

to 11 U.S.C. § 502(c) Authorizing Estimation of Debtors' Aggregate Liability for Asbestos Personal Injury Claims and Establishing Schedule for Estimation Proceeding (the "**Motion**").

I. INTRODUCTION

1. The Future Claimants' Representative agrees that it is appropriate to achieve a reliable estimate of the Debtors' aggregate current and future liability for asbestos-related personal injury claims, either by trial or by settlement among the parties. Indeed, such an estimate is necessary for the Debtors to determine the appropriate ratable distribution to be made to the Asbestos Trust that is to be established pursuant to the Debtors' Amended Joint Chapter 11 Plan (the "**Plan**").

2. The proposed scheduling order sought by the Debtors, however, is completely unrealistic and violates the Future Claimants' Representative's due process right to be heard in a meaningful manner. Even a cursory analysis of the Debtors' proposed schedule reveals that its primary purpose is not to facilitate a reliable estimate of the Debtors' aggregate current and future asbestos liability, but instead to prevent the Future Claimants' Representative's expert, Analysis, Research & Planning Corporation ("**ARPC**"), from fully and fairly analyzing the true extent of the Debtors' aggregate asbestos liabilities. For example, the Debtors advocate a truncated, fast track schedule that gives ARPC little or no time for written discovery and limits ARPC's ability to properly evaluate the data that the Debtors and New GM are still providing in response to the Future Claimants' Representative's 2004 requests that were served in July 2010.

3. The Future Claimants' Representative has been hopeful that the parties could achieve a resolution of the Debtors' aggregate asbestos estimation, whether by trial

or by negotiation, in an efficient and expeditious manner. The Debtors claim to share that goal, but have proposed a schedule that is completely unrealistic. The Debtors cannot be permitted to run roughshod over the due process and fundamental fairness rights of the Future Claimants' Representative and the other parties to the estimation proceedings. Accordingly, the Court should deny the Debtors' proposed schedule.

II. ARGUMENT

A. *The Debtors' Proposed Schedule Violates the Future Claimants' Representative's Due Process Right to a Meaningful Opportunity to Be Heard*

4. "The concept of due process is fundamental to our system of laws in the United States." *In re Farmland Indus., Inc.*, 284 B.R. 111, 116-17 (Bankr. W.D. Mo. 2002). "There is no argument that the Due Process Clause applies to proceedings under the Bankruptcy Code." *Farmland Indus.*, 284 B.R. at 116 (citing *Bank of Marin v. England*, 385 U.S. 99, 102, 87 S.Ct. 274, 276, 17 L.Ed.2d 197 (1966)). "The essential element of due process is the right to notice and an opportunity to be heard at a meaningful time and in a meaningful manner." *Shell Offshore, Inc. v. Director, OWCP*, 122 F.3d 312, 315 (5th Cir. 1997) (quoting *Matthews v. Eldridge*, 424 U.S. 319, 333, 96 S.Ct. 893, 902, 47 L.Ed.2d 18 (1976)).

5. The Debtors' proposed estimation schedule, however, purports to force a completely unrealistic time schedule upon the Future Claimants' Representative. By proposing a schedule specifically designed to preclude the Future Claimants' Representative and his experts from properly evaluating the data that is *still being produced by the Debtors and New GM*, the Debtors seek to deny the Future Claimants' Representative the right to be heard at a meaningful time and in a meaningful manner. *See, e.g., In re Dow Corning Corp.*, 211 B.R. 545, 563 (Bankr. E.D. Mich. 1997) ("To

begin with, regardless of the estimation method selected, for the process to have any semblance of fairness it will necessarily involve hearings that would be quite lengthy and protracted. After all, the extremely contentious issues surrounding the tort claims are highly complex and their resolution will require the presentation of many witnesses, many pieces of evidence and extensive oral argument. Abbreviating the time parties have to present their cases at an estimation hearing would, in the Court's opinion, be ill-advised. Considering the magnitude of the claims involved and the absolute importance of rendering a fair and accurate decision, *the Court cannot countenance a valuation procedure that would place artificial time constraints on the parties' ability to properly present their cases.*") (emphasis added); *In re The Bible Speaks*, 65 B.R. 415, 427 (Bankr. D. Mass. 1986) (finding that when a claim is of particular importance to a reorganization plan, procedures approaching a complete trial are more appropriate than summary procedures).

6. The Debtors' demand that the Future Claimants' Representative present the merits of his aggregate asbestos estimation on a schedule basically guaranteeing an underdeveloped factual and legal record cannot pass scrutiny under the due process clause. The schedule fails to provide the Future Claimants' Representative with a meaningful opportunity to be heard and should therefore be rejected by the Court.

B. The Debtors' Proposed Estimation Schedule is Patently Unfair

7. The inequities of the Debtors' proposal are revealed on the face of the schedule. As currently drafted, the schedule gives the Future Claimants' Representative only four days after the hearing—until December 6, 2010—to serve all fact discovery that the Future Claimants' Representative will need in connection with the asbestos

estimation. The Debtors then unrealistically ask for discovery responses to be due on Christmas Eve, with a fact deposition deadline of December 31, 2010. It is implausible to even consider, much less to demand in a formal pleading, that all of the fact deponents will be available for deposition from December 25-31, the busiest vacation week of the year. Instead of productively guiding the asbestos estimation toward resolution, the Debtors' schedule unfairly imposes undue burdens on the other parties to the estimation and threatens to keep hidden the facts underlying the Debtors' true asbestos exposure.

8. The purported schedule is also unfair with regard to expert discovery. Despite the fact that the Future Claimants' Representative served his discovery requests to the Debtors and New GM back on July 20, 2010, the Debtors and New GM are still producing responsive data necessary for the Future Claimants' Representative's experts to complete their analysis of the Debtors' aggregate current and future asbestos liabilities. Indeed, significant amounts of additional data have been received by ARPC as recently as Monday, November 22, 2010. This additional data must be reviewed and coded by the Future Claimants' Representative's experts, thoroughly evaluated, and ultimately incorporated into the economic forecasting model that ARPC is using to derive its estimate of the Debtors' aggregate asbestos liability. This process takes a significant amount of time, yet the Debtors' proposed schedule completely ignores this fact.

9. Accordingly, while the Future Claimants' Representative would support a reasonable schedule for the resolution of the asbestos estimation proceeding, the Debtors' proposed schedule is far from reasonable and should not be approved by the Court. While the Debtors, in the context of their proposed "pot plan," may not care whether the parties to the asbestos estimation have sufficient time to properly analyze and evaluate all

the data necessary for estimating the Debtors' aggregate asbestos liabilities, the asbestos estimation proceeding is far more important to the constituency represented by the Future Claimants' Representative. The asbestos estimation should not be decided on the Debtors' truncated, summary schedule, and the Future Claimants' Representative respectfully requests that the Court reject the proposed schedule as inherently inequitable.

10. The Future Claimants' Representative and his professionals are willing to and intend to engage in discussions with the Debtors, the Debtors' counsel and other parties involved in the asbestos estimation proceedings prior to the hearing on the Debtors' Motion to attempt to develop an agreed upon schedule that meets due process, the needs of the Debtors' creditors, as well as the needs of the Future Claimants' Representative and his experts.

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III. CONCLUSION

For all of the foregoing reasons, the Future Claimants' Representative respectfully requests the Court to enter an order denying the Debtors' Motion and granting him such other and further relief to which the Court finds he is justly entitled.

Dated: November 24, 2010
Dallas, Texas

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