

**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. 1103

**FUTURE CLAIMANTS' REPRESENTATIVE'S OBJECTION TO THE MOTION
OF COALITION FOR LITIGATION JUSTICE, INC. FOR LEAVE TO FILE
AMICUS CURIAE BRIEF IN SUPPORT OF DEBTOR'S MOTION FOR
BANKRUPTCY RULE 2004 EXAMINATION OF ASBESTOS TRUSTS**

Sander L. Esserman (the "Future Claimants' Representative"), as the legal representative for persons who have not yet asserted an asbestos-related personal-injury claim against the above-captioned debtor (the "Debtor") but may in the future assert such a claim (the "Future Claimants"), hereby files this objection (the "Objection") to the *Motion of Coalition for Litigation Justice, Inc. for Leave to File Amicus Curiae Brief in Support of Debtor's Motion for Bankruptcy Rule 2004 Examination of Asbestos Trusts* [Dkt No. 1103] dated October 1, 2021 (the "Motion for Leave"). In support of this Objection, the Future Claimants' Representative respectfully represents as follows:

PRELIMINARY STATEMENT²

The Coalition for Litigation Justice, Inc. (the "Coalition"), an association of insurers with no interest in this bankruptcy requiring protection, seeks to file an unhelpful and inexcusably

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 used in the Preliminary Statement but not defined therein shall have the meanings ascribed to them in the body of the Objection.

belated brief (the “Proposed Brief”) in support of the Debtor’s *Motion for Bankruptcy Rule 2004 Examination of Asbestos Trusts* [Dkt. No. 416] dated August 19, 2020 (the “Trust Motion”). The Court should exercise its broad discretion to deny the Coalition’s Motion for Leave.

The Coalition boasts of a mission to improve asbestos litigation in the tort system by supporting greater transparency, and seeks leave to file a Proposed Brief advocating for discovery of highly sensitive information from the Trusts,³ but the Coalition has no special interest in this bankruptcy proceeding or the Trust data. Nor do the insurers that support the Coalition have any special interest; none claim to be the Debtor’s insurers and the Debtor contends that its insurance was exhausted long ago. Granting leave for this coalition of insurers with no legitimate interest to submit briefing on a discovery motion threatens to flood the Court with non-party briefing by other self-proclaimed do-gooders purporting to share general interests in “justice” and “transparency.”

There will be no harm in denying the Coalition’s Motion for Leave because the Proposed Brief offers nothing helpful to the Court in deciding whether the data sought by the Trust Motion is within the scope of Rule 2004 of the Federal Rules of Bankruptcy Procedure and whether the Debtor has established good cause to obtain the discovery.⁴ The Proposed Brief serves only to unhelpfully extend briefing on the Debtor’s assertion that asbestos plaintiffs asserting claims against *other defendants*, including Garlock Sealing Technologies, LLC, suppressed evidence of other asbestos exposures. The Coalition’s further characterization of the *Garlock* case and other

³ “Trusts” is defined in the Trust Motion as “the ten asbestos personal injury trusts [the Delaware Claims Processing Facility] manages (collectively, the “DCPF Trusts”) and (b) the Manville Personal Injury Settlement Trust (the ‘Manville Trust’ and, together with the DCPF Trusts, the ‘Trusts’).” Trust Motion at p. 1.

⁴ See generally *Objection of the Future Claimants’ Representative to Debtor’s Motion for Bankruptcy Rule 2004 Examination of Asbestos Trusts* [Dkt. No. 870] (the “FCR’s Trust Motion Objection”).

public information equally available to the Court and the parties would be an unhelpful and unnecessary addition to the briefing on the Trust Motion.

Even if the Proposed Brief could have been helpful to the Court, the prejudice of the Coalition's delay requires denial of the Motion for Leave. The Coalition should have filed its Motion for Leave no later than seven days after the Debtor filed the Trust Motion but offers no justification for filing more than thirteen months later and only three weeks before the hearing on the Trust Motion. Allowing the Coalition's belated brief would threaten to subject the Court and the parties to eleventh hour non-party briefing on any motion filed going forward and would require further briefing on the pending Trust Motion.

The FCR respectfully submits that the Court should deny the Motion for Leave on the papers or hold a hearing on the Motion for Leave on October 21, 2021 for further argument.

OBJECTION

The Coalition has no inherent right to file its Proposed Brief.⁵ It has identified no legitimate interest in the outcome of the Trust Motion, and its Proposed Brief is unhelpful and inexcusably untimely.⁶ The Court should exercise its discretion to deny the Motion for Leave.

⁵ See *Am. Humanist Ass'n v. Maryland-National Cap. Park and Planning Comm'n*, 303 F.R.D. 266, 269 (D. Md. 2014) ("There is no Federal Rule of Civil Procedure that applies to motions for leave to appear as amicus curiae in a federal district court. District courts therefore have discretion whether to grant or deny such leave and often look for guidance to Rule 29 of the Federal Rules of Appellate Procedure, which applies to amicus briefs at the federal appeals level."); see also *In re Edison Mission Energy*, 610 B.R. 871, 878 (N.D. Ill. 2020) (citing *Nat'l Org. for Women, Inc. v. Scheidler*, 223 F.3d 615, 616 (7th Cir. 2000) ("Whether to permit a nonparty to submit a brief, as amicus curiae, is, with immaterial exceptions, a matter of judicial grace."); Fed. R. App. Proc. 29(a)(2) ("Brief of an Amicus Curiae"); Fed. R. Bank. Proc. 8017(a)(2) ("Brief of an Amicus Curiae").

⁶ "[A]t the trial level, where the issues of fact as well as law predominate, the aid of amicus curiae may be less appropriate than at the appellate level where such participation has become standard procedure." *Finkle v. Howard Cty., Md.*, 12 F. Supp. 3d 780, 783 (D. Md. 2014). Trial courts allow amicus briefs only "where they provide helpful analysis of the law, they have a special interest in the subject matter of the suit, or existing counsel is in need of assistance." *Wheelabrator Balt., L.P. v. Mayor & City Council of Balt.*, 449 F.Supp.3d 549, 555 n.1 (D. Md. 2020) (quotation marks and citations omitted) (denying motion for leave to file amicus brief where coalition "purport[ed] to have a special interest in [the] litigation," but "their proposed amici briefs [did] not provide any legal analysis beyond the arguments raised in the parties' briefs and [were] not necessary for the Court's determination of

I. The Court Should Deny the Coalition’s Motion for Leave on the Basis that the Coalition has No Special Interest in the Outcome of the Trust Motion.

The Coalition has identified no legitimate interest in injecting itself into this proceeding to advocate for the Court to grant the Trust Motion.⁷ Though the Proposed Brief includes a section titled “Identity and Interest of *Amici Curiae*,” it does not state any special interest in either this bankruptcy or the Trust Motion.

The Coalition identifies itself as “a nonprofit association formed by insurers in 2000 to address and improve the litigation environment for asbestos and other toxic tort claims”⁸ and specifically identifies six current members, including five insurance companies and one third-party administrator for numerous insurers.⁹ The Coalition does not identify any relationship between any of the six members and the Debtor, or the Debtor’s ultimate parent Compagnie de Saint-Gobain or any of its subsidiaries, or any fact that might give the Coalition or its members a direct interest in this bankruptcy proceeding.¹⁰ It would be surprising if they did, given the Debtor’s repeated statements that its “insurance coverage for asbestos claims” was exhausted “long ago.”¹¹

the legal issues at hand”). Even then, they allow amicus briefs only if “the court deems the proffered information timely and useful.” *Finkle*, 12 F. Supp. 3d at 783.

⁷ See Fed. R. App. Proc. 29(a)(4)(D) (requiring an amicus brief to include “a concise statement of the identity of the amicus curiae, its interest in the case, and the source of its authority to file”); Fed. R. Bank. Proc. 8017(a)(4)(C) (same); Fed. R. App. Proc. 29(a)(3)(A) (requiring that a motion for leave to file “be accompanied by the proposed brief and state . . . the movant’s interest”); Fed. R. Bank. Proc. 8017(a)(3)(A) (same).

⁸ Proposed Br. at 1.

⁹ Mot. for Leave at 1.

¹⁰ To the extent the Coalition has any undisclosed interest, it has failed to be transparent with this Court. It has also failed to offer any reason to believe that the Debtor’s counsel has not adequately represented any undisclosed interest of the Coalition through the Debtor’s own briefing in support of the Trust Motion.

¹¹ *Debtor’s Compl. for Injunctive and Declaratory Relief* ¶ 20 [Dkt. No. 21]; *Informational Brief of DBMP LLC* at 2 [Dkt. No. 22]; *Declaration of Robert J. Panero in Support of First Day Pleadings* ¶ 27 [Dkt. No. 24].

Instead, the Proposed Brief states an unremarkable general interest, explaining that “[t]he Coalition files amicus briefs in important cases that may have a significant impact on the asbestos litigation environment” and that “[t]he Coalition supports greater transparency between the asbestos trust and tort systems.”¹² The Motion for Leave similarly argues that the Coalition should be permitted to file its Proposed Brief so that the Coalition may “use its broad perspective to provide the Court with evidence that asbestos plaintiffs exploit the disconnect between the asbestos trust and tort systems to manipulate exposure evidence and frustrate the ability of tort defendants to prove alternative exposures.”¹³ The Coalition’s general interest in asbestos litigation and transparency *in the tort system* has no bearing on the Court’s ruling on the Trust Motion seeking discovery for use only within this *bankruptcy proceeding* that was designed expressly to remove asbestos litigation from the tort system. Courts deny motions for leave to appear as amicus curiae where the non-parties seeking to appear express only general interests in the underlying litigation and provide no basis for the Court to grant the Motion for Leave.¹⁴

It would be particularly problematic to allow the Coalition, based on its general interest in transparency in the tort system, to inject itself into this bankruptcy process for the express purpose of advocating for the disclosure of highly sensitive information that neither the Coalition nor its insurer-members has any right to access. The Trust Motion seeks discovery of sensitive personal information regarding approximately 9,000 individuals who are not parties to this bankruptcy concerning those individuals’ claims and settlements against Trusts that also are not

¹² Proposed Br. at 1.

¹³ Mot. for Leave at 2.

¹⁴ See *Am. Coll. of Obstetricians & Gynecologists, Pa. Sec. v. Thornburgh*, 699 F.2d 644, 645 (3d Cir. 1983) (finding “no persuasive reason to grant the motion” for leave filed by a group of law professors seeking to “share with th[e] Court [their] concern that the strict standards for constitutional review of legislation impinging on fundamental rights be rigorously enforced within the Third Circuit” but “not purport[ing] to represent any individual or organization with a legally cognizable interest in the subject matter at issue”).

parties to this bankruptcy based on assurances that the information will be kept strictly confidential and only used in this bankruptcy proceeding.¹⁵ The Coalition does not state how the disclosure of the Trust information restricted to use in this bankruptcy proceeding will advance its purported interest in supporting “greater transparency between the asbestos trust and tort systems.”¹⁶

It must be assumed that, if the Court gives credence to the Coalition’s interest in “transparency” in the tort system as a basis to advocate for the Trust discovery to be produced in this bankruptcy proceeding, the next request will be for the Coalition, and for other “coalitions” of “interested” non-parties, to be given access to the Trust data in furtherance of self-proclaimed noble purposes.¹⁷ The Court should stop the circus before it starts and deny the Coalition’s Motion for Leave to file the Proposed Brief.

II. The Court Should Deny the Coalition’s Motion for Leave on the Basis that the Coalition’s Brief Is Unhelpful.

The Coalition seeks to add 15 unhelpful pages of briefing to the record in support of the Debtor’s Trust Motion.¹⁸ The Motion for Leave states that “[t]he [P]roposed [B]rief does not

¹⁵ Trust Mot. ¶ 42; *Proposed Order Granting Debtor’s Motion for Bankruptcy Rule 2004 Examination of Asbestos Trusts and Governing Confidentiality of Information Provided in Response* [Dkt. No. 416, Ex. 1] (the “Trust Motion Proposed Order”), ¶¶ 7-9; *see also Reply in Support of Debtor’s Motion for Bankruptcy Rule 2004 Examination of Asbestos Trusts* at 2 [Dkt. No. 949] (the “Trust Motion Reply”).

¹⁶ Mot. for Leave at 1. *See also* Fed. R. App. Proc. 29(a)(3)(B) (requiring that a motion for leave to file “be accompanied by the proposed brief and state . . . the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case”); Fed. R. Bank. Proc. 8017(a)(3)(B) (same).

¹⁷ The notion that the Coalition seeks “transparency” in furtherance of a neutral and noble interest in “litigation justice” and not as an advocate seeking to further its insurer-members’ general interests in opposing and reducing payment of asbestos claims, strains credulity.

¹⁸ At 15 pages, more than two-thirds the length of the Debtor’s Trust Motion, the length of the brief alone would justify denial of the Motion for Leave. Absent leave of the Court, Rule 29(a)(5) of the Federal Rules of Appellate Procedure and Rule 8017 of the Federal Rules of Bankruptcy Procedure limit amicus briefs to “no more than one-half of the maximum length authorized . . . for a party’s principal brief.” Fed. R. App. Proc. 29(a)(5); Fed. R. Bankr. Proc. 8017(a)(5). Rule 9013-2(a) of the Rules of Practice and Procedure of the United States Bankruptcy Court for the Western District of North Carolina limits “any brief” to 25 pages.

seek to simply repeat arguments made by the parties,”¹⁹ but the Proposed Brief does just that. It repeats and expands upon the Debtor’s assertion that the *Garlock* case reflects a “widespread pattern in which certain plaintiff firms failed to disclose material evidence of their clients’ exposures to other companies’ products.”²⁰ Discussing the *Garlock* case, among other public cases and information, the Coalition argues that “[i]rrefutable evidence exists that asbestos plaintiffs exploit the disconnect between the asbestos trust and tort systems to manipulate exposure evidence and frustrate the ability of tort defendants to prove alternative exposures[.]”²¹ but the Court is “not helped by an amicus curiae’s expression of a ‘strongly held view’ about the evidence.”²²

Further, the Coalition’s discussion of public cases and other public commentary, including sources already cited by the parties,²³ introduces no actual “evidence” to support what is clearly nothing more than advocacy on behalf of its members who have no interest in this bankruptcy proceeding. It certainly offers no evidence that the Debtor or its predecessor Old CT relied upon the absence of other asbestos exposures in resolving claims asserted against them by any of the 9,000 individuals for which Trust data is sought or that those plaintiffs’ claims would have been resolved for less if other asbestos exposures had not been suppressed.²⁴ The Coalition

¹⁹ Mot. for Leave at 2.

²⁰ Trust Motion at 2; Trust Motion Reply ¶ 29, ¶ 30 n.12.

²¹ Proposed Br. at 5.

²² *Ryan v. CFTC*, 125 F.3d 1062, 1064 (7th Cir. 1997).

²³ Objections to the Trust Motion cited some of the same public sources that the Coalition cites in its Proposed Brief to argue that the Debtor’s predecessor, Old CT, was fully aware of allegations concerning “trust-transparency issues” since at least the *Garlock* estimation decision in January 2014. See *Objection of the Official Committee of Asbestos Personal Injury Claimants to Debtor’s Motion for Bankruptcy Rule 2004 Examination of Asbestos Trusts* at 20-24 [Dkt. No. 872] (the “ACC Trust Motion Objection”); FCR’s Trust Motion Objection ¶ 22 [Dkt. No. 870].

²⁴ See FCR’s Trust Motion Objection ¶¶ 4, 7.

simply restates arguments already made by the Debtor concerning asbestos plaintiffs' claims against *other asbestos defendants*.

In short, the Proposed Brief should be denied because it “add[s] nothing to the already amply proportioned brief of the petitioner.”²⁵ The Debtor and the objecting parties in this bankruptcy proceeding “capably briefed the relevant issues” on the Trust Motion and the Proposed Brief would be “neither helpful nor necessary.”²⁶ As this Court advised the parties when it denied additional discovery in connection with the Trust Motion, there is no need to get into “the minutia” and “dig back into things that might have factored into Garlock.”²⁷ The Coalition's Motion for Leave should be denied.

III. The Court Should Deny the Coalition's Motion for Leave as Untimely.

Even if the Coalition's brief could have been helpful to the Court had it been filed in a timely manner, the Court should deny the Motion for Leave on the basis that it was filed inexcusably and prejudicially late.²⁸ The Coalition should have filed its Motion for Leave in support of the Trust Motion within one week after the Trust Motion was filed.²⁹ The Coalition

²⁵ *Ryan*, 125 F.3d at 1064.

²⁶ *Liberty Lincoln Mercury, Inc. v. Ford Marketing Corp.*, 149 F.R.D. 65, 83 (D.N.J. 1993) (denying an association's motion for leave to “present views of its members” and its “insight into the issue, its history, and the potential effect” of the issue on the industry and consumers and an alliance's motion for leave seeking to “present[] to the Court the collective experience of its membership of over 1700” and to “bring to th[e] Court's attention the experiences of its members” to give the Court “a complete picture” of the issues where the parties had “capably briefed the relevant issues” such that “additional input . . . [wa]s neither helpful or necessary” and, “[a]t best, the information and arguments presented . . . merely repeat[ed] the arguments already submitted” and “[t]o the extent the information and arguments . . . [were] not repetitious, they [were] irrelevant to the determination of the issues”).

²⁷ Tr. of Sept. 17, 2021 Hr'g. at 134.

²⁸ See *Finkle*, 12 F. Supp. 3d at 783 (denying leave to file an untimely brief in support of a motion to dismiss despite the amici's “significant ‘collective experience with litigation and policy advocacy’ that is relevant to many of the issues raised by the present case” where the motion for leave was filed “101 days after Defendant filed its motion to dismiss . . . , 73 days after Plaintiff filed her response in opposition . . . , and 45 days after Defendant filed its reply” and stating that the “Amici's brief therefore comes too late to be useful to the Court in resolving Defendant's motion to dismiss”).

²⁹ See Fed. R. App. Proc. 29(a)(6) (“An amicus curiae must file its brief, accompanied by a motion for filing when necessary, no later than 7 days after the principal brief of the party being supported is filed. An amicus curiae that does not support either party must file its brief no later than 7 days after the appellant's or petitioner's principal brief

offers no excuse for filing the Motion for Leave more than thirteen months after the Debtor filed the Trust Motion and more than two months after the completion of briefing on the Trust Motion.³⁰ A hearing on the Trust Motion would have been held more than a year before the Coalition filed its Motion for Leave if there had not been multiple continuations of the hearing, including continuations that the Debtor opposed.³¹

Allowing the submission of the Proposed Brief after more than a year of unexcused delay and on the eve of argument would subject this Court and the parties to an untenable burden as generally interested parties will be empowered to submit eleventh hour requests to file amicus briefs in connection with any and all matters before this Court. Further, allowing the Coalition to file its Proposed Brief would require additional briefing on the Trust Motion to afford the parties objecting to the Trust Motion an opportunity to address the matters in the Proposed Brief that the Court believes would be helpful to it in deciding the Trust Motion. The Coalition has offered no

is filed. A court may grant leave for later filing, specifying the time within which an opposing party may answer.”); Fed. R. Bank. Proc. 8017(a)(6) (same except specifying “The district court or BAP” in place of “A court”).

³⁰ Three separate objections to the Trust Motion, including the FCR’s objection, were filed on June 14, 2021. FCR’s Trust Motion Objection [Dkt. No. 870]; ACC Trust Motion Objection [Dkt. No. 872]; *Response and Objection of Nonparties Manville Personal Injury Settlement Trust and Delaware Claims Processing Facility to the Debtor’s Motion for Bankruptcy Rule 2004 Examination of Asbestos Trusts and Governing Confidentiality of Information Provided in Response* [Dkt. No. 864]. The Debtor filed its Trust Motion Reply on July 29, 2021.

³¹ The hearing on the Trust Motion was originally noticed for September 9, 2020. See Dkt. No. 418. Over the Debtor’s objection, the hearing was continued until after the hearing on the Debtor’s request for issuance of preliminary injunction and declaratory relief. See *Debtor’s Objection to the Joint Motion of the Future Claimants’ Representative and the Official Committee of Asbestos Personal Injury Claimants to Continue Hearing [on Trust Motion]* [Dkt. No. 467]; see also *Order Granting Joint Motion of the Future Claimants’ Representative and the Official Committee of Asbestos Personal Injury Claimants to Continue Hearing [on Trust Motion]* ¶ 3 [Dkt. No. 517]. Thereafter, the parties agreed upon a July 15, 2021 hearing date for the Trust Motion. See Dkt. No. 845. On July 8, 2021, the Trust Motion hearing was rescheduled until August 12, 2021. *Order Continuing Hearing [on Trust Motion]* [Dkt. No. 918]. Over the Debtor’s August 11, 2021 objection that the Trust Motion had been filed “nearly a full year ago” and “continued multiple times but [was] now ripe for adjudication” with the requested relief having been “amply described” in the Debtor’s briefing, on August 13, 2021, the hearing on the Trust Motion was again continued and is now scheduled for October 21 and 22, 2021. See *Debtor’s Objection to Joint Motion of the Official Committee of Asbestos Personal Injury Claimants and the Future Claimants’ Representative to Continue Hearing on Discovery Motions* [Dkt. No. 978]; see also Tr. of Aug. 13, 2021 Hr’g. at 54.

basis for the Court to subject itself and the parties to these burdens. The Court should deny the untimely Motion for Leave.

CONCLUSION

WHEREFORE, for the reasons discussed herein, the Future Claimants' Representative respectfully requests that the Court deny the Coalition's Motion for Leave.

Dated: October 15, 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