Docket #1812 Date Filed: 6/15/2023

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re:	)	
	)	Chapter 11
ALDRICH PUMP LLC,	)	
MURRAY BOILER LLC,	)	
	)	Case No. 20-30608 (JCW)
Debtors.	)	

SEMIAN'S REPLY TO THE FUTURE ASBESTOS CLAIMANTS' REPRESENTATIVE'S OPPOSITION TO THE MOTION TO DISMISS ON BEHALF OF ROBERT SEMIAN AND OTHER CLIENTS OF MRHFM

Robert Semian[1], files the following reply to the opposition filed by future asbestos claimants representative (the "FCR") (Dkt. 1779) to these claimants' Motion to Dismiss (Dkt. 1712).

Mr. Semian contends the Debtors can pay all asbestos victims in full, are not in financial distress, and did not file their bankruptcy petitions in good faith. *See* Semian Motion to Dismiss, Dkt. 1712. The FCR doesn't dispute any of this, nor does he offer any legal basis—because there ***isn't*** any—to support his view that as the FCR he can foist a "settlement" on future victims in the complete absence of a limited fund and when the debtor is *not* overwhelmed by asbestos liabilities.

Mr. Semian, the other forty-six movants, and all future plaintiffs have unambiguous Constitutional rights to jury trials and all remedies available to them under

[1] For ease of reading, Mr. Semian and the forty-six other MRHFM clients moving to dismiss the Debtors' bankruptcy case shall be collectively referred to as "Mr. Semian."

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state law.[2] The FCR ignores this, and his tortured reading 11 U.S.C. § 524(g) stands in stark contrast to the history of asbestos litigation. Johns-Manville filed for protection in 1982; Section 524(g) was added to the Code in 1994; the Supreme Court struck down asbestos class action settlements—for infringing on *future* plaintiffs' Seventh Amendment Rights and capping their damages—in 1997 and 1999.[3] The Supreme Court did *not* read section 524(g) as applying to non-debtors like Fibreboard in 1999 and would *not* apply it to non-distressed debtors like Murray and Aldrich now. During the early 2000s, Congress decided *against* several bills proposed to "address" asbestos litigation.[4] During this time several companies filed real (non-Two Step) asbestos bankruptcies because they (and their lawyers) interpreted, *inter alia*, the purpose of the Bankruptcy Code and the applicable case law, the same way then that Mr. Semian does now.[5]

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[2] "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law." U.S. Const., amend VII. State legislatures, courts and constitutions guarantee and provide as inviolate the right of an injured person to have a jury trial. *See* Steven Gow Calabresi, et al., Individual Rights Under State Constitutions in 2018: What Rights Are Deeply Rooted in a Modern-Day Consensus of the States, 94 Notre Dame L. Rev. 49, 113-14 (Nov. 2018).

[3] *See Amchem Prods. v. Windsor*, 521 U.S. 591, 628-29 (1997) ("The argument is sensibly made that a nationwide administrative claims processing regime would provide the most secure, fair, and efficient means of compensating victims of asbestos exposure. Congress, however, has not adopted such a solution.") and *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 845-46 (1999) (recognizing the "serious constitutional concerns that come with any attempt to aggregate individual tort claims on a limited fund rationale" as "a mandatory settlement-only class action with legal issues and future claimants compromises their Seventh Amendment rights without their consent.").

[4] *See e.g.* The Fairness in Asbestos Injury Resolution Act of 2005 (S. 852, 109th Cong.); The Fairness in Asbestos Compensation Act of 1999 (S. 758, 106th Cong.), the Asbestos Compensation Act of 2000 (H.R. 1283, 106th Cong.), and the Asbestos Claims Criteria and Compensation Act of 2003 (S. 413, 108th Cong.).

[5] *See In re WR Grace & Co.*, 729 F.3d 332 (3d Cir. 2013); *In re Armstrong World Indus., Inc.*, 348 B.R. 136 (D. Del. 2006); *In re USG Corp.*, 290 B.R. 223 (Bankr. D. Del. 2003); *In re Fed.-Mogul Glob. Inc.*, 684 F.3d 355 (3d Cir. 2012); *In re Celotex Corp.*, 204 B.R. 586 (Bankr. M.D. Fla. 1996); *In re Nat'l Gypsum Co.*, 257 B.R. 184

Breaching his fiduciary duty to protect the rights of future victims, the FCR proposes to cap the claims of future claimants and channel them to a trust. Bereft of legal support for this position, the FCR offers value judgments about the "inferior results" in the tort system. The decision to settle or to try a case to verdict before a jury belongs to Mr. Semian and to all future plaintiffs, especially when, as here, there is no limited fund. *See e.g. In re Combustion Eng'g*, 391 F.3d 190, 237-238 (3d Cir. 2004) (future plaintiffs "might prefer having recourse against solvent entities rather than being limited to proceed against" a trust); Semian Motion to Dismiss, Dkt. 1712, at pp. 4-9.

When not bemoaning the civil jury system, the FCR attacks MRHFM, contending that the Firm's current (and future) plaintiffs can't decide for themselves what they want, and have to adhere to the positions *not* taken by *different* claimants[6] in a non-Two Step bankruptcy involving a different debtor, different products, and wholly different facts, simply because some of the plaintiffs in this case were represented by the same law firm as some of the claimants in *Paddock*. *See* FCR Opposition, Dkt. 1779, at pp. 5-17.[7] This argument deliberately conflates law firms with clients. MRHFM is not a party to this case

(Bankr. N.D. Tex. 2000) - asbestos bankruptcy cases filed with the true intent of reorganizing and/or resolving their financially distressed circumstances.

[6] As movants here were not parties to *Paddock*, the FCR's argument concerning judicial estoppel is misplaced. FCR Opposition, Dkt. 1779, fn 19. *See e.g. Ryan Operations G.P. v. Santiam-Midwest Lumber Co.*, 81 F.3d 355, 358 (3d. Cir. 1996) (noting that "any application of the doctrine [of judicial estoppel] must rest upon a finding that the party against whom estoppel is sought asserted a position inconsistent with one she [or he] previously asserted in a judicial proceeding").

[7] With regard to the FCR's remaining arguments—including laches and lack of financial distress—movants rely upon, and incorporate by reference, the points raised in their Reply to the Debtors' Objection.

and was not a party in *Paddock.* MRHFM's duty as counsel for individual plaintiffs is to use its professional judgment in each case, for each client; but it is the clients who are the parties and the clients whose lives and rights are at stake.

The Court has heard more than enough about *Paddock* from the FCR. While there are ample distinctions—Owens-Illinois hasn't made an asbestos product since the 1950s; Paddock didn't seek a preliminary injunction for Owen-Illinois; and there was evidence of financial distress—they are irrelevant. None of the movants here took a position before the Court in *Paddock*, and the fact that the Committee in *Paddock* did not challenge the jurisdiction of that bankruptcy court has no import here.

The FCR provides no authority for the notion that a different party's decision in a different case to not raise a particular objection or argument somehow precludes future parties in different cases from raising such an objection or argument. The FCR speciously suggests that this Court adopt a never-before-adopted rule of negative, implied, non-mutual collateral estoppel, implying that the asbestos claimants committee's ("ACC") decisions in *Paddock* preclude Mr. Semian from challenging this Court's subject matter jurisdiction now and in this bankruptcy case.

The FCR asserts that if the *Paddock* ACC properly exercised its fiduciary duties to current claimants, the Aldrich/Murray ACC "cannot simultaneously be doing so [by] pursuing its Motion to Dismiss." *Id*. at 19. Mr. Semian is not the ACC, a member of the

ACC, nor is he bound by any choices of the ACC. With that said, whether the ACC had ever filed a motion to dismiss this case or not, Mr. Semian's motion would remain.

Ultimately, the FCR's objections boil down to criticisms of the tort system, which don't matter to the analysis of Mr. Semian's legal arguments in support of dismissing this bankruptcy case. The role of an FCR is to ensure that—in situations where there is not enough money to go around—a sufficiently large slice of the pie is held in reserve for future claimants. *See In re Imerys Talc America, Inc.*, 38 F.4th 361, 375-79 (3rd Cir 2022) (The court provides a detailed analysis of section 524(g) and the role of a future claimants representative through an analysis of the legislative history of section 524(g), other asbestos bankruptcy cases, and applicable case law). The FCR has provided no support for the proposition that his role extends to forcing his value judgments on future victims and forcing them to surrender their rights to seek recourse in the tort system *in absentia*. FCR Opposition, Dkt. 1781, pp. 7, 20-22.

The FCR erroneously focuses on the trust distribution procedures in its Opposition. *See* FCR Opposition, Dkt. 1781, pp. 13-16. In fact, the trust distribution procedures in actual, good faith, distressed company bankruptcies, such as *Paddock*, are inapplicable here. Section 524(g) is a remedy, not a basis for jurisdiction. Only companies in financial distress, overwhelmed by asbestos liabilities, and that subject themselves to the jurisdiction of the bankruptcy court (none of which Aldrich Pump nor Murray have done here) can hope to qualify for a channeling injunction under section 524(g). The TDPs

in those types of asbestos bankruptcies—and inapplicable here—usually limit the remedies available to future victims and impair their jury access.

The FCR's "concerns" about MRHFM's exercise of its fiduciary duties, and the alleged conflicts of interest engendered thereby [*See* FCR Opposition, Dkt.1779, pp. 18-20], are meritless. There is no settlement offer for Mr. Semian to accept because the Debtors refuse to make individual offers to individual victims. That is by design and emblematic of the entire purpose of this sham bankruptcy: to force collective resolution of all present and future claims and to override individual rights. In effect, the FCR argues that Mr. Semian and those similarly situated should agree to their Constitutional rights being deprived in hopes that the companies that poisoned them with asbestos will one day make an offer to resolve all present and future cases that every single movant might find acceptable.

This contravenes well-established precedent that causes of action are constitutionally protected property rights. *See e.g., Logan v. Zimmerman Brush*, 455 U.S. 422 (1982) ("The first question, we believe, was affirmatively settled by the *Mullane* case itself, where the Court held that a cause of action is a species of property protected by the Fourteenth Amendment's Due Process Clause. . . . Similarly, the Fourteenth Amendment's Due Process Clause has been interpreted as preventing the States from denying potential litigants use of established adjudicatory procedures, which such an action would be the equivalent of denying them an opportunity to be heard on their

claimed rights." (internal citations omitted)). The argument that a tortfeasor may non-consensually violate another party's Constitutional rights for an indefinite period of time because the tortfeasor claims that, eventually, the abused party might agree to a settlement, is absurd. No such "settlement" would ever be truly voluntary, nor does such a possibility justify the violation of the non-consenting party's rights. Yet, this is the entire premise of the FCR's complaint that Mr. Semian is not eagerly pursuing settlement of his claims in this bad-faith bankruptcy.

Contrary to the FCR's position, the only conflict of interest to be found here is with the FCR's decision to advocate for the forfeiture of the current and future claimants' Constitutional rights in this unlimited fund case because the FCR dislikes the civil justice system set up by the United States Constitution and State Constitutions. The FCR has no authority to make value judgements and force them on the Debtors' future victims.

Respectfully submitted, this the 15th day of June, 2023.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing SEMIAN'S REPLY TO THE FUTURE ASBESTOS CLAIMANTS' REPRESENTATIVE'S OPPOSITION TO THE MOTION TO DISMISS ON BEHALF OF ROBERT SEMIAN AND OTHER CLIENTS OF MRHFM was filed in accordance with the local rules and served upon all parties registered for electronic service and entitled to receive notice thereof through the CM/ECF system.

Respectfully submitted this the 15th day of June, 2023.

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