

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

In re:

DBMP LLC,<sup>1</sup>

Debtors.

Chapter 11

Case No. 20-30080 (JCW)

**MOTION OF THE OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY  
CLAIMANTS TO SUBSTITUTE A COMMITTEE MEMBER**

The Official Committee of Asbestos Personal Injury Claimants (the “Committee”) in the above-captioned chapter 11 case of DBMP LLC (the “Debtor”), hereby moves (the “Motion”) this Court to appoint Alice B. Nuzzolese as substitute Committee member for Michael D. Nuzzolese, who recently passed away. In further support of this Motion, the Committee states as follows:

**JURISDICTION**

1. The Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue for this proceeding and the Motion is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. The statutory basis of the relief requested in this Motion is section 1102(a)(4) of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 9013-1(f) of the Rules of Practice and Procedure of the United States Bankruptcy Court for the Western District of North Carolina (the “Local Rules”).

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

### **BACKGROUND**

3. On January 23, 2020 (the “Petition Date”), the Debtor commenced this proceeding (the “Chapter 11 Case”) by filing a voluntary petition for relief under the Bankruptcy Code. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the Debtor has continued as a debtor-in-possession since the Petition Date.

4. On February 5, 2020, the Bankruptcy Administrator (the “Administrator”) moved for the appointment of the Official Committee of Asbestos Personal Injury Claimants in the Debtor’s case pursuant to Bankruptcy Code Section 1102. [Dkt. No. 96]. Thereafter, multiple asbestos claimants of the Debtor filed a request to be added to the committee of asbestos claimants as proposed by the Bankruptcy Administrator. At a hearing held on February 13, 2020, the Court granted the Administrator’s motion and appointed the Committee, which the Court memorialized in an order [Dkt. No. 155] (the “Appointment Order”) dated February 14, 2020 (the “Appointment Date”).

5. The Committee’s members, as appointed, are: (i) Theresa V. Germont, represented by Christopher M. Placitella of the law firm Cohen, Placitella & Roth, P.C.; (ii) Robin S. Wierenga, represented by John D. Cooney of the law firm Cooney & Conway; (iii) Earl F. Powell, represented by Bruce E. Mattock of the law firm Goldberg Persky White, P.C.; (iv) Patsy Diehl, Special Administrator of Carl Diehl, represented by Sara Salger of The Gori Law Firm; (v) Cindy Burch, represented by Steven Kazan of the law firm Kazan, McClain, Satterly & Greenwood PLC; (vi) Kurt Henningsen, represented by Armand J. Volta, Jr. of the Law Offices of Peter G. Angelos, P.C.; (vii) Jimmy Reich, represented by Marcus E. Raichle, Jr. and Chris McKean of the law firm Maune Raichle Hartley French & Mudd, LLC; (viii) James Hunt, represented by Michael Shepard of The Shepard Law Firm; (ix) Francisco Galaviz, represented by Robert E. Shuttlesworth of the law firm Shrader & Associates, L.L.P.; (x) Michael D. Nuzzolese represented by Lisa Nathanson

Busch of the law firm Weitz & Luxenberg, P.C.; and (xi) Wendy Roberts, spouse of Colin Roberts, deceased, represented by Lauren E. Williams of the law firm SWMW Law, LLC.

6. On May 4, 2020, the Court granted the application of the Committee to jointly retain Robinson & Cole, LLP and Caplin & Drysdale, Chartered as its bankruptcy co-counsel. [Dkt. No. 278].

7. Prepetition, Michael D. Nuzzolese sued CertainTeed Corporation (“Old CT”), predecessor in interest to DBMP LLC, for an asbestos-related personal injury. In his personal capacity, Michael D. Nuzzolese held an asbestos-related claim, which survives his passing.

8. On March 13, 2021, Michael D. Nuzzolese passed away. On July 14, 2021, the Surrogate’s Court of the State of New York, Orange County, appointed Alice B. Nuzzolese as Fiduciary for Michael D. Nuzzolese’s probate estate in the underlying state court asbestos-related litigation that establishes the claim in this case. A copy of the order granting Alice B. Nuzzolese’s appointment is attached hereto as Exhibit A.

### **RELIEF REQUESTED**

9. Bankruptcy Code § 1102(a)(4) provides that “[o]n request of a party in interest and after notice and a hearing, the court may order the United States trustee to change the membership of a committee appointed under this subsection, if the court determines that the change is necessary to ensure adequate representation of creditors . . . .” 11 U.S.C. § 1102(a)(4). Moreover, Federal Rule of Civil Procedure 25(a) provides in relevant part: “If a party dies and the claim is not extinguished, the court may order substitution of the proper party.” Fed. R. Civ. P. 25(a).<sup>2</sup> Additionally, this Court has authority to modify the Appointment Order through its inherent

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<sup>2</sup> Rule 25 is made applicable here by Federal Rules of Bankruptcy Procedure 7025 and 9014(c).

powers and Bankruptcy Code § 105(a). *See In re Arms*, 238 B.R. 259, 261 (Bankr. D. Vt. 1999); *In re Dore & Assocs. Contracting, Inc.*, 54 B.R. 353, 360 (Bankr. W.D. Wis. 1985).

10. The Committee requests that the Court appoint Alice B. Nuzzolese to replace the late Michael D. Nuzzolese. This Court originally appointed Mr. Nuzzolese, among others, to ensure adequate representation of the Debtor's asbestos creditors. To maintain that representation, Mr. Nuzzolese's successor, Alice B. Nuzzolese, should be substituted in his place. In fulfilling her charge as a Committee member, the law firm of Weitz & Luxenberg, P.C. will act on Alice B. Nuzzolese's behalf as attorney and agent. Weitz & Luxenberg's Managing Attorney, Lisa Nathanson Busch, has represented a member of the Committee since its formation.

11. Further, the Local Rules provide a non-exhaustive list of motions that are appropriate for *ex parte* relief. Local Rule 9013-1(f). As the Committee consists of asbestos claimants suffering from fatal diseases such as mesothelioma, it is unfortunately unlikely that Mr. Nuzzolese's untimely death will be the only one. Accordingly, the Committee requests that if these circumstances arise again where the Committee should have to make additional requests to substitute a committee member during the course of this case, it be authorized to utilize the *ex parte* motion process set forth in Local Rule 9013-1(f) to seek such relief.

12. The Bankruptcy Administrator previously informed the Committee that she has no objection to the relief requested in this Motion. Likewise, the Debtor informed the Committee on November 19, 2021 that it did not object to the relief requested including the prospective request for an *ex parte* motion procedure for future committee member substitutions.

### **CONCLUSION**

WHEREFORE, for the reasons noted above, the Committee requests that this Court enter an order granting this Motion substantially in the form attached hereto as Exhibit B and such other and further relief as this Court deems just and appropriate.

Dated: November 22, 2021

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/s/ Glenn C. Thompson

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