

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

In re

DBMP LLC,¹

Debtor.

Chapter 11

Case No. 20-30080 (JCW)

**MOTION OF THE DEBTOR FOR AN ORDER APPOINTING SANDER L.
ESSERMAN AS LEGAL REPRESENTATIVE FOR FUTURE ASBESTOS CLAIMANTS**

The above-captioned debtor (the “Debtor”) hereby moves the Court for the entry of an order, pursuant to sections 105(a) and 524(g)(4)(B)(i) of the Bankruptcy Code, appointing Sander L. Esserman as the legal representative for future asbestos claimants in this chapter 11 case, effective as of April 16, 2020. In support of this Motion, the Debtor respectfully states as follows:

Background

1. On January 23, 2020 (the “Petition Date”), the Debtor commenced this case (the “Chapter 11 Case”) by filing a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”).

2. The Debtor is a North Carolina limited liability company. It is the direct parent company of Millwork & Panel LLC, a North Carolina limited liability company, which manufactures vinyl siding and polyvinyl chloride (PVC) trim products for the construction market at facilities it owns in Claremont, North Carolina and Social Circle, Georgia. As of 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.

Petition Date, the Debtor was a defendant in tens of thousands of asbestos-related lawsuits pending in courts throughout the United States.

3. The Debtor is authorized to continue to manage its property and operate its business as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

4. A comprehensive description of the Debtor, its history, its assets and liabilities and the events leading to the commencement of this chapter 11 case can be found in the *Declaration of Robert J. Panaro in Support of First Day Pleadings* [Dkt. 24], which was filed on the Petition Date. The Debtor also filed an *Informational Brief of DBMP LLC* [Dkt. 22] to provide additional information about its asbestos litigation, related costs and its plans and goals for this Chapter 11 Case.

5. On February 14, 2020, the Court entered an order [Dkt. 155] appointing an official committee of asbestos personal injury claimants (the “Asbestos Committee”) in this Chapter 11 Case.

Jurisdiction

6. This Court has subject matter jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

The Debtor’s Need for a Future Claimants’ Representative

7. The Debtor and the former CertainTeed Corporation (“Old CT”) have faced hundreds of thousands of asbestos-related lawsuits dating back to the 1970s. As of the Petition Date, there were approximately 60,000 asbestos-related claims and associated lawsuits pending against the Debtor. The Debtor expects that, absent its bankruptcy filing, thousands of additional claims would have been filed against it for decades to come. From 2002

to 2019, Old CT and the Debtor incurred asbestos-related defense and indemnity costs in the range of approximately \$80 million to over \$160 million per year. (First Day Decl. ¶ 30; Informational Br., at 18). The extraordinary and ongoing costs of the litigation have been a significant and continuing burden.

8. This burden has not diminished over time and is expected to continue for decades more. After careful review of the available alternatives, the Debtor concluded that the commencement of this Chapter 11 Case to utilize section 524(g) of the Bankruptcy Code offered the best alternative under the circumstances — in fact, the only alternative — to permanently, globally and fairly resolve asbestos-related claims against it. (First Day Decl. ¶¶ 26, 34, 36; Informational Br., at 24).

9. Section 524(g) of the Bankruptcy Code provides for the issuance of a channeling injunction for asbestos-related claims and demands if certain conditions are met. One of the conditions is that the court appoint a legal representative (the “Future Claimants’ Representative”) for the purpose of protecting the rights of persons who might subsequently assert asbestos-related personal injury demands against the Debtor, as defined in section 524(g)(5) of the Bankruptcy Code (such persons are referred to herein as the “Future Claimants”). See 11 U.S.C. § 524(g)(4)(B)(i).

10. The appointment of a legal representative to protect the interests of Future Claimants in chapter 11 proceedings is well established. Future Claimants’ Representatives are routinely appointed in asbestos-related chapter 11 cases in this District and in others. See, e.g., In re Bestwall LLC, Case No. 17-31795 (LTB) (Bankr. W.D.N.C. Feb. 23, 2018); In re Kaiser Gypsum Co., Inc., Case No. 16-31602 (JCW) (Bankr. W.D.N.C. Oct. 19, 2016); In re Garlock Sealing Tech., Case No. 10-31607 (GRH) (Bankr. W.D.N.C. Sept. 30, 2010); In re Yarway

Corp., Case No. 13-11025 (BLS) (Bankr. D. Del. May 28, 2013); In re Metex Mfg. Corp., Case No. 12-14554 (BRL) (Bankr. S.D.N.Y. Jan. 16, 2013); In re Specialty Prods. Holding Corp., Case No. 10-11780 (JKF) (Bankr. D. Del. Oct. 18, 2010); In re Durabla Mfg. Co., Case No. 09-14415 (MFW) (Bankr. D. Del. May 3, 2010); In re Mid-Valley, Inc., Case No. 03-35592 (JKF) (Bankr. W.D. Pa. Feb. 18, 2004); In re W.R. Grace & Co., Case No. 01-01139 (JKF) (Bankr. D. Del. May 24, 2004); In re Combustion Eng'g, Inc., Case No. 03-10495 (JKF) (Bankr. D. Del. Mar. 17, 2003); In re USG Corp., Case No. 01-2094 (JKF) (Bankr. D. Del. July 14, 2002); In re Kaiser Aluminum Corp., Case No. 02-10429 (JKF) (Bankr. D. Del. Dec. 23, 2002).

11. The Debtor, with the assistance of its advisors, has evaluated multiple potential candidates for the role of Future Claimants' Representative in this Chapter 11 Case. It also has discussed candidates with the Asbestos Committee. Based on its evaluation, and after consulting with the Asbestos Committee, the Debtor has determined, in its sound business judgment, that Mr. Esserman is well-qualified to represent the interests of the Future Claimants and, therefore, should be appointed as the Future Claimants' Representative in this Chapter 11 Case. The Asbestos Committee has advised the Debtor that it supports the appointment of Mr. Esserman as the Future Claimants' Representative.

Relief Requested

12. By this Motion, pursuant to sections 105(a) and 524(g)(4)(B)(i) of the Bankruptcy Code, the Debtor requests that the Court appoint Mr. Esserman as the Future Claimants' Representative in this Chapter 11 Case, to represent the interests of the Future

Claimants in accordance with the terms and conditions described below, effective as of April 16, 2020.²

Basis for Relief Requested

Mr. Esserman Is Qualified to Serve as the Future Claimants' Representative

13. The Debtor submits that Mr. Esserman is an independent and well-qualified candidate, who previously has been found to possess the experience and qualifications necessary to serve as the Future Claimants' Representative. A copy of Mr. Esserman's *curriculum vitae* is attached hereto as Exhibit A. As set forth in his *curriculum vitae* and the *Declaration of Sander L. Esserman* submitted in support of this Motion and attached hereto as Exhibit B (the "Esserman Declaration"), Mr. Esserman has broad experience in financial reorganizations and disputes, and has had significant roles in major bankruptcy cases across the country, including numerous mass tort and asbestos cases.

14. In particular, Mr. Esserman has more than 25 years of experience handling asbestos-related and mass tort-related issues in various capacities, including by serving as a Future Claimants' Representative and acting as counsel to Future Claimants' Representatives and counsel to mass tort trusts. He currently serves as the Future Claimants' Representative in the chapter 11 case of Bestwall LLC and for the NGC Bodily Injury Trust. He has served as counsel to Future Claimants' Representatives in the bankruptcy cases of J.T. Thorpe (and now

² Pursuant to section 105(a) of the Bankruptcy Code, the Court may issue an order to assist in carrying out the other provisions of the Bankruptcy Code, including by appointing a Future Claimants' Representative as contemplated by section 524(g)(4)(B)(i) of the Bankruptcy Code. See In re Forty-Eight Insulations, Inc., 58 B.R. 476, 477 (Bankr. N.D. Ill. 1986); In re Johns Manville Corp., 36 B.R. 743, 757 (Bankr. S.D.N.Y. 1984); see also In re Garlock Sealing Tech., Case No. 10-31607 (GRH) (Bankr. W.D.N.C. Sept. 30, 2010). Future Claimants' Representatives have also been appointed pursuant to section 327(a) of the Bankruptcy Code. See In re Kaiser Gypsum Co., Inc., Case No. 16-31602 (JCW) (Bankr. W.D.N.C. Oct. 19, 2016); In re Specialty Prods. Holding Corp., Case No. 10-11780 (JKF) (Bankr. D. Del. Oct. 18, 2010); In re W.R. Grace & Co., Case No. 01-01139 (JKF) (Bankr. D. Del. May 24, 2004). To the extent that the Court determines that section 327(a) of the Bankruptcy Code is an appropriate basis for the relief sought herein, the Debtor also seeks relief under that section.

counsel to the Future Claimants' Representative under its trust), National Gypsum Company (before being appointed as Future Claimants' Representative), Thorpe Insulation, Plant Insulation, Western Asbestos, General Motors and T H Agricultural and Nutrition, L.L.C. Mr. Esserman is currently counsel to 16 mass tort trusts, most of which are asbestos-related trusts. In addition, Mr. Esserman participates in an informal discussion group of Future Claimants' Representatives, which meets quarterly to discuss a variety of issues.

15. The Debtor believes that Mr. Esserman's many years of experience and involvement in a substantial number of large and complex cases involving asbestos-related issues make him highly qualified to represent the interests of the Future Claimants. Accordingly, the Debtor respectfully requests that the Court appoint Mr. Esserman to serve as the Future Claimants' Representative in this Chapter 11 Case.

16. In reliance on the Esserman Declaration, which is incorporated herein by reference, the Debtor believes that Mr. Esserman is a "disinterested person," as defined in section 101(14) of the Bankruptcy Code, and has no adverse interest that would prevent him from serving as the Future Claimants' Representative.

Terms and Conditions of Mr. Esserman's Appointment

17. The Debtor requests that the appointment of Mr. Esserman be approved on the following terms and conditions:

- (a) Appointment. Mr. Esserman will be appointed as the Future Claimants' Representative, effective as of April 16, 2020, to represent and protect the rights of Future Claimants.³ Mr. Esserman will have no other obligations except those that may

³ As noted in the Esserman Declaration, Mr. Esserman began his work conducting diligence and preparing for his role as Future Claimants' Representative on April 16, 2020.

be prescribed by orders of the Court and accepted by Mr. Esserman.

- (b) Powers and Duties. Mr. Esserman will have such powers and duties of a committee, as set forth in section 1103 of the Bankruptcy Code, as are appropriate for a Future Claimants' Representative.⁴ Mr. Esserman will have the right to be heard in the Debtor's Chapter 11 Case on any issue on which he has standing under applicable standing principles.
- (c) Engagement of Professionals. Mr. Esserman may employ attorneys and other professionals consistent with sections 105, 327 and 1103 of the Bankruptcy Code, subject to prior approval of this Court. Such attorneys and other professions shall be subject to the terms of the *Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Retained Professionals* [Dkt. 150] (the "Interim Compensation Order"). In addition, without further Court approval, Mr. Esserman may utilize the services of his firm, Stutzman, Bromberg, Esserman & Plifka ("Stutzman Bromberg"), for primarily administrative matters. Payment of Stutzman Bromberg's fees or the reimbursement of any of Stutzman Bromberg's expenses will be subject to the terms of the Interim Compensation Order, and Mr. Esserman will include the services provided by Stutzman Bromberg in his applications for payment, pursuant and subject to the orders and procedures of this Court.
- (d) Compensation. Compensation, including professional fees and reimbursement of expenses, shall be payable to Mr. Esserman and his professionals from the Debtor's estate, subject to approval of this Court, and in accordance with the terms, conditions and procedures set forth in the Interim Compensation Order. The Debtor and Mr. Esserman have agreed that Mr. Esserman will be compensated at the rate of \$850 per hour for calendar year 2020, subject to periodic adjustment (generally annually) in the ordinary course of Mr. Esserman's business, plus reimbursement of actual, reasonable and documented out-of-pocket expenses. Mr. Esserman will file a supplement to the Esserman Declaration to reflect any changes in his billing rate, and parties in interest shall have 10 days to file a written objection to any such changes.

⁴ See *In re Johns-Manville Corp.*, 52 B.R. 940, 942 (S.D.N.Y. 1985) (legal representative for future claimants was authorized to exercise powers and perform duties of a committee under section 1103 of the Bankruptcy Code); *In re UNR Indus., Inc.*, 71 B.R. 467, 478 (Bankr. N.D. Ill. 1987) (stating that the future claimants' representative was granted the powers and responsibilities of a committee).

- (e) Liability Insurance. Mr. Esserman will be covered by his own firm's liability insurance without any additional cost to the Debtor's estate.
- (f) Indemnification. The Debtor will indemnify, defend and hold harmless Mr. Esserman, his partners, associates, principals, employees and professionals (collectively, the "Indemnified Parties") from and against any losses, claims, damages or liabilities (or actions in respect thereof) to which any Indemnified Party may become subject as a result of or in connection with Mr. Esserman's rendering services hereunder, unless and until it is finally judicially determined that such losses, claims, damages or liabilities were caused by gross negligence, willful misconduct, bad faith or fraud on the part of one or more of the Indemnified Parties in performing their obligations. Any such indemnification will be an allowed administrative expense under section 503(b) of the Bankruptcy Code and will be paid upon application to and approval of the Court. For the avoidance of doubt, gross negligence, willful misconduct, bad faith or fraud on the part of one Indemnified Party shall not preclude indemnification for the other Indemnified Parties.
- (g) Right to Receive Notices. Mr. Esserman and any Court-approved counsel retained by Mr. Esserman will be deemed members of the "Master Service List" for purposes of the *Order Establishing Certain Notice, Case Management and Administrative Procedures* [Dkt. 27] (the "Case Management Order").
- (h) Termination of Appointment. Unless otherwise ordered by the Court or provided for in any confirmed plan of reorganization, Mr. Esserman's appointment as Future Claimants' Representative will terminate upon the effective date of a plan of reorganization in this Chapter 11 Case or otherwise by written resignation or incapacity to serve.

18. The Debtor believes that the proposed terms of Mr. Esserman's employment are consistent with the terms typically approved by bankruptcy courts for such appointments. In addition, as noted above, the selection of the Future Claimants' Representative was made after consultation with the Asbestos Committee and is supported by the Asbestos Committee.

19. For all of the foregoing reasons, the Debtor submits that the appointment of Mr. Esserman as Future Claimants' Representative is in the best interests of the Debtor, its estate, the Future Claimants and all other parties in interest.

Notice

20. Consistent with the Case Management Order, notice of this Motion has been provided to: (a) the Office of the United States Bankruptcy Administrator for the Western District of North Carolina; (b) counsel to the Asbestos Committee; (c) counsel to the Debtor's non-debtor affiliate, CertainTeed LLC; (d) the proposed Future Claimants' Representative and his counsel; and (e) the other parties on the Service List established by the Case Management Order. The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be provided.

No Prior Request

21. No prior request for the relief sought in this Motion has been made to this Court or any other court in connection with this Chapter 11 Case.

WHEREFORE, the Debtor respectfully requests that the Court enter an order, substantially in the form attached hereto as Exhibit C, granting (a) the relief requested herein and (b) such other and further relief to the Debtor as the Court may deem just and proper.

Dated: May 8, 2020
Charlotte, North Carolina

Respectfully submitted,

/s/ Garland S. Cassada

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ATTORNEYS FOR DEBTOR AND DEBTOR
IN POSSESSION

EXHIBIT A

Sander L. Esserman *Curriculum Vitae*

SANDER L. ESSEMAN
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EDUCATION:

1969 - 1973 DePauw University, B.A., 1973, cum laude in economics, Omicron Delta Epsilon honorary for economics, Gold Key Award recipient.

1973 - 1976 Southern Methodist University School of Law, J.D., 1976, student editor for *Human Rights Law Journal*, an ABA sponsored publication, Dean's List, "M" Award recipient.

EMPLOYMENT:

1976 - 1977 Law Clerk for the Honorable Nauman S. Scott, Chief Judge for the United States District Court for the Western District of Louisiana.

1977 - 1983 Associate and partner in Freytag, Marshall, LaForce, Rubinstein & Stutzman.

1984 - Present Partner, then Shareholder in Stutzman Bromberg Esserman & Plifka, A Professional Corporation.

1997 - Present President of Stutzman Bromberg Esserman & Plifka, A Professional Corporation.

1999 - Present Adjunct Faculty member at Southern Methodist University School of Law teaching Creditors' Rights and Advanced Bankruptcy.

PROFESSIONAL**ACTIVITIES:**

Published numerous articles in the debtor-creditor area, including Creditor and Consumer Rights in 45 *Southwestern Law Journal* 1553 (1992), Annual Survey of Texas Law, and 46 *SMU Law Review* 1187 (1993). Contributing author in *Creditors' Rights Handbook*, a guide to the Debtor-Creditor Relationship, a Clark Boardman Callaghan Publication; Contributing Author in *Bankruptcy: Essential Legal and Business Strategies* (1991); co-author, *Course Materials for Advanced Bankruptcy* (2000); and co-author, *Collier Handbook for Trustees and Debtors In Possession (2001-2017 Editions)*, a Matthew Bender & Company publication; and co-author, New York University Annual Survey of American Law: "The Case for Broad Access to 11 U.S.C. 524(g) in Light of the Third Circuit's Ongoing Business Requirement Dicta in Combustion Engineering" (2006).

Lecturer and panel member in numerous seminars on Bankruptcy, Mass Torts, Creditors Rights, Corporate Trust, and the Trust Indenture Act.

Past Chairman of the ABA Business Bankruptcy Section Subcommittee of Mass Tort and Environmental Claims.

Advisor to the ALI on Restatement of Torts: Economic Loss.

Southern Methodist University School of Law Executive Board (2009 - present).

Duke University School of Law Board of Visitors (2017 appointment).

PROFESSIONAL**REPRESENTATIONS:**

My experience in financial reorganizations and disputes covers the waterfront, including legal representative for future claimants in asbestos cases ("FCR"), counsel to FCRs, lead counsel to debtors, secured creditors, trustees, indenture trustees, and various creditors' committees. I currently serve as FCR for Bestwall LLC (affiliate of Georgia Pacific) in Chapter 11 in Charlotte, NC, NGC Settlement Trust and Asbestos Claims Management Corporation (2000), and subsequently for NGC Bodily Injury Trust. I have also served as counsel to the FCRs in National Gypsum Company (subsequently appointed FCR), General Motors (SDNY), and T H Agricultural and Nutrition, L.L.C. (SDNY) while in Chapter 11 proceedings. I also represent the Public Entities (including Town of Paradise and various cities and counties) in the PG&E Chapter 11.

I have also served as lead bankruptcy counsel to various corporations and committees. I have served or am serving as special bankruptcy counsel to the MDLs in General Motors, Takata (TK Holdings, et al.), Cook Medical, and Chinese Drywall, pending in New Orleans. I am currently counsel to 14 mass tort trusts, mostly asbestos related, but also some silica and drywall trusts. I am also counsel to the Futures Representative in 4 mass tort trusts.

EXHIBIT B

Declaration of Sander L. Esserman

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

In re

DBMP LLC,¹

Debtor.

Chapter 11

Case No. 20-30080 (JCW)

DECLARATION OF SANDER L. ESSERMAN

Pursuant to Rule 2014(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), Sander L. Esserman declares:

1. I submit this declaration in support of the *Motion of the Debtor for an Order Appointing Sander L. Esserman as Legal Representative for Future Asbestos Claimants* (the “Motion”).²

2. My professional qualifications to serve as the Future Claimants’ Representative in this Chapter 11 Case are set forth in my *curriculum vitae*, attached to the Motion as Exhibit A.

3. As set forth in my *curriculum vitae*, I have broad experience in financial reorganizations and disputes, and have held significant roles in major bankruptcy cases across the country, including numerous mass tort and asbestos cases. In particular, I have more than 25 years of experience handling asbestos-related and mass tort-related issues in various capacities, including by serving as a Future Claimants’ Representative and acting as counsel to Future Claimants’ Representatives and counsel to mass tort trusts. I currently serve as the Future

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 Motion.

Claimants' Representative in the chapter 11 case of Bestwall LLC (Case No. 17-31795 (LTB) (Bankr. W.D.N.C.)) and for the NGC Bodily Injury Trust. I have also served as counsel to Future Claimants' Representatives in the bankruptcy cases of J.T. Thorpe, National Gypsum Company (before being appointed as Future Claimants' Representative), General Motors and T H Agricultural and Nutrition, L.L.C. And, as set forth in further detail below, I am currently counsel to 16 mass tort trusts, most of which are asbestos-related trusts, with the remaining being silica- and drywall-related trusts. Finally, I participate in an informal discussion group of Future Claimants' Representatives, which meets quarterly to discuss a variety of issues.

4. Since April 16, 2020, at the request of the Debtor, to be prepared to move this matter forward expeditiously upon my appointment, I have conducted certain due diligence. Accordingly, I respectfully submit that my appointment as the Future Claimants' Representative should be made effective as of April 16, 2020, and that I should be permitted to seek compensation for fees and expenses reasonably incurred from and after April 16, 2020.

5. For primarily administrative matters, I may utilize the services of my firm, Stutzman, Bromberg, Esserman & Plifka ("Stutzman Bromberg"), subject to the terms of the Interim Compensation Order with respect to the payment of any of the firm's fees or the reimbursement of any of the firm's expenses. I will include the services provided by Stutzman Bromberg in my applications for payment, pursuant and subject to the orders and procedures of this Court.

6. The Debtor has provided me with a list of names (collectively, the "Interested Parties"), a copy of which is attached hereto as Schedule 1, of individuals or institutions in the following categories:

- (a) the Debtor;
- (b) the Direct Equity Owner of Debtor;
- (c) the Debtor's Direct Non-Debtor Subsidiary;
- (d) Other Non-Debtor Affiliates;
- (e) Managers and Officers of the Debtor;
- (f) Major Current Business Affiliates of Debtor's Managers;
- (g) Depository and Disbursement Banks
- (h) Parties to Material Contracts, Unexpired Leases and License Agreements with the Debtor;
- (i) Significant Co-Defendants in Asbestos-Related Litigation;
- (j) the Debtor's Retained Professionals and Claims Agent;
- (k) the Debtor's Significant Ordinary Course Professionals, Consultants and Service Providers;
- (l) Known Professionals for Certain Non-Debtor Parties in Interest;
- (m) Major Suppliers of Goods and Services;
- (n) Law Firms with the Most Significant Representations of Asbestos Claimants;
- (o) Members of and Professionals Retained by the Asbestos Committee;
- (p) Proposed Professionals for the Asbestos Committee;
- (q) Major Sureties;
- (r) Bankruptcy Rule 2002 Parties;
- (s) Employees of the Bankruptcy Administrator's Office for the Western District of North Carolina; and
- (t) the Bankruptcy Judges for the Western District of North Carolina.

7. I have reviewed the list of Interested Parties. My firm has searched its conflicts database and prepared a summary of the results of the aforementioned searches, which

is set forth below. To the best of my knowledge, information and belief, insofar as I have been able to ascertain after reasonable inquiry, my firm and I do not represent, and have not represented, any entity in matters related to this Chapter 11 Case. Other than in connection with my appointment as Future Claimants' Representative in this Chapter 11 Case, my firm and I have no connection with any Interested Parties, other than as set forth below.

8. In the Motors Liquidation Company bankruptcy case in the Southern District of New York, Stutzman Bromberg has an ongoing representation of Lead Counsels for the MDL Litigation relating to ignition switch matters. In particular, Stutzman Bromberg serves in the role of Co-Designated Counsel for the Ignition Switch Plaintiffs and Certain Non-Ignition Switch Plaintiffs. Stutzman Bromberg does not represent the Plaintiffs' Steering Committee in the MDL litigation, which works with the various Lead Counsel groups. Certain members of the Plaintiffs' Steering Committee, including representatives of Baron & Budd, P.C. ("Baron & Budd"), may represent claimants with asbestos claims against the Debtor.

9. Stutzman Bromberg represented as bankruptcy counsel the Plaintiffs' Steering Committee, Plaintiffs' Personal Injury Track Lead Counsel, Plaintiffs' Economic Damages Track Co-Lead Counsel and the Chair Lead Counsel for the MDL plaintiffs and proposed classes (collectively, the "MDL Plaintiffs") in the MDL action against Takata Corporation and affiliates in *In re Takata Airbag Product Liability Litigation*, MDL No. 2599, 15-MD 2599-FAM, United States District Court, S.D. Fla., Miami Division. In particular, Stutzman Bromberg represented the interests of the MDL Plaintiffs in the pending bankruptcy cases of Takata Corporation and certain affiliates. A lawyer from Baron & Budd was on the MDL Plaintiffs' Steering Committee. Certain members of that Steering Committee may represent claimants with asbestos claims against the Debtor.

10. I also report that in past matters that have ended, Stutzman Bromberg has represented or has been consulted by a number of asbestos law firms and other asbestos-related creditor groups in various asbestos-related bankruptcy proceedings around the country. Stutzman Bromberg represented these law firms in connection with various bankruptcy-related legal issues, including discovery issues, insurance issues, confirmation issues, contested lift stay issues, proofs of claim, section 363 sales, plans of reorganization, fee issues and appellate work. While many of these law firms may now represent clients who have or had claims against the Debtor, Stutzman Bromberg no longer represents these law firms in any current matter and does not represent and has not represented individual asbestos claimants in their capacity as asbestos claimants against asbestos defendants (including the Debtor) in the tort system.³

11. Stutzman Bromberg also has represented the WCI Chinese Drywall Property Damage and Personal Injury Settlement Trust. At one point, a lawyer from Baron & Budd, who subsequently resigned from Baron & Budd, served on the advisory board of that WCI trust. The WCI trust was terminated in 2017, all its assets distributed and Stutzman Bromberg's representation ended.

12. I was co-counsel with Baron & Budd to the State of New Mexico in the chapter 11 case of Insys Therapeutics, Inc. (Case No. 19-11292 (Bankr. D. Del.)) in a matter that lasted only two months and was terminated.

13. In addition to the foregoing, I currently serve in the following roles in other chapter 11 cases or in connection with mass tort trusts:

³ Some of the law firms that have been Stutzman Bromberg clients (but more than three years ago) include Provost Umphrey, Reaud Morgan Quinn, Baron & Budd, Peter G. Angelos firm, Brayton Purcell, Ryan A. Foster Law Firm, Hissey Kientz Herron, Lipman Law, the Shepard Law Firm, Weitz & Luxenberg PC, Thornton & Naumes and The Bogdan Law Firm. Again, Stutzman Bromberg no longer represents these law firms in any current matter.

- the Future Claimants' Representative in the chapter 11 case of Bestwall LLC (Case No. 17-31795 (LTB) (Bankr. W.D.N.C.));
- counsel for David F. Levi in his capacity as Future Claimants' Representative for the Western Asbestos Settlement Trust, the Plant Insulation Settlement Asbestos Trust, the Thorpe Insulation Settlement Trust and the J.T. Thorpe Settlement Trust, each of whose general outside counsel is Schiff Hardin LLP, which serves as special counsel to the Debtor in this Chapter 11 Case;
- counsel to the Plaintiffs' Co-Lead Counsel⁴ in the matter of In re Cook Medical Inc. (Case No. 1:14-ml-2570 (D. S.D. Ind.));
- co-counsel with Baron & Budd⁵ and Nuti Hart LLP to the Public Entities Impacted by the Wildfires in the chapter 11 case of PG&E Corporation (Case No. 19-30088 (Bankr. N.D. Cal.));
- counsel to the following 16 mass tort trusts:⁶ (i) ABB Lummus Global Inc. 524(g) Asbestos PI Trust; (ii) ASARCO Asbestos Personal Injury Settlement Trust; (iii) Clemtex Silica Settlement Trust; (iv) Combustion Engineering 524(g) Asbestos PI Trust; (v) Congoleum Plan Trust; (vi) J T Thorpe Company Successor Trust; (vii) Leslie Controls, Inc. Asbestos Personal Injury Trust; (viii) Maremont Asbestos Personal Injury Trust; (ix) Metex Asbestos PI Trust; (x) M.H. Detrick Company Asbestos Trust; (xi) North American Refractories Company Asbestos Personal Injury Settlement Trust;⁷ (xii) Rock Wool Manufacturing Company Asbestos Trust; (xiii) Rutland Fire Clay Company Asbestos Trust; (xiv) T H Agriculture & Nutrition, L.L.C., Asbestos Personal Injury Trust; (xv) United Gilsonite Laboratories Asbestos Personal Injury Trust; and (xvi) Utex Industries, Inc. Successor Trust; and
- Legal Representative for Unknown Claimants of the NGC Bodily Injury Trust, where Stutzman Bromberg serves as counsel to the Legal Representative.

⁴ The Plaintiffs' Co-Lead Counsel in In re Cook Medical Inc. are (i) Ben C. Martin, Law Offices of Ben C. Martin; (ii) David P. Matthews, Matthews & Associates; and (iii) Michael W. Heaviside, Heaviside Reed Zaic. The leadership structure of MDL in this proceeding has Plaintiffs' Liaison Counsel & State/Federal Liaison Counsel, Plaintiffs' Executive Committee consisting of eight firms, and a Plaintiffs' Steering Committee ("PSC") consisting of fifteen firms. Certain members of the PSC represent claimants with asbestos claims against the Debtor.

⁵ Baron & Budd represents asbestos claimants in the tort system, some of whom may have claims against the Debtor.

⁶ Stutzman Bromberg serves as general outside counsel to these trusts. As general outside counsel to each of these trusts, Stutzman Bromberg provides various legal analysis and advice to assist the respective trustees in fulfilling their fiduciary responsibilities.

⁷ The NARCO Asbestos Personal Injury Settlement Trust is funded by Honeywell International, Inc., one of the Debtor's significant co-defendants in asbestos-related litigation identified on the Interested Parties list.

14. The vast majority of the law firms identified on the Interested Parties list as the law firms with the most significant representation of asbestos claimants and the law firms on the Asbestos Committee have filed claims against one or more of the above-listed mass tort trusts that I represent or whose representatives I represent. I regularly engage in disputes with those firms over claims valuations and other issues that are unrelated to this Chapter 11 Case. Caplin & Drysdale, Chartered, co-lead counsel to the Asbestos Committee, represents the Trust Advisory Committees for the ASARCO Asbestos Personal Injury Settlement Trust, Congoleum Plan Trust, M H Detrick Company Asbestos Trust, Rutland Fire Clay Company Asbestos Trust, Rock Wool Manufacturing Company Asbestos Trust, Metex Asbestos PI Trust, and the North American Refractories Company Asbestos Personal Injury Trust. The Asbestos Committee's other co-lead counsel, Robinson & Cole, LLP, represents the Trust Advisory Committees for the Leslie Controls, Inc. Asbestos Personal Injuries Trust, Maremont Asbestos Personal Injury Trust and the United Gilsonite Laboratories Asbestos Personal Injury Trust. FTI Consulting, Inc., the proposed financial advisor to the Asbestos Committee in this Chapter 11 Case, advises me in my capacity as the Future Claimants' Representative in the chapter 11 case of Bestwall, LLC.

15. Additionally, it is anticipated that I will represent the Sepco Asbestos Trust, which will be established pursuant to the chapter 11 plan in the chapter 11 case of Sepco Corporation (Case No. 16-50058 (Bankr. N.D. Ohio)), an affiliate of the Debtor ("Sepco").⁸ The Sepco plan provides that (a) Saint-Gobain Corporation, one of the Debtor's non-debtor affiliates, will transfer to reorganized Sepco ("Reorganized Sepco") a 33.33% non-managing membership interest in Moores Commercial Unit, LLC; (b) Reorganized Sepco will have the option to sell

⁸ I understand that Sepco is an indirect subsidiary of Saint-Gobain Abrasives, Inc., which is a sister company to CertainTeed Holding Corporation, the direct parent of both the Debtor and CertainTeed LLC.

this membership interest back to Saint-Gobain Corporation for a fixed price; and (c) the Sepco Asbestos Trust will own Reorganized Sepco. I will file a supplement to this Declaration upon my official retention as counsel for the Sepco Asbestos Trust.

16. In addition, in 2018, my son, Mark Esserman, served as a summer law clerk for Haynes and Boone, LLP (“Haynes and Boone”) and Baron & Budd, and now is employed as an associate at Haynes and Boone. Haynes and Boone has performed defense work in mass tort cases and is general counsel to the National Gypsum Settlement Trust (where I serve as Future Claimants’ Representative). Baron & Budd represents asbestos claimants, some of whom may have claims against the Debtor. Although these relationships are wholly unrelated to the services I would provide pursuant to my appointment as the Future Claimants’ Representative in this Chapter 11 Case, I am nevertheless making this disclosure out of an abundance of caution.

17. To the best of my knowledge and belief, insofar as I have been able to ascertain after reasonable inquiry based on the list of Interested Parties set forth on Schedule 1, my firm and I do not hold or represent any interest adverse to the Debtor or its estate, and my firm and I are each a “disinterested person,” as defined in section 101(14) of the Bankruptcy Code, in that, except as set forth in this Declaration: (a) my firm and I have no connection with the Debtor, its creditors, the Bankruptcy Administrator, any person employed in the office of the Bankruptcy Administrator or any other party with an actual interest in this Chapter 11 Case or their respective attorneys or accountants; (b) my firm and I are not creditors, equity security holders or insiders of the Debtor; (c) my firm and I are not and were not, within two years of the Petition Date, a director, officer or employee of the Debtor; and (d) my firm and I do not have an interest materially adverse to the Debtor, its estate or any class of creditors or equity security

holders by reason of any direct or indirect relationship to, connection with or interest in the Debtor, or for any other reason.

18. I have no agreement with any other entity to share with such entity any compensation received by me in connection with the Debtor's bankruptcy case, other than with respect to my law firm.

19. Except as set forth in the Motion and this Declaration, I have not received compensation in this case, nor has an agreement been made as to compensation to be paid.

20. I have agreed to charge a rate of \$850 per hour for calendar year 2020 for my incurred time, subject to periodic adjustment (generally annually) in the ordinary course of my business, plus reimbursement of actual, necessary and documented out-of-pocket expenses. I will file a supplement to this Declaration to reflect any changes in my billing rate.

21. In my role as the Future Claimants' Representative, I will be covered by his own firm's liability insurance without any additional cost to the Debtor's estate.

22. I have reviewed the Interim Compensation Order, and I agree to comply with the provisions thereof and with any other orders that may be entered by the Court with respect to the compensation of professionals in this Chapter 11 Case.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Date: May 8, 2020

By: /s/ Sander L. Esserman
Sander L. Esserman

SCHEDULE 1

Interested Parties

DBMP LLC

Interested Parties

Debtor

DBMP LLC

Direct Equity Owner of Debtor

CertainTeed Holding Corporation

Debtor's Direct Non-Debtor Subsidiary

Millwork & Panel LLC

Other Non-Debtor Affiliates

Bayside Port Corporation, Inc.
Bird Incorporated
Carborundum Ceramic Holdings, Inc.
Carborundum Ventures, Inc.
CertainTeed Canada, Inc.
CertainTeed Ceilings Corporation
CertainTeed Gypsum and Ceiling Mfg., Inc.
CertainTeed Gypsum Mfg, Inc.
CertainTeed Gypsum NC, Inc.
CertainTeed Gypsum West Virginia, Inc.
CertainTeed Gypsum, Inc.
CertainTeed Holding Corporation
CertainTeed LLC
CertainTeed Gypsum and Ceilings USA, Inc.
Compagnie de Saint-Gobain
CT Solar Fund I LLC
CTKC Corporation
Fluorocarbon Components, Inc.
Grindwell Norton Ltd.
GS II, Inc.
HCS Corporation
Level Solar Fund IV LLC
MAG-ISOVER K.K.
New West Gypsum Recycling, Inc.
Norton Foreign Affiliates Holding Corporation
OFI GP Inc.

OFI L.P.
Ottawa Fibre GP Inc
Ottawa Fibre L.P.
P.T. Saint-Gobain Abrasives Indonesia
Phoenix Coating Resources, Inc.
Redcliff Fibre L.P.
Sage Electrochromics, Inc.
Saint-Gobain (SEA) PTE, Ltd
Saint-Gobain Abrasives, Inc.
Saint-Gobain Abrasives. Ltd.
Saint-Gobain Abrasivos S.A. de C.V.
Saint-Gobain Adfors America, Inc.
Saint-Gobain Advanced Ceramics, LLC
Saint-Gobain Building Distribution Ltd.
Saint-Gobain Canada, Inc.
Saint-Gobain Ceramic Materials Pvt. Ltd.
Saint-Gobain Ceramics & Plastics, Inc.
Saint-Gobain Corporation
Saint-Gobain Corporation Foundation
Saint-Gobain Delaware Corporation
Saint-Gobain Finance Corporation
Saint-Gobain Glass Corporation
Saint-Gobain HyComp LLC
Saint-Gobain India Foundation
Saint-Gobain India Pvt. Ltd.
Saint-Gobain Insurance Ltd.
Saint-Gobain Interior Building Distribution Company
Saint-Gobain KK
Saint-Gobain Materiaux de Construction S.A.S.
Saint-Gobain Merit, S.De R.L. De C.V.
Saint-Gobain Performance Plastics (Hangzhou) Co., Ltd.
Saint-Gobain Performance Plastics Corporation
Saint-Gobain Receivables Corporation
Saint-Gobain Research India Pvt. Ltd.
Saint-Gobain Shared Services Corporation
Saint-Gobain Solar Gard Australia Pty. Ltd.
Saint-Gobain Solar Gard, LLC
Saint-Gobain TM KK

Sepco Corporation
Societe de Participations Financieres et
Industrielles
The Grid Company GP, Inc.
The Grid Company Limited Partnership
The Grid Company, LLC
Tillsonburg Fibre L.P.
Vertec SAS
Vetrotech Saint-Gobain North America,
Inc.
VIB L.P.
Western Mining and Minerals, Inc.
Zenpure Americas, Inc.
Zenpure Corporation
Z-Tech, LLC

Managers and Officers of the Debtor

D. Lawrence Rayburn
Donald J. Melroy
Joseph N. Bondi
Michael T. Starczewski
Robert J. Panaro
Sean R. Knapp
Vincent F. DiNenna, III

Major Current Business Affiliations of Debtor's Managers

Millwork & Panel LLC
Pennsylvania Association of Notaries
Royersford Outreach (d/b/a Open
Door Ministries)
Tampa Chapter of the American
Constitution Society
Vinyl Siding Institute

Depository and Disbursement Banks

Bank of America, N.A.
J.P. Morgan Chase

Parties to Material Contracts, Unexpired Leases and License Agreements with the Debtor

CertainTeed LLC

CT Corp.
PACE Claim Services
PrincetonClaims Services
Saint-Gobain Corporation
Saint-Gobain Shared Services Corporation

Significant Co-Defendants in Asbestos-Related Litigation

3M Company
A.O. Smith Corporation
Carborundum Company
CBS Corporation
Crane Company
Foster Wheeler Energy Corporation
General Electric Company
Honeywell International Inc.
Industrial Holdings Inc.
Ingersoll Rand Company
JM Manufacturing Company Inc.
Metropolitan Life Insurance Company
Union Carbide Corporation
Westinghouse Electric Corporation

Debtor's Retained Professionals and Claims Agent

Bates White LLC
Epiq Corporate Restructuring, LLC
Jones Day
Robinson, Bradshaw & Hinson, P.A.
Schiff Hardin LLP

Debtor's Significant Ordinary Course Professionals, Consultants and Service Providers

Caruso Smith Edell Picini P.C.
Cetrulo LLP
Darger Errante Yavitz & Blau LLP
DeHay & Elliston LLP
Dentons LLP
Deutsch Kerrigan LLP
Foley & Lardner LLP
Gordon Thomas Honeywell LLP
Harvey Kruse
Hawkins & Parnell

Heyl Royster
Kalinowski & Chaplinsky
Maron & Marvel
Miles & Stockbridge
Paine Tarwater Bickers & Tillman LLP
Polsinelli LLP
Swartz Campbell LLC
Vorys Sater Seymour & Pease LLP
Wilbraham Lawler & Buba
Wilson Elser Moskowitz Edelman &
Dicker LLP

**Known Professionals for Certain
Non-Debtor Parties in Interest**

Goodwin Procter LLP

Major Suppliers of Goods and Services

CertainTeed LLC
Saint-Gobain Corporation
Saint-Gobain Shared Services Corporation

**Law Firms with the Most Significant
Representation of Asbestos Claimants**

Baron & Budd, PC
Belluck & Fox, LLP
Brookman, Rosenberg, Brown & Sandler
Cooney & Conway, LLC
Early Lucarelli Sweeney
Flint Law Firm
George & Farinas, LLP
Goldberg, Persky & White, P.C.
Goldenberg Heller Antognoli &
Rowland, PC
The Gori Law Firm
James F. Humphreys & Associates L.C.
Kazan, McClain, Satterley &
Greenwood PLC
Kelley & Ferraro, LLP
Law Offices of Peter G. Angelos, PC
Maune Raichle Hartley French
& Mudd, LLC
Motley Rice, LLC
O'Brien Law Firm, PC

Richardson, Patrick, Westbrook
& Brickman, LLC
Shrader & Associates, L.P.
Simmons Hanly Conroy LLC
SWMW Law, LLC
The Ferraro Law Firm
The Law Offices of Peter T. Nicholl
Weitz & Luxenberg, PC
Wilentz, Goldman & Spitzer

**Committee of Asbestos Personal Injury
Claimants**

Cohen, Placitella & Roth, P.C.
Cooney & Conway
Goldberg Persky White, P.C.
Kazan, McClain, Satterly
& Greenwood PLC
Law Offices of Peter G. Angelos, P.C.
Maune Raichle Hartley French &
Mudd, LLC
Shrader & Associates, L.L.P.
SWMW Law, LLC
The Gori Law Firm
The Shepard Law Firm
Weitz & Luxenberg, P.C.

**Professionals to the Committee of
Asbestos Personal Injury Claimants**

Caplin & Drysdale, Chartered
Hamilton Stephens Steele + Martin, PLLC
Robinson & Cole, LLP
Winston & Strawn, LLP

**Proposed Professional to the Committee
of Asbestos Personal Injury Claimants**

FTI Consulting, Inc.

Major Sureties

Travelers Casualty and Surety Company
of America

Bankruptcy Rule 2002 Appearances

Bestwall LLC
Honeywell International, Inc.

**Employees of the Bankruptcy
Administrator's Office for the Western
District of North Carolina**

Alexandria Kenny
Anne Whitley
David Shepherd
Katrina Adams

Sarah Scholz
Shelley K. Abel

**Bankruptcy Judges for the Western
District of North Carolina**

Judge George Hodges (Charlotte)
Judge J. Craig Whitley (Charlotte)
Judge Laura T. Beyer (Charlotte)

EXHIBIT C

Proposed Order

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

In re

DBMP LLC,¹

Debtor.

Chapter 11

Case No. 20-30080 (JCW)

**ORDER APPOINTING SANDER L. ESSERMAN AS LEGAL
REPRESENTATIVE FOR FUTURE ASBESTOS CLAIMANTS**

This matter coming before the Court on the *Motion of the Debtor for an Order Appointing Sander L. Esserman as Legal Representative for Future Asbestos Claimants* (the “Motion”),² filed by the Debtor; the Court having reviewed the Motion and the Esserman Declaration attached thereto as Exhibit B and having heard the statements of counsel regarding the relief requested in the Motion at a hearing before the Court (the “Hearing”); the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and (c) notice of the Motion and

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 Motion.

the Hearing was sufficient under the circumstances and no other or further notice is or shall be required; and the Court having determined that the legal and factual bases set forth in the Motion and the Esserman Declaration and at the Hearing establish good and sufficient cause for the relief granted herein;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.
2. Pursuant to sections 105(a) and 524(g)(4)(B)(i) of the Bankruptcy Code, Sander L. Esserman is hereby appointed as the Future Claimants' Representative in this Chapter 11 Case, effective as of April 16, 2020, for the purpose of representing and protecting the rights of the Future Claimants on the terms and conditions set forth herein.
3. Mr. Esserman shall have such powers and duties of a committee, as set forth in section 1103 of the Bankruptcy Code, as are appropriate for a Future Claimants' Representative. Mr. Esserman shall have the right to be heard in the Debtor's Chapter 11 Case on any issue on which he has standing under applicable standing principles.
4. In his role as the Future Claimants' Representative, Mr. Esserman may employ attorneys and other professionals consistent with sections 327 and 1103 of the Bankruptcy Code, subject to prior approval of this Court, and such attorneys and other professionals shall be subject to the terms of the Interim Compensation Order. In addition, for primarily administrative matters, Mr. Esserman may utilize the services of his firm, Stutzman, Bromberg, Esserman & Plifka ("Stutzman Bromberg"), without further Court approval but subject to the terms of the Interim Compensation Order with respect to the payment of any of Stutzman Bromberg's fees or the reimbursement of any of Stutzman Bromberg's expenses.

Mr. Esserman shall include the services provided by Stutzman Bromberg in his applications for payment, pursuant and subject to the orders and procedures of this Court.

5. Compensation, including professional fees and reimbursement of actual and necessary expenses incurred since the Petition Date, shall be payable to Mr. Esserman and his professionals from the Debtor's estate, as appropriate, subject to approval of this Court, and in accordance with the terms, conditions and procedures set forth in the Interim Compensation Order. In his role as the Future Claimants' Representative, Mr. Esserman shall be compensated at the rate of \$850 per hour, subject to periodic adjustment (generally annually) in the ordinary course of his business, plus reimbursement of actual, reasonable and documented out-of-pocket expenses. Mr. Esserman shall file a supplement to the Esserman Declaration to reflect any changes in his billing rate, and any parties in interest shall have 10 days to file a written objection to any such changes, with any such unresolved objections to be determined by this Court.

6. The Debtor shall indemnify, defend and hold harmless Mr. Esserman, his partners, associates, principals, employees and professionals (collectively, the "Indemnified Parties") from and against any losses, claims, damages or liabilities (or actions in respect thereof) to which any Indemnified Party may become subject as a result of or in connection with Mr. Esserman's rendering services in his capacity as the Future Claimants' Representative, unless and until it is finally judicially determined that such losses, claims, damages or liabilities were caused by gross negligence, willful misconduct, bad faith or fraud on the part of one or more of the Indemnified Parties in performing their obligations. Any such indemnification shall be an allowed administrative expense under section 503(b) of the Bankruptcy Code and shall be paid upon application to and approval of this Court. For the avoidance of doubt, gross

negligence, willful misconduct, bad faith or fraud on the part of one Indemnified Party shall not preclude indemnification for the other Indemnified Parties.

7. Mr. Esserman and any Court-approved counsel retained by Mr. Esserman in his role as Future Claimants' Representative shall be deemed members of the "Master Service List" for purposes of the Case Management Order.

8. Unless otherwise ordered by this Court or as provided for in any confirmed plan of reorganization, Mr. Esserman's appointment as Future Claimants' Representative shall terminate upon the effective date of a plan of reorganization in this Chapter 11 Case or otherwise by written resignation or incapacity to serve.

9. This Court shall retain exclusive jurisdiction to interpret, enforce and implement the terms and provisions of this Order and to resolve any disputes arising hereunder.

This Order has been signed electronically.
The Judge's signature and Court's seal
appear at the top of the Order.

United States Bankruptcy Court