

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

MAREMONT CORPORATION, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 19-10118 (KJC)

Jointly Administered

Related Doc. Nos. 44 and 63

**RESPONSE OF THE OFFICIAL COMMITTEE OF ASBESTOS CLAIMANTS  
TO THE UNITED STATES TRUSTEE'S OBJECTION TO DEBTORS' MOTION FOR  
ENTRY OF AN ORDER APPOINTING JAMES L. PATTON, JR., AS LEGAL  
REPRESENTATIVE FOR FUTURE ASBESTOS CLAIMANTS,  
NUNC PRO TUNC TO THE PETITION DATE**

The Official Committee of Asbestos Claimants<sup>2</sup>, through its undersigned counsel, hereby files this response (the "ACC Response") to the objection (the "UST Objection") of the United States Trustee (the "UST") to the Debtors' Motion for Entry of An Order Appointing James L. Patton, Jr., as Legal Representative for Future Claimants, *Nunc Pro Tunc* to the Petition Date (the "Motion to Appoint FCR"), and in support thereof, states as follows:

**Employment of James L. Patton, Jr. As FCR Under the Facts of  
These Chapter 11 Proceedings Is Fair, Reasonable, and Promotes the  
Efficient Resolution of These Cases**

1. These bankruptcy cases are the final step in a pre-negotiated, prepackaged plan of reorganization under section 524(g) of Title 11 of the United States Code (the "Bankruptcy Code") that places these Debtors on an expedited path to confirmation and emergence from chapter 11 with a trust funded for the benefit of asbestos victims.

<sup>1</sup> The Debtors ("Debtors") in these chapter 11 cases, together with the last four digits of each Debtor's federal taxpayer identification number, are: Maremont Corporation (6138); Maremont Exhaust Products, Inc. (9284); AVM, Inc. (9285); and Former Ride Control Operating Company, Inc. (f/k/a ArvinMeritor, Inc., a Delaware corporation) (9286). The mailing address for each Debtor for purposes of these chapter 11 cases is 2135 West Maple Road, Troy, MI 48084.

<sup>2</sup> Two of the five law firms representing members of the Official Committee of Asbestos Claimants also served on the unofficial, pre-petition asbestos committee.

2. The terms of the resolution reflected in the Chapter 11 Plan (the “Plan”) were diligently and rigorously negotiated by all interested parties over a series of months. These parties included the pre-petition committee formed of three law firms which represent asbestos claimants, the eventual Debtors, the Debtors’ non-debtor parent, and James L. Patton, Jr. in his role as the pre-petition representative for future claimants (the “FCR”).

3. With limited assets available for the payment of the asbestos victims whose claims are to be channeled to and resolved by the resulting asbestos trust (the “Trust” or the “Maremont Trust”), it is particularly critical that these cases proceed without undue delay or litigation. The costs of these cases (including any delay in these cases) are borne entirely by the asbestos claimants.

4. The particular facts of these cases strongly support Mr. Patton’s continued role as the FCR. Mr. Patton was selected by the Debtors and completed his due diligence before the pre-petition committee was formed. Following formation of the pre-petition committee and its independent investigation of the proposed Debtors’ assets and liabilities, the pre-petition committee and Mr. Patton engaged in an arms-length negotiation both with the future debtors and with one another, which occurred over a series of months.

5. Negotiations during the pre-petition phase were arm’s-length, fair, and governed by the necessary checks and balances that typically overlay the relationship between a committee and its adversaries. These negotiations included an analysis of the ultimate Debtors’ asbestos database by professionals engaged by each of the FCR and the pre-petition committee.

6. In addition to database analysis, significant diligence and legal analysis occurred to establish not only the financial capacity of the Debtors and its non-Debtor affiliates but also

their potential claims and causes of action. The result was contribution of the full value of the Debtors, together with a significant contribution from its corporate parent, to fund the Plan.

7. The diligence and negotiation performed, and the result in the form of the Plan and the trust distribution procedures (the “TDP”) were endorsed by the vote of the present claimants who voted unanimously in favor of the Plan. No party-in-interest has objected to the Plan.

8. There is no allegation that a better result for the asbestos creditors could be achieved.

9. Although the Committee believes that the Plan provides the best relief available, the Trust will nonetheless provide for only a fraction of the payment that asbestos creditors have historically received from the Debtors. If a new FCR is engaged, that individual may well seek to retain a separate cadre of professionals including asbestos estimation expert, legal counsel, and financial advisers. Each of these parties would then complete the same analysis that was performed by each of the ACC and the FCR – all while adding significant delay and cost to these cases. Because the assets available are fixed, the costs associated with the addition of a new party will reduce the amount available to the Trust.

10. Not only would the estate and therefore the Trust bear the costs of the investigation and analysis of a new FCR and his or her professionals, if the new FCR were to seek to modify the Plan or underlying documents (which a new FCR might feel some pressure to do to justify their engagement), any such modification would at best create the additional cost of re-solicitation, and at worst could result in the settlement that forms the cornerstone of the Plan completely failing.

11. No party-in-interest other than the UST has raised concerns with respect to Mr. Patton's role in these cases.

12. The UST does not provide compelling reasons for the Court to delay these proceedings to allow the UST to solicit and the parties to vet potential FCR candidates when Mr. Patton has already been presented as a qualified and disinterested candidate. Indeed, the UST does not dispute that Mr. Patton is "disinterested" and qualified—the only standards imposed by the Bankruptcy Code. Rather, the UST questions Mr. Patton's independence and effectiveness, paradoxically because of his extensive experience in asbestos bankruptcy cases and related trusts—the very attribute that other courts have found to bring unique value to the role. *See, e.g., In re Leslie Controls, Inc.*, No. 11-0013 (Simandle, J.) (D. Del. Mar. 25, 2011), Additional Findings in Support of Affirmation Order. The UST seeks a process for selecting an FCR that is not provided for by the Bankruptcy Code and is without precedent.

13. Accepting the position of the UST under these facts would effectively destroy the ability to effectuate a pre-packaged bankruptcy case in asbestos-driven cases.

14. The ACC objects to that process and asserts that Mr. Patton is uniquely qualified in these cases to proceed as FCR due to his experience generally and especially due to his involvement in the pre-petition negotiation and plan formulation process. To find otherwise would waste precious resources and cause significant and unnecessary delay in confirming the Plan, establishing the Trust, and allowing asbestos claimants to recover for their injuries.

15. Finally, the UST Objection is premised on a false narrative pushed by asbestos defendants that asbestos settlement trusts are governed by lax procedures that permit the payment of fraudulent claims, thereby diverting assets from the payment of future claims.

16. The “evidence” of fraud cited in the UST Objection is the estimation decision in *In re Garlock Sealing Techs., LLC*, 504 B.R. 71 (Bankr. W.D.N.C. Jan. 10, 2014). The *Garlock* decision was not about fraud in the trust system and has no precedential value. Furthermore, the *Garlock* decision was unique in that the court’s estimation was based its analysis of 15 “exemplar” cases out of thousands in the debtor’s history that were hand-picked by the debtor and not represented as a random or fair sampling. *Garlock* is an outlier among all the decisions issued by bankruptcy courts in that no other court before or since has taken the same approach in estimating asbestos liability.

17. In fact, the entities which have raised concerns and criticisms about the operation of the asbestos trusts are not the trust participants -- they are insurers and defendants still in the tort system whose motivations may be other than to ensure that asbestos victims are fairly compensated by the asbestos trusts. It should be pointed out that the purported concern seems to be part of an effort by asbestos defendants to disadvantage the victims of asbestos injuries in their underlying cases.

18. The asbestos-trust system is not perfect, but it has proven effective in providing a recourse for future claimants and even some present claimants, who likely would be left with no recovery in the tort system. As set forth in the Plan, the Maremont Trust will be similar to the 60+ other asbestos trusts that have been established pursuant to section 524(g) of the Bankruptcy Code.

19. The proponents of the Plan will establish at the confirmation hearing that the Maremont Trust is structured to treat both current and future claimants fair and equitably. The Maremont Trust is an administrative-type settlement facility that is an alternative to the tort

system. Although the TDP is based on the Debtors' historical settlement experience, it is not intended to replicate the tort system.

20. The Trust will not pay full tort system values or hold claimants to trial standards of establishing claims. When a company is defending an asbestos claim in the tort system, the company is paying the costs to litigate. The Maremont Trust, in contrast, will be a limited fund. The TDP is designed to strike a delicate balancing of verifying claims against paying value to valid claims.

21. Under these facts, including the intense diligence and negotiation that went into formulating the Plan, the cost and delay associated with a new post-petition FCR are unnecessary. Mr. Patton is deeply informed concerning the issues and negotiations that occurred prior to filing. To entertain the process proposed by the UST would be wasteful and time consuming and would threaten the recoveries achieved in these cases, which benefit all present and future asbestos creditors.

**CONCLUSION**

For the reasons set forth above, the ACC respectfully request that the Court: (i) overrule the UST Objection; (ii) grant the Motion; and (iii) enter an order appointing Mr. Patton as the FCR; and (iv) grant such other and further relief as is just and proper.

Dated: February 20, 2019  
Wilmington, Delaware

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