

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

In re:

DBMP LLC,¹

Debtor.

Chapter 11

Case No. 20-30080 (JCW)

Ref. Docket No. 1051

**FUTURE CLAIMANTS' REPRESENTATIVE'S JOINDER TO THE
OBJECTION OF THE OFFICIAL COMMITTEE OF ASBESTOS
PERSONAL INJURY CLAIMANTS TO DEBTOR'S MOTION TO
APPROVE SECOND AMENDED FUNDING AGREEMENT**

Sander L. Esserman, in his capacity as the legal representative for future asbestos claimants (the "Future Claimants' Representative" or "FCR"), hereby joins the *Objection of the Official Committee of Asbestos Personal Injury Claimants to Debtor's Motion to Approve Second Amended Funding Agreement* (the "Objection")² filed by the Official Committee of Asbestos Claimants of DBMP LLC (the "Committee" and, together with the FCR, the "Claimants' Representatives") on September 29, 2021.

Although the FCR does not oppose the proposed revisions to the Funding Agreement in and of themselves, the FCR supports and joins the Committee's Objection for three main reasons. *First*, the proposed findings in the Approval Order are unsupported and entirely inappropriate.

Second, the revisions to the Funding Agreement, and the findings in the Approval Order, do not repair or validate the Corporate Restructuring. Before that transaction, Old CertainTeed's

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 defined herein shall have the meaning ascribed to them in the Objection.

asbestos creditors had the same ability and rights to access Old CertainTeed's considerable assets as did its other unsecured (non-asbestos) creditors. As a result of the Corporate Restructuring, asbestos creditors were placed one step beyond those assets. Nothing about the proposed revisions to the Funding Agreement or the findings in the Approval Order changes that fact.

Third, the Debtor's proposed revisions do not go far enough in fixing the issues with the Funding Agreement. Among other things, New CertainTeed's funding commitment is still not secured or guaranteed. The Funding Agreement continues to provide that the Debtor cannot assign the agreement without New CertainTeed's consent. Moreover, the funding commitment is made by New CertainTeed to DBMP, and not to the asbestos claimants. Only DBMP can enforce the agreement. The Approval Order purports to give the Claimants' Representatives the right to take "necessary or appropriate" actions on behalf of the Debtor if the Debtor fails to enforce its remedies against New CertainTeed. The Approval Order, however, would allow the Claimants' Representatives to enforce the Debtor's rights against New CertainTeed only if they first convince the Court that the Debtor has failed to take action in response to an Event of Default under the Funding Agreement. *See* Motion at 9 n.8; Proposed Order ¶ 6 ("Any disagreement between the Debtor and Claimant Representatives about whether there is an Event of Default under the Second Amended Funding Agreement shall be resolved by the Bankruptcy Court."). In other words, the Debtor's proposed order simply restates the standard for creditor standing—it does not give the Claimants' Representatives any mechanism for enforcing the Funding Agreement that they did not already have.

Accordingly, although the FCR does not oppose the proposed revisions to the Funding Agreement itself, for the reasons set forth above, the FCR joins the Committee's objection and requests that the Court deny the Motion.

Dated: September 29, 2021

Respectfully submitted,

/s/ Felton E. Parrish

Felton E. Parrish (NC Bar No. 25448)
ALEXANDER RICKS PLLC
1420 East 7th Street, Suite 100
Charlotte, NC 28204
Telephone: (704) 365-3656
Facsimile: (704) 365-3676
Email: felton.parrish@alexanderricks.com

-and-

James L. Patton, Jr. (Delaware Bar No. 2202)
Edwin J. Harron (Delaware Bar No. 3396)
Sharon M. Zieg (NC Bar No. 29536)
Travis G. Buchanan (Delaware Bar No. 5595)
YOUNG CONAWAY STARGATT & TAYLOR, LLP
Rodney Square
1000 North King Street
Wilmington, Delaware 19801
Telephone: (302) 571-6600
Facsimile: (302) 571-1253
Email: jpatton@ycst.com
eharron@ycst.com
szieg@ycst.com
tbuchanan@ycst.com

Counsel to the Future Claimants' Representative