that there is no current, impartial estimate of the Debtor’s liability for asbestos claims for the Court to utilize in such a test. ACC Obj. ¶ 17. And the Asbestos Committee’s assertion that the future claimants’ representative is typically the party who provides evidence as to whether a proposed section 524(g) plan satisfies the “fair and equitable” standard, ACC Obj. ¶¶ 19-20, has no support in the Bankruptcy Code, which makes that condition a freestanding requirement that the Court must find has been met, entirely independent of the separate requirement that a future claimants’ representative be appointed. In any event, such evidence is necessary to the confirmation of a section 524(g) plan, regardless of who presents it, and an estimation will allow it to be developed.

25. The FCR’s reliance on *Dow Corning* also is misplaced. Not only is *Dow Corning* outside of the asbestos context, but it is inconsistent with the Fourth Circuit’s instruction in *A.H. Robins* that estimation should precede liquidation. *See A.H. Robins Co., Inc. v. Piccinin (In re A.H. Robins Co., Inc.)*, 788 F.2d 994, 1012 (4th Cir. 1986) (“The estimations of the potential

¹³ The FCR’s assertion that the benefit of estimation is “speculative at best” because New CT can “simply walk away” from its obligations under the Funding Agreement if it does not agree with the result of the Court’s estimation decision is untrue. *See* FCR Obj. at 4, 8. The recent amendments to the Funding Agreement, among other things, make clear that (as was always the case) funding will be available for a section 524(g) plan regardless of whether New CT supports such a plan or receives the benefits of a channeling injunction. *See* Funding Agreement Mot. ¶ 12.

and pending claims by the bankruptcy courts should precede any trials of the claims”). Further, the court in *Dow Corning* determined that under the circumstances of that case, neither the debtor nor the tort claimants had demonstrated that liquidation of the debtor’s tort claims would result in undue delay. *See* 211 B.R. at 566, 574. Accordingly, estimation was neither mandatory nor necessary.¹⁴ Here, no party disputes that liquidation of current and future asbestos claims against the Debtor would cause undue delay in this Chapter 11 Case and, thus, estimation is warranted and required.¹⁵ *See supra* Part I.A.

26. In an effort to persuade the Court that estimation is not necessary here, the Claimant Representatives further assert that the parties in many asbestos bankruptcies successfully confirm section 524(g) plans without estimation. FCR Obj. at 2; ACC Obj. ¶ 22. But the cases cited by the Claimant Representatives share one feature not yet present in this Chapter 11 Case—the meaningful engagement of the parties in negotiations to achieve a consensual resolution of the debtor’s asbestos liabilities, either pre-petition or post-petition. *See, e.g., Disclosure Statement*, Dkt. 665 at 7, *In re Sepco Corp.*, No. 16-50058 (Bankr. N.D. Ohio Dec. 15, 2019), (“representatives of the Debtor, the Asbestos Claimants Committee, and the Future Claimants’ Representative have conferred repeatedly during the Chapter 11 Case” and “also have negotiated

¹⁴ The *Dow Corning* court also held that estimation would be unnecessary for plan confirmation because, in that case, the debtor’s plan provided for a set funding amount and expressly provided that that funding amount would not change regardless of the court’s estimation determination. 211 B.R. at 568-69. That is not the case here. As explained herein, the Debtor is neither seeking estimation for purposes of capping its liability nor has the Debtor proposed a plan with a capped funding amount. Rather, the Debtor is pursuing estimation to provide information to assist the parties in negotiating, formulating and confirming a consensual section 524(g) plan of reorganization.

¹⁵ The other cases cited by the FCR in support of its argument that estimation is not necessary (FCR Obj. nn. 33, 34, 35, 45) bear no resemblance to this case. *In re Bellucci*, 119 B.R. 763 (Bankr. E.D. Cal. 1990) and *In re Statewide Realty Co.*, 159 B.R. 719 (Bankr. D.N.J. 1993) involved individual liquidated claims. *In re RNI Wind Down Corp.*, 369 B.R. 174 (Bankr. D. Del. 2007) involved a post-confirmation dispute over a single claim for advancement of attorneys’ fees. The FCR’s citation to *In re Adelpia Bus. Sols.*, 341 B.R. 415 (Bankr. S.D.N.Y. 2003) for general propositions regarding section 502(c) and estimation omit that the court ultimately allowed the estimation of administrative claims against the estate. FCR Obj. at 10 n.19, 18 n.49.

extensively regarding the formulation and content of the proposed Plan and ancillary documents”); *Disclosure Statement*, Dkt. 1869 at 1, *In re Kaiser Gypsum Co.*, No. 16-31602 (JCW) (Bankr. W.D.N.C. Oct. 21, 2019) (“Since the inception of the Reorganization Cases, the Debtors, Lehigh Hanson, the Asbestos Personal Injury Committee and the Future Claimants’ Representative discussed potential paths forward to a consensual plan of reorganization and the terms of a plan of reorganization”); *Decl. in Supp. of First Day Pleadings*, Dkt. 3 ¶ 23, *In re Maremont Corp.*, No. 19-10118-LSS (Bankr. D. Del. Jan. 22, 2019) (future claimants’ representative, *ad hoc* committee of asbestos claimants and parent company of debtor entered into a settlement which led to a pre-packaged plan of reorganization); *Decl. in Supp. of First Day Pleadings*, Dkt. 3 ¶ 32, *In re Duro Dyne Nat’l Corp.*, No. 18-27963-MBK (Bankr. D.N.J. Sept. 7, 2018) (future claimants’ representative, *ad hoc* committee of asbestos claimants and debtor agreed on a pre-packaged plan of reorganization).¹⁶

27. The Debtor remains hopeful that the Claimant Representatives will accept the Debtor’s invitation to engage in settlement discussions. However, such discussions do not appear to be forthcoming, particularly given the Claimant Representatives’ recent filings. In the absence of discussions, estimation remains the best means of moving this case forward to a successful conclusion.

C. Estimation Would Advance This Chapter 11 Case.

28. At its core, and contrary to the assertions by the Claimant Representatives, estimation would advance and aid in the administration of this Chapter 11 Case. Estimation

¹⁶ See also *In re Paddock Enters., LLC*, No. 20-10028-LSS (Bankr. D. Del. Feb. 16, 2021) [Dkt. 721] (entering order, filed by certification of counsel, appointing mediators at request of debtor, debtor’s parent, official committee of asbestos personal injury claimants and future claimants’ representative); *Disclosure Statement*, Dkt. 2866 at 32, *In re Imerys Talc Am., Inc.*, No. 19-10289-LSS (Bankr. D. Del. Jan. 28, 2021) (“Plan discussions between the Tort Claimants’ Committee, the FCR, and the North American Debtors (and related due diligence) progressed after the bankruptcy filing”).

currently is the only proposed path that seeks to address the central issue in this case—the amount of the Debtor’s asbestos liability. *See* Hr’g Tr. 69:21-22 (Sept. 17, 2021) (counsel to the Asbestos Committee recognizing that this case was filed for the “sole purpose of resolving” the Debtor’s asbestos liabilities). As described above, an estimation proceeding would permit the parties to engage in discovery, develop and submit evidence and engage in informed negotiations and decision-making. Neither the Claimant Representatives’ Standing Motion nor the Substantive Consolidation Adversary Proceeding would address this issue; instead, they invite protracted litigation that will only serve to delay this Chapter 11 Case. Consistent with Judge Beyer’s *Bestwall* ruling, quoted by the FCR, there is “[n]o alternative” to estimation, which is “the only way forward for the case. . . .” FCR Obj. at 18.

29. The FCR asserts that the Substantive Consolidation Adversary Proceeding and the Standing Motion are meant to move this case forward and cite to the Injunction Decision and *Garlock* in support. FCR Obj. at 3. As described in detail in the Debtor’s response to the Standing Motion, neither *Garlock* nor the *Specialty Products* case support a conclusion that affording the Claimant Representatives standing to prosecute estate claims would advance this Chapter 11 Case or obviate the need for estimation. To the contrary, in *Garlock*, the asbestos committee *never* was afforded standing to prosecute estate claims, and the bankruptcy court instead approved the debtor’s entry into tolling agreements so that the parties could focus on estimation (*i.e.*, tolling similar to that proposed by the Debtor in its Tolling Agreement Motion), and in *Specialty Products*, the debtors only determined not to continue opposing the claimants’ request for derivative standing *after* the estimation proceeding had occurred and given the stage of the cases and the parties’ negotiations. *See* Standing Obj. ¶ 39.

30. The Claimant Representatives also make much of the fact that the amount ultimately funded by agreement of the claimants and the debtor may differ from the bankruptcy

court's liability estimate. *See* ACC Obj. ¶¶ 10-11; FCR Obj. at 19. However, this circumstance is not unusual, nor does it suggest that estimation is unnecessary or useless. As set forth below, *infra* ¶¶ 35-37, the Debtor is not proposing to use the Court's estimate of its liability to impose a non-consensual cap. And, there can be no confirmed plan under section 524(g) unless all the requirements of that section and section 1129 are fulfilled, and this Court and the District Court give their approval. *Infra* ¶ 41. The point is that, notwithstanding their initial disagreement, the parties in other cases ultimately have reached agreement following (or even before the completion of) estimation. It is the Debtor's view that a liability estimate from the Court would be, as it has been in other cases, the chief determination that *fosters* the formulation and confirmation of a plan of reorganization under section 524(g) of the Bankruptcy Code.

31. The Claimant Representatives diminish the importance of the estimation to the ultimate resolution achieved in *Garlock*, and emphasize the amount of time between the bankruptcy court's estimation decision and confirmation of the section 524(g) plan. ACC Obj. ¶¶ 10-12; FCR Obj. at 19. However, the Claimant Representatives omit that (a) prior to the estimation the parties *were at an impasse*, (b) amended plan and settlement discussions *immediately* followed the estimation decision, (c) the estimation decision played a key role in defining the range of confirmable plans in the case, *see Garlock*, 504 B.R. at 74 (noting that *Garlock* had proposed a plan before estimation and estimation was "necessary to consideration of that Plan or any subsequent modification to it or a competing Plan filed by another party"), and (d) *months later*, *Garlock* and the future claimants' representative reached agreement on a proposed plan. *See* Estimation Mot. ¶ 28. There is a clear and obvious correlation between the *Garlock* estimation and the *Garlock* plan confirmation.¹⁷ A variety of factors can impact the time

¹⁷ The ACC's assertions about the purported irrelevance of the *Garlock* court's estimate to the amount of consensual plan funding also are incorrect because they are an apples to oranges comparison. The *Garlock*

it takes to reach agreement on a plan of reorganization,¹⁸ and the fact that the negotiations prompted by the estimation ruling in *Garlock* took time does not mean the estimation was fruitless. The fact remains that prior to estimation the parties were at an impasse, and a determination with respect to the debtor's asbestos liability was necessary. Estimation paved the way to plan confirmation.

32. The FCR also disingenuously points to *Bestwall* as a cautionary tale. FCR Obj. at 4, 18-19. However, the FCR's selective portrayal of the events in *Bestwall* glosses over the substantial time and expense the debtor has expended seeking to enforce compliance with the bankruptcy court's orders granting the debtor's discovery requests in connection with estimation.¹⁹

estimate determined only the debtor's liability for current and future mesothelioma claims. It did not include liability for other diseases or costs of administering a trust. *Garlock*, 504 B.R. at 75. Before estimation, the debtor had proposed a \$270 million plan that included all of those additional costs—not a \$125 million plan. *Id.* at 74. The ultimate consensual plan funded a trust with \$480 million (the additional \$20 million was a settlement of Canadian claims that was not part of the estimation either). *Disclosure Statement*, Dkt. 5444 at ii, iv, *In re Garlock Sealing Techs. LLC*, No. 10-31607 (Bankr. W.D.N.C. July 29, 2016). That plan resolved not only claims against *Garlock*, but also independent claims against *Garlock's* parent *Coltec*, including claims based on engines, pumps and compressors that were an entirely separate source of liability and were not included in the Court's \$125 million estimate. *Id.* at ii, x, 2. *Coltec* paid \$110 million of the \$480 million consideration. *Id.* at ii, iv. Thus, the real comparison is between the \$270 million in the original plan and the \$370 million funded by *Garlock* in the consensual plan—an outcome that was obviously powerfully influenced by estimation, given the *Garlock* asbestos committee estimated the mesothelioma liability alone at up to \$1.3 billion pre-estimation. *Garlock*, 504 B.R. at 74.

¹⁸ Indeed, in the *Specialty Products* case, the parties reached agreement on and achieved confirmation of a consensual plan the year after the bankruptcy court entered its estimation decision (which was preceded by three years of stalled efforts to achieve consensus).

¹⁹ Much of that litigation, which has consumed nearly three months, is the result of certain claimants' and their counsel's blatant and unrepentant disregard of Judge Beyer's *Order Pursuant to Bankruptcy Rule 2004 Directing Submission of Personal Injury Questionnaires by Pending Mesothelioma Claimants and Governing the Confidentiality of Responses* [Dkt. 1670] (the "PIQ Order"), *In re Bestwall LLC*, No. 17-31795 (Bankr. W.D.N.C. Mar. 23, 2021). Following briefing, the entry of a show cause order and the conduct of a show cause hearing, Judge Beyer ultimately held those parties in contempt, finding that "the Illinois Parties are willfully flouting the plain terms of the PIQ Order and this court's authority." *Order on Debtor's Emergency Motion to Enforce PIQ Order and Automatic Stay and Order to Show Cause* [Dkt. 1996] (the "Contempt Order"), *In re Bestwall LLC*, No. 17-31795 (Bankr. W.D.N.C. Aug. 18, 2021). Although the court initially did not order sanctions and instead provided the parties with an opportunity to "purge their contempt" by dismissing the contemptuous competing lawsuit, Contempt Order ¶ 18, the court ultimately issued sanctions in the amount of \$402,817.70 after the parties refused to dismiss their suit (prosecuting it until it was dismissed with prejudice by the Illinois court). See *In re Bestwall LLC*, No. 17-31795 (Bankr. W.D.N.C. Aug. 31, 2021), Hr'g Tr. 14:6-12; *Order* [Dkt. 2095]. *Bestwall* subsequently filed another motion to enforce the court's PIQ Order due to the widespread failure of claimants to comply. See *Motion to Enforce*

The debtor in *Bestwall* is not the source of delay.²⁰ And, the claimants’ repeated defiance of and assault upon bankruptcy court orders in that case (recently resulting in the imposition of substantial sanctions against certain claimants and one counsel firm) cannot serve as justification for the denial of estimation in this case.

33. Although an estimation proceeding may require time and effort, that time will not be wasted; estimation will advance the administration and resolution of this Chapter 11 Case.

D. Estimation Is Not Contrary to Law—the Debtor Is Not Seeking to Cap Claims.

34. Having failed to rebut the Debtor’s showing that estimation is necessary and for a proper purpose, the Claimant Representatives erroneously assert that an estimation of asbestos claims, as has been performed in multiple chapter 11 cases to date, is contrary to law.

35. The FCR argues that the Debtor seeks “to use estimation as the ‘hidden lever’ to cap for all time the funds” for asbestos claimants, and similarly claims that the estimation is being proposed “for purposes of distribution” and would violate asbestos claimants’

PIQ Order With Respect to Non-Compliant Claimants [Dkt. 2065], *In re Bestwall LLC*, No. 17-31795 (Bankr. W.D.N.C. Sept. 8, 2021).

Bestwall has had similar difficulty securing compliance with the bankruptcy court’s order requiring certain discovery from asbestos trusts. In that regard, the debtor currently is appealing to the Third Circuit an order of the Delaware District Court that quashed a subpoena issued under the bankruptcy court’s trust discovery order, at the request of various trusts and asbestos claimants. *In re Bestwall LLC*, No. 21-2263, Dkt. 35 (3d Cir. Sept. 3, 2021). Bestwall continues to seek issuance of and compliance with a new subpoena.

²⁰ With respect to the contention that the debtor failed to complete document production on time, the FCR fails to note that: (a) the debtor in *Bestwall* met each date for substantial completion of discovery set forth in the discovery plan agreed to in connection with the estimation case management order and the court’s order setting a date for substantial completion of document production; (b) the debtor met each date for the service of privilege logs provided in the discovery plan; and (c) the debtor sought and obtained only modest deviations from the default substantial completion deadlines, which were necessitated by the breadth of the requests propounded on the debtor. See *Order Setting Date for Substantial Completion of Document Production*, Dkt. 1972, *In re Bestwall LLC*, No. 17-31795 (LTB) (Bankr. W.D.N.C. Aug. 13, 2021); *Debtor’s Motion to Set Date of Substantial Completion of Document Production*, Dkt. 1841 ¶¶ 2-3, 9-15, *In re Bestwall LLC*, No. 17-31795 (LTB) (Bankr. W.D.N.C. June 28, 2021).

constitutional rights.²¹ FCR Obj. at 12-13. There is no “hidden lever” here. The Debtor, like many before it, will seek to confirm a plan with a fixed (and agreed) amount of funding. But, the Debtor is *not* intending to use the Court’s estimate of its liability to impose a non-consensual cap. Rather, the Debtor is pursuing estimation to provide “critical information to assist the parties in negotiating, formulating and confirming a *consensual* section 524(g) plan of reorganization in this case.” Estimation Mot. ¶ 5 (emphasis added); *see supra* Part I.B.

36. Ignoring the Debtor’s many statements to the contrary, the FCR points to language in the Debtor’s draft plan of reorganization, providing that the “Asbestos Personal Injury Trust Funding Amount” will “be either (a) an amount agreed upon by the Parties or (b) an amount set by the Debtor based on an estimation of the aggregate amount of Asbestos Personal Injury Claims by the Bankruptcy Court under section 502(c) of the Bankruptcy Code,” as evidence that the Debtor seeks to place a non-consensual cap on its claims. FCR Obj. at 12; Debtor’s Plan, Art. I.A.15. The FCR reads the draft plan out of context. The Debtor’s Plan is a *section 524(g) plan* that requires approval from 75% of current claimants. Moreover, the plan’s definition of Asbestos Personal Injury Trust Funding Amount provides that, absent agreement of the parties, the amount will be “based on” an estimation, not that it would be an amount *equal to* the Court’s aggregate estimation of the Debtor’s asbestos liability. *See also* Estimation Mot. ¶ 32 (stating that the Debtor is not “seeking to use estimation to establish a non-consensual ‘cap’” and that estimation will assist in developing a consensual plan that satisfies all the requirements of the Bankruptcy Code). That

²¹ As discussed below, *infra* ¶¶ 44-46, the Asbestos Committee’s assertion that the existence of the Funding Agreement demonstrates that estimation is being utilized solely to lessen the amount that ultimately must be paid or for the benefit New CT, ACC Obj. ¶ 35, is not only untrue but also is not an argument against estimation itself. In any estimation proceeding that is authorized, the Claimant Representatives will be fully engaged and able to put forth any evidence in opposition to the Debtor’s proposed methodology. The Debtor does not seek to preclude the Claimant Representatives from asserting that their proposed estimation methodology is the correct approach.

amount would still require a 75% vote of current claimants on a plan that meets all of the applicable legal requirements.

37. Nor will estimation establish the liability amount for, or cap recovery on, any individual claim. No individual claim is being adjudicated. The proposed estimation would be an aggregate estimation of all mesothelioma claims, and no individual claimant's rights or claims will be determined. All of that will be addressed in the future under the section 524(g) trust documents, including the trust distribution procedures (and in all cases preserving the rights of claimants to opt for a jury trial if desired).

38. On this point, the Claimant Representatives' suggestions that the *A.H. Robins* case somehow instructs that this Court cannot conduct an estimation is inaccurate; estimation would not violate any due process or constitutional rights of asbestos claimants.²² In *A.H. Robins*, the Fourth Circuit merely reiterated the statutory limits of a bankruptcy court's power set forth in 28 U.S.C. §§ 157(b)(2)(B) and 157(b)(5). *See* 788 F.2d at 1012. The Fourth Circuit also emphasized that even though "tort claimants may be entitled to their jury trials, the bankruptcy court is not relieved of its duty in a Chapter 11 proceeding to estimate those contingent claims." *Id.* The Debtor does not seek estimation for "purposes of distribution," and the requested estimation would neither infringe on jury trial rights nor exceed the Court's powers. *A.H. Robins* makes clear that 28 U.S.C. § 157(b)(2)(B) "denies authority to the bankruptcy court to 'estimate' contingent claims *only if the purpose is to make a 'distribution'* of the assets of the debtor." *Id.* (emphasis added). Citing two asbestos bankruptcy cases, *A.H. Robins* further makes clear that a

²² The Asbestos Committee also cites to *G-I Holdings* for the proposition that asbestos claimants possess constitutional and statutory jury trial rights for purposes of liquidating their claims. ACC Obj. ¶ 27. However, and as recognized by the court in *G-I Holdings*, it does not follow that asbestos claimants are entitled to a jury trial in an estimation proceeding. *In re G-I Holdings*, 323 B.R. 583, 607 (Bankr. D.N.J. 2005). Further, the Asbestos Committee's citation to cases where courts have held that personal injury claims cannot be decided *en masse* are inapposite. ACC Obj. ¶ 15. In an estimation, the Court would be determining the aggregate amount of the Debtor's asbestos liability, not deciding any personal injury claims.

bankruptcy court *can* perform estimations “incident of the development of a plan of reorganization,” *id.*—precisely what the Debtor seeks here. *See supra* Part I.B.

39. Similarly, the Asbestos Committee’s assertion that the Debtor intends to use estimation to essentially conduct mini-trials of asbestos claims on the merits misunderstands the Debtor’s proposed methodology and the purpose of estimation. Aggregate estimation does not violate any statutory rights claimants have to individual allowance, jury trial, and trial in the district court nor any due process rights, because those rights are preserved for treatment under the eventual plan of reorganization and agreed upon trust distribution procedures. *See* 28 U.S.C. § 157(b)(5); 28 U.S.C. § 1411(a); 28 U.S.C. § 157(b)(2)(B).

40. The FCR’s reliance on *Dow Corning* and *In re Roman Catholic Archbishop of Portland in Or.*, 339 B.R. 215 (Bankr. D. Or. 2006), also is unfounded. These cases do not involve asbestos claims, and the debtors there did not seek estimation for purposes of formulating and confirming a section 524(g) plan that necessarily requires creditor approval. Moreover, as described above, in *Dow Corning*, the court found that the debtor sought to establish a cap on the amount it would pay to resolve tort claims, 211 B.R. at 566-67, based on the fact that prior to estimation, the debtor had already submitted a plan that contained a pre-established amount it would set aside to liquidate the claims. *Id.* at 555, 567. Similarly, in *Roman Catholic Archbishop of Portland*, the debtor’s proposed plan provided that it would fund a claims resolution facility equal to the amount of the court’s estimation. Accordingly, the court found that the “Debtor’s proposal to use estimation to cap the amount of the fund available to pay all tort claimants is similar to that proposed in [*Dow Corning*].” 339 B.R. at 220.

41. Unlike the debtors in those cases, the Debtor here seeks an estimation proceeding—informed by the input of all interested parties—to assist in developing and then confirming a consensual plan of reorganization that: (a) meets all of the statutory requirements of

section 524(g), including support from at least 75% of current asbestos claimants, review and input by the FCR, and a finding by this Court and the District Court that the plan is fair and equitable to future claimants and otherwise confirmable; and (b) satisfies all of the requirements of section 1129, including the “best interests of creditors” test. *See also* Estimation Mot. ¶ 32. Such an estimation is not contrary to law.

E. The Debtor’s Ability to Satisfy Asbestos Claims, Including Through the Funding Agreement, Does Not Reduce the Benefits of Estimation.

42. The benefits of estimation in advancing this Chapter 11 Case do not change because of the existence of the Funding Agreement. *See* Estimation Mot. ¶ 27. The question estimation seeks to address is not the Debtor’s *ability* to fund a section 524(g) trust, but rather, the *amount* of the Debtor’s liability for asbestos claims that should form the basis for such trust funding and assist the parties in negotiating that amount.²³

43. The FCR’s statement that estimation occurred in *A.H. Robins* only because “the debtor could not pay all claims in full and remain a going concern,” FCR Obj. at 14, misreads that opinion. What the Fourth Circuit actually said was that the cost of liquidating every tort claim in the district court, not the quantum of the tort liability itself, may well consume the debtor’s resources. *A.H. Robins Co.*, 788 F.2d at 1012 (reorganization could be “completely thwarted” if “the resources of the debtor are dissipated in the expenses of litigating, the trial of thousands of personal injury suits in courts throughout the land spread over an interminable period of time”);²⁴

²³ The Asbestos Committee incorrectly asserts that New CT is independently and directly liable for mesothelioma claims. ACC Obj. ¶ 35. Pursuant to the 2019 Corporate Restructuring, all of Old CT’s asbestos-related liability was allocated *exclusively* to the Debtor. As a result, New CT has no such independent or “direct” liability. *See* Plan of Div. Merger § 5(d)(i) [Adv. Pro. No. 20-3004, Dkt. 236 A-51] (“DBMP will be the sole obligor for the DBMP Liabilities, and [New] CT will not be liable for the DBMP Liabilities”); *id.*, Sch. 5(c)(i) at 112 (listing asbestos liability as exclusive to the Debtor); *see also* Injunction Findings and Conclusions ¶ 54 (“the Plan of Divisional Merger allocated *all* of [Old CT’s] asbestos liabilities to the Debtor”) (emphasis added).

²⁴ Estimation in *A.H. Robins* did lead to a consensual plan pursuant to which tort claims were paid in full at the court-estimated amount and shareholders received a recovery valued at approximately \$700 million.

see also G-I Holdings, 323 B.R. at 623 (recognizing “that a once viable company [would] become extinct . . . based upon the insurmountable personal injury claims facing the estate.”). Here too, the large number of asbestos claims pending against the Debtor demonstrates that estimation is necessary and mandated by section 502(c).

II. The Debtor’s Legal Liability Approach Is Appropriate.

44. Throughout the Objections, the Claimant Representatives deride estimation as a tactic designed to pressure claimants into settling their claims for a lower recovery, *see* ACC Obj. ¶¶ 1, 33; FCR Obj. at 1, 6-7, but these arguments are nothing more than the Claimant Representatives’ litigation posture in estimation and are not objections to estimation itself. The Claimant Representatives have failed to establish that an estimate of the Debtor’s legal liability is inappropriate.

45. First, there is no merit to the factually unsupported and unfairly framed suggestion that estimation is designed to “maroon asbestos creditors” and “pressure them into settling their claims at a discount.” ACC Obj. ¶ 1. As described by the Debtor’s claims expert, Dr. Charles Bates, asbestos claimants “sue dozens of parties and can submit claims to many previously established asbestos trusts.” *See* Bates Report ¶ 19; *Bestwall*, 606 B.R. at 257 (“plaintiffs in asbestos-related suits typically name multiple defendants”); *see also* Bates Report ¶ 17 (explaining that, for a sample of claimants with claims against both Garlock and DBMP, DBMP contributed “less than 4%” of the claimants’ total recoveries). Nothing about this Chapter 11 Case or the Estimation Motion prohibits asbestos claimants from continuing to proceed against any remaining defendants in state court or filing claims against asbestos trusts.

46. Moreover, as of the Petition Date, more than half of the Debtor’s approximately 32,200 pending asbestos claims on active dockets had been filed more than 10 years

ago.²⁵ See Starczewski Decl. ¶ 44; see also Injunction Findings and Conclusions ¶ 225. There is therefore no basis to suggest that the Estimation Motion is designed to delay recoveries to asbestos claimants, especially when compared to delays experienced in the tort-system. See Injunction Findings and Conclusions ¶ 225 (“Litigation, particularly mass tort asbestos litigation, generally requires extensive discovery, involves numerous parties, and presents complicated questions of causation. Such litigation often goes on for years, if not decades.”).

47. Second, the Claimant Representatives’ attempts to distinguish the cases relied on by the Debtor in support of its legal liability approach are unavailing.²⁶ See ACC Obj. ¶¶ 1, 32-33; FCR Obj. at 1-2, 6-7.²⁷ In particular, the Asbestos Committee attempts to distinguish *USG* and *G-I Holdings*, ACC Obj. ¶ 26-27, but each of these cases squarely supports an estimation focused on the Debtor’s legal liability. As acknowledged by the Asbestos Committee, the *USG* court stated that it would permit challenges to allegedly invalid claims based on the substantive

²⁵ See also Declaration of Michael T. Starczewski (Feb. 18, 2021) [Adv. Pro. No. 20-03004, Dkt. 238 Ex. E, ¶ 44 (the “Starczewski Decl.”) (“That is in addition to the more than 27,000 claims pending on ‘inactive’ dockets. More than 96% of inactive cases have been pending for more than 10 years. Taken together, approximately 75% of pending claims that are on either active or inactive dockets were filed more than ten years before the Petition Date.”).

²⁶ The Debtor addresses the propriety of the legal liability approach in the *Debtor’s Objection to ACC-FCR Motion for Two-Step Estimation Protocol* [Dkt. 1076] (the “Protocol Objection”) at 3-7 (Bankr. W.D.N.C. Sept. 24, 2021).

²⁷ The FCR cites to *SGL Carbon* for the proposition that “attempting to use a bankruptcy case as leverage to pressure a creditor to accede to liquidating his or her claim at an amount less than the amount at which the claim would be valued . . . may be evidence of a bad faith filing.” FCR Obj. at 7 n.11. That case, which addresses dismissal of a chapter 11 case, is irrelevant here. As set forth herein and in the Estimation Motion, the Debtor is not using this case to “pressure” claimants or devalue claims.

The Asbestos Committee further attempts to distinguish the cases of *In re Genesis Health Ventures, Inc.*, 112 F. App’x 140 (3d Cir. 2004), *Chaussee v. Lyngholm (In re Lyngholm)*, 24 F.3d 89 (10th Cir. 1994), *Bittner v. Borne Chem. Co., Inc.*, 691 F.2d 134 (3d Cir. 1982), and *In re Cont’l Airlines Corp.*, 64 B.R. 858 (Bankr. S.D. Tex. 1986), *aff’d in part, vacated in part*, 901 F.2d 1259 (5th Cir. 1990). ACC Obj. ¶¶ 28-31. Each of these cases was cited by the Debtor for the proposition that, in an estimation, the court should consider the principles that govern whether and in what amount a claim would be allowed based on state substantive law and consideration of a debtor’s defenses. Estimation Mot. ¶¶ 40-42; Protocol Obj. at 3-7. The Asbestos Committee’s arguments go to its position that this Court need not consider the merits of the asbestos claims pending against the Debtor. None of these cases stand for the proposition that estimation is inappropriate.

law governing those claims—the same proposition asserted by the Debtor here. *See* ACC Obj. ¶ 26; *see also* Protocol Obj. at 5. The *USG* court recognized that the proper mode of valuing a debtor’s asbestos liability “may lie at the heart of all asbestos bankruptcies” and explained:

The Court exists to assist the parties in resolving their differences. It does so by providing a framework within which the parties can litigate those differences to a Court-imposed result or compromise them based on the parties’ expectation of a predictable outcome.

In re USG Corp., 290 B.R. 223, 224-25 (Bankr. D. Del. 2003). Similarly, in *G-I Holdings*, the court recognized its role and the importance of estimation and concluded that the debtor would be permitted to present any relevant defenses and challenge evidence in estimation. *See In re G-I Holdings*, 323 B.R. at 623, 626; *see also* Protocol Obj. at 5. Any attempt to distinguish *USG* or *G-I Holdings* because the cases settled before the merits-based estimation hearing ever occurred is no distinction at all. In those cases, the courts indicated their openness to considering the merit of the claims, but consensual agreements were reached before any such estimations were necessary. The Debtor would welcome such a result here.

48. Regardless, the Claimant Representatives’ complaints are aimed at the methodology the Court should utilize in estimation—whether it be the approach based on the Debtor’s experience in the tort system that has been championed by the Claimant Representatives²⁸ or the Debtor’s legal liability approach. The Claimant Representatives will have a full opportunity to advance their arguments before and during the estimation trial. The parties’ underlying disputes regarding *how* the Court eventually should estimate the claims only underscores the need for estimation in the first instance. *See also* Protocol Obj. at 12-13.

²⁸ *See 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* [Dkt. 1031] ¶ 11 (Bankr. W.D.N.C. Sept. 3, 2021).

CONCLUSION

For all of these reasons and those set forth in the Estimation Motion, this Court should enter an order granting the Debtor's request for estimation.

Dated: September 27, 2021
Charlotte, North Carolina

Respectfully submitted,

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