

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

In re:

MAREMONT CORPORATION, *et al.*,¹

Debtors.

Chapter 11

Case No. 19-10118 (KJC)

Jointly Administered

Related Doc Nos. 68 and 69

**OBJECTION OF THE OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY
CLAIMANTS TO THE UNITED STATES TRUSTEE'S MOTION TO SHORTEN TIME
FOR NOTICE OF THE UNITED STATES TRUSTEE'S MOTION
TO APPOINT A LEGAL REPRESENTATIVE FOR FUTURE ASBESTOS CLAIMANTS**

The Official Committee of Asbestos Personal Injury Claimants (the "Committee")², by and through its undersigned counsel, hereby files this objection ("Objection") to the *United States Trustee's Motion to Shorten Time for Notice of the United States Trustee's Motion to Appoint a Legal Representative for Future Asbestos Claimants* ("Motion"). In support of this Objection, the Committee represents as follows:

PRELIMINARY STATEMENT

1. At the first day hearing that occurred nearly a month ago, the Office of the United States Trustee (the "UST") stated that it would be filing a motion to have this Court appoint a futures representative in these cases. *See* Tr. 1/27/2019 at 27:23 – 28:3.³ At that time, the UST stated that it expected to file that motion within a week of the first day hearing. *See id.* at 28:4 – 28:8 ([Mr. Scheparcarter:] "We would file that motion; hopefully, we will be able to file it, given the circumstances, early next week. And we would want to seek to have

¹ 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 135 West Maple Road, Troy, MI 48084.

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

³ References to transcripts from these cases are presented as Tr. MM/DD/YYYY at Page : Line – Page : Line.

that so that the parties aren't – that the process doesn't become attenuated. Have that motion heard sometime during the week of February 11th.”)

2. Nothing was filed in the week following the first day hearing or indeed for several weeks following that hearing. On February 20, 2019, the UST filed its *Motion of the United States Trustee to Appoint a Legal Representative for Future Asbestos Claimants* [D.I. 68] (the “Motion to Appoint”). Having filed the motion three business days before a hearing scheduled in the case, the UST now asks this Court to shorten the two weeks that parties in interest would have to respond to the Motion to Appoint to two days.

3. The UST's Motion to Shorten should be rejected. First, the Motion to Shorten asserts the incorrect standard—“cause”—to obtain the requested relief. Second, the Motion to Shorten fails to set forth a “true emergency” as the correct standard requires. Third, the compressed timetable will prejudice the Committee's efforts to prepare for a contested hearing on the Motion to Appoint. The Committee will object to the Motion to Appoint and the Committee should have the opportunity (and time) to thoroughly present its concerns to the Court.

4. While the Committee has no desire to delay these cases, which should proceed expeditiously, or to waste the limited resources available to claimants on litigation, the UST's Motion to Appoint is of such magnitude that the Committee is compelled to request that this Court deny the Motion to Shorten. The Motion should be scheduled and noticed in accordance with the local rules of this Court and the Federal Rules of Bankruptcy Procedure.

JURISDICTION AND VENUE

5. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012, because the dispute arises in and relates to the Debtors' chapter 11 cases.

3. This is a core proceeding under 28 U.S.C. § 157(b) because it relates to the administration and property of the bankruptcy estates in the chapter 11 cases. Pursuant to Local Rule 9013-1(f), the Committee consents to entry of a final order with respect to the Motion to Shorten to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

4. Venue is proper pursuant to 28 U.S.C. § 1409 because the Motion to Shorten arises in and relates to the chapter 11 cases which are pending in this Court.

BACKGROUND

5. The facts underlying the selection of Mr. Patton as the FCR were laid out and public since December 4, 2018 when solicitation of the Debtors' joint prepackaged chapter 11 plan of reorganization (the "Plan") began but the Committee will briefly summarize here.

6. After decades in the tort system due to injuries caused by asbestos contained in its products, the pre-petition Debtors sought an end to their ongoing asbestos issues. Accordingly, the pre-petition Debtors engaged professionals to examine the issues and construct a potential solution.

7. Having engaged their own restructuring and valuation advisers, the pre-petition Debtors selected James Patton to serve in the role as pre-petition future claimants'

representative (the “FCR”) – a role that allows Mr. Patton to speak for those who do not have a voice and for debtors to potentially propose a plan pursuant to section 524(g) of Title 11 of the United States Code (the “Bankruptcy Code”). Mr. Patton and his professionals then conducted diligence.

8. A pre-petition asbestos claimants’ committee (the “Pre-Petition Committee”) was then formed. Over a series of months, the Pre-Petition Committee and its professionals conducted diligence, performed analyses, and worked with its experts.

9. After the Pre-Petition Committee had performed its diligence, the Pre-Petition Committee and Mr. Patton engaged in arms-length negotiations with the future Debtors, their non-Debtor parent, and with one another over a series of months. The result was an agreement that formed the cornerstone for the Plan including the various related Plan supplement documents.

10. The Plan provides, among other things, that no classes of claims will be impaired with the exception of the class composed of current and future asbestos claimants (the “Asbestos Victims”). The Asbestos Victims will have their right for compensation channeled to a trust (the “Trust”) formed pursuant to section 524(g) of the Bankruptcy Code. The Trust contains, among other things, the full value of the Debtors as well as a significant contribution from the non-Debtor corporate parent.

11. Solicitation of the proposed Plan took place over approximately 6 weeks – ending on January 18, 2019. The result of the vote was unanimous acceptance by the present Asbestos Victims. No party-in-interest has objected to the plan. No present Asbestos Victim (or the representative of a present Asbestos Victim) has come forward to allege that a better result for the Asbestos Victims could have been achieved.

12. The Debtors filed their cases on January 22, 2019. The first day hearing in the cases was conducted on January 23, 2019.

13. In connection with the Debtors' motion requesting, among other things, the scheduling of a combined hearing to consider approval of disclosure statement and confirmation of the Plan, the UST raised concerns about Mr. Patton's independence to serve in the role of FCR and advised that a motion to appoint an alternative candidate was forthcoming. *See, generally* Tr. 1/27/2019 at 27:23 – 28:8.

14. In the ensuing weeks, the cases have progressed. The Committee was appointed and chose professionals, and procedural motions and retention applications were filed – the UST remained silent as it related to the proposal of an alternative FCR. Finally, the UST filed an objection to the appointment of Mr. Patton as FCR [D.I. 63].

15. On February 20, 2019, the Motion to Appoint and the accompanying Motion to Shorten were filed.

OBJECTION

18. As the UST recognizes, the notice period for motions may be shortened only when the moving party “specif[ies] the exigencies justifying shortened notice.” Del. Bankr. L.R. 9006-1(e); *see also* Motion to Shorten at ¶ 8. This Court's precedent tasks the UST with showing emergency circumstances entitling the UST to the requested relief. *See In re Fleming Cos., Inc.*, 304 B.R. 85, 100 (Bankr. D. Del. 2003) (“[M]otions to shorten notice . . . should be necessary only in true emergency circumstances.”) (analysis leading to an order denying a debtor's motion to shorten).

22. The UST has not set forth any legitimate basis to curtail the due process rights of all parties-in-interest in these cases so as to squeeze in consideration of the Motion to

Appoint at the last moment. The UST has not explained how the prejudice to all of the parties-in-interest in these cases is in the interest of justice. The Motion to Shorten should be denied.

23. First, as a threshold matter, the UST argues and applies the incorrect standard. The Motion to Shorten argues that there is “cause” to “shorten notice.” *See* Motion to Shorten at ¶ 8. But cause by itself is insufficient - there must be “exigencies justifying shortened notice.” *Id.* ¶ 19. The UST provides no arguments or facts on which this Court may properly conclude that this standard has been met.

24. Second, the Motion to Shorten is also defective because it provides this Court no basis upon which to conclude there is a “true emergency.” Were this matter heard under a normal briefing schedule, the Committee (and indeed all other parties in interest) would have until March 6, 2019 to respond to the Motion to Appoint. The UST requests a hearing on the Motion to Appoint on February 25, 2019 – with a proposed briefing schedule for any opposition to the Motion to Appoint of two business days. That difference is simply not enough time for the Committee (or others) to consider the candidates proposed by the UST to serve as FCR, which candidates were not disclosed until the Motion to Appoint was filed. The Committee should be provided with an adequate opportunity to consider whether discovery, depositions, briefing, and other actions should occur. Indeed, the time frame requested by the UST is hardly sufficient to begin to review the credentials of the potential candidates, let alone meet with them and then prepare any appropriate objection.

25. Further, any purported emergency is the result of delay in filing of the Motion to Appoint. The day after the petition date, the UST advised that a motion was forthcoming and would be filed in the next week. Instead the Motion to Appoint was filed five days before the February 25 hearing date. The shortened notice is does not meet the legal test of

being “justified.” Del. Bankr. L.R. 9006-1(c)(i); *In re Fleming Cos., Inc.*, 304 B.R. at 100 (denying motion to shorten where debtor was “aware of looming deadlines well in advance of the filing of the motions”).

26. Third, the Committee would be substantially prejudiced by having to respond to the Motion to Appoint in two days—when there are serious legal and factual issues that require further time to fully explicate to the Court. The UST downplays the Motion to Appoint as one that “dovetails” with its objection to the appointment of Mr. Patton but cannot deny that the Motion to Appoint has a significant potential to affect the Debtors’ chapter 11 cases as a whole. Further, the Motion to Appoint raises complex issues with far reaching ramifications for these cases and indeed the entire process of negotiating pre-packaged plans that propose section 524(g) relief.

27. Nor is the UST’s appeal to “judicial economy” persuasive. *See* Motion to Shorten at ¶ 9. If the Court overrules the UST Objection to the appointment of Mr. Patton as FCR, the UST Motion will become moot. If the Court is prepared to consider the appointment of a mid-stream replacement to represent the interests of future claimants, forcing the parties to diligence and the Court to rush to judgment on this critical role makes no sense. The implications of replacing the FCR at this stage, in a pre-negotiated and solicited case with 100% acceptance, jeopardizes the entire case. If the parties are to start over, the Committee deserves ample time to consider the UST’s candidates, and to fully brief the new and extraordinary process proposed by the UST, which is both not provided for by the Bankruptcy Code and goes against decades of precedent. Requiring the Committee to do so on two days’ notice is highly prejudicial and a denial of due process.

CONCLUSION

For the reasons set forth above, the Committee respectfully request that the Court: (i) sustain the Objection; (ii) deny the Motion to Shorten; and (iii) grant such other and further relief as is just and proper.

Dated: February 21, 2019
Wilmington, Delaware

/s/ Natalie D. Ramsey
Natalie D. Ramsey, Esquire (5378)
Mark A. Fink (3946)
Laurie M. Krepto, Esquire (4109)
ROBINSON & COLE LLP
1000 N. West Street, Suite 1200
Wilmington, DE 19801
(302) 295-4800
nramsey@rc.com
mfink@rc.com
lkrepto@rc.com

*Proposed Counsel for the Official Committee of Personal
Injury Claimants*