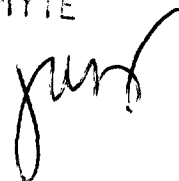


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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE THE BABCOCK & WILCOX
CO., ET AL.

CIVIL ACTION

NO: 00-0558
Bankruptcy Case
No. 00-10992

SECTION: "R" (5)

ORDER AND REASONS

The debtors have filed a Motion for Entry of an Order Establishing a Bar Date, Approving the Proof of Claim Forms and Approving the Form and Manner of Notice. The Court rules on debtors' motion as follows.

I. BACKGROUND

On February 22, 2000, debtors, the Babcock & Wilcox Co., Diamond Power International, Inc., Babcock & Wilcox Construction Co., Inc. and Americon, Inc., filed voluntary Chapter 11 petitions. Debtors seek protection under Chapter 11 as a result of the mass of asbestos liability lawsuits and claims pending against them. Although debtors did not manufacture asbestos,

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they incorporated asbestos insulation into the design and construction of large commercial boiler systems over a period of several decades. These boiler systems were used in electric power plants, manufacturing facilities and ships.

In addition to the pending asbestos claims, debtors also face liability to other personal injury claimants, including approximately 400 claimants who allege that they suffered personal injuries as a result of their exposure to radiation from two nuclear facilities operated by Babcock & Wilcox in Apollo and Parks Township, Pennsylvania. The Hall plaintiffs, 350 alleged radiation exposure victims, filed suit against Babcock & Wilcox in U.S. District Court for the Western District of Pennsylvania in 1994. Eight test cases relating primarily to the Apollo facility went to trial in 1998, resulting in a \$37 million verdict against Babcock & Wilcox. That verdict was set aside by the presiding judge, who ordered a new trial based on certain evidentiary rulings.

On April 17, 2000, this Court partially withdrew the reference of this case from the bankruptcy court with regard to the validity of the asbestos personal injury tort claims. The Court withdrew the reference from the bankruptcy court on the following matters: motions to set a bar date; motions related to

the procedure for notifying claimants; motions regarding the form of proofs of claims; and motions for summary judgment on threshold liability issues, together with all scheduling and discovery matters relating thereto. The bankruptcy court retains original jurisdiction over all other matters in this case.

When the Court partially withdrew the reference, it ordered debtors to file a motion to set a bar date and to address the issues of the form and timing of notice, the content of proof of claim forms, and the procedure for receipt and processing of claims. Debtors filed their Motion for Entry of an Order Establishing a Bar Date, Approving the Proof of Claim Forms and Approving the Form and Manner of Notice on June 1, 2000. In support, debtors attached a 25-page Asbestos Personal Injury Proof of Claim Form. The Asbestos Claimants' Committee opposed debtors' Bar Date Motion, arguing that the extensive Asbestos Personal Injury Proof of Claim Form was unprecedented and unduly burdensome. After the Court held a telephone conference on June 30, 2000 with counsel for debtors and the Committee, the debtors agreed to withdraw the proposed proof of claim form and to resubmit a simplified form. The other aspects of debtors' Bar Date Motion were taken under submission as filed.

Debtors submitted a Bar Date Reply Memorandum and Revised Proof of Claim Form on July 1, 2000. The new proof of claim form is four pages long and accompanied by six pages of instructions. The Committee continues to oppose the form, asserting that although it is ostensibly shorter, the revised form and accompanying instructions seek nearly the same amount of information as the original form. The Court held a hearing on the Bar Date Motion and Revised Proof of Claim Form on August 16, 2000.

II. DISCUSSION

A. Necessity of a Bar Date

As a threshold matter, the Court must address whether to establish a bar date by which time proofs of claim must be filed. Debtors seek to establish a bar date for all current Asbestos Personal Injury Claims, Asbestos Property Damage Claims, Derivative Asbestos Claims, and Apollo-Parks Township Claims. They assert that a bar date is necessary in order (1) to identify and bring before the Court the universe of current claimants seeking recovery for asbestos-related personal injuries; and (2) to obtain meaningful information about the claimants' exposure history by means of a specialized proof of claim form that will

provide the necessary information for debtors' objections and anticipated summary judgment motions. Debtors do not seek a bar date for any future asbestos-related claims¹ or future Apollo-Parks Township claims. Rather, they will move the Court to appoint a "futures representative" to protect the rights of persons that might subsequently assert future demands. See 11 U.S.C. § 524(g)(4)(B)(i).

The Committee argues that a bar date for Asbestos Personal Injury Claims is not necessary in light of the 1994 enactment of 11 U.S.C. § 524(g), which permits a debtor in a Chapter 11 reorganization to establish a trust to compensate present and future claimants for asbestos-related liability and to obtain an injunction channeling all asbestos liability to the trust. The Committee asserts that bar dates for filing proof of claim forms are not necessary because asbestos claims held by present and future claimants will not be allowed or disallowed at confirmation, but instead will be channeled to the trust, at which time the claimants' right to recover will be determined. It contends that bar dates are only relevant for voting purposes,

¹Accordingly, the response filed by the Center for Claims Resolution, seeking to clarify that the bar date does not apply to future derivative claims, is moot.

and, since the parties are not close to voting on a reorganization plan, the Court should postpone addressing the bar date, notice and proof of claim issues. The Committee further asserts that the setting of a bar date would forfeit the claims of a substantial number of deserving claimants.

The Court finds that setting a bar date is appropriate in this case. Indeed, the Bankruptcy Rules direct the bankruptcy court to establish bar dates in Chapter 11 cases. Here, debtors assert that the asbestos claims pending against them are both disputed and contingent. Under the Bankruptcy Rules, claims listed by debtors as "disputed, contingent or unliquidated" are not deemed filed. Rather, claimants holding disputed claims "shall file a proof of claim or interest" by a deadline, or bar date, set by the Court. See Bankr. R. 3003(c)(2). Bankruptcy Rule 3003(c)(3) provides that "[t]he Court shall fix and for cause shown may extend the time within which proofs of claim or interest may be filed." Bankr. R. 3003(c)(3).

In re Eagle-Picher Industries, Inc. addressed the necessity of setting a bar date in an asbestos bankruptcy. 137 B.R. 679, 680-82 (Bankr. S.D. Ohio 1992). There, the court rejected arguments similar to those raised by the Committee to find that a bar date must be set in that case. It recognized that while

ascertaining the total number of claimants would not in and of itself yield a value of present asbestos claims, this endeavor nevertheless would "lend considerable assistance to the process of arriving at a value of the claims of this class." *Id.* at 681. *Cf. In re Keene Corp.*, 188 B.R. 903, 907 (Bankr. S.D. N.Y. 1995) (bar date serves purpose of identifying identity and general amount of claims and is not "procedural gauntlet" but "integral part of reorganization process"); *In re Hooker Investments, Inc.*, 937 F.2d 833, 840 (2d Cir. 1991) (same). Moreover, the court found that the "vital function" the bar date plays in determining voting rights in a Chapter 11 "virtually mandates that a bar date be set." *Id.* Finally, the *Eagle-Picher* court concluded that the bankruptcy law objectives of finality and fixing the universe of claims make the forfeiture of claims filed after a bar date no more unfair, assuming reasonable notice, than a statute of limitations for tort claimants. *See id.* at 682; *cf. Mercado-Boneta v. Administracion Del Fondo De Compensacion Al Paciente*, 125 F.3d 9, 17 (1st Cir. 1997) (purpose behind bar date is finality).

The Court finds this reasoning persuasive here. Further, it does not find that the prospect of establishing a section 524(g) trust justifies relieving present claimants from asserting their

claims before a bar date. Ascertaining the number and identity of present claimants will assist in valuing the claims in this class, by facilitating the claims allowance and estimation processes. This will in turn assist the parties in the negotiation and formulation of a viable reorganization plan. See *In re Trump Taj Mahal Assocs.*, 156 B.R. 928, 938 (Bankr. D. N.J. 1993) ("Without a final claims deadline, participants in the reorganization process would be hindered by undue caution in their negotiations and in voting on the plan"). Moreover, although future claimants are not governed by the bar date, an identification of the number and nature of present asbestos-related claimants will help to predict debtors' future claims liability, which is necessary for determining the size and structure of the section 524(g) trust.

B. Form and Manner of Notice

The Supreme Court set out the due process requirements for notice as follows: "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their claims." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S. Ct.

652, 657 (1950). It is well established that *Mullane's* due process requirements apply in bankruptcy cases. See *In re Sam*, 894 F.2d 778, 781 (5th Cir. 1990); *In re Eagle-Picher*, 137 B.R. at 682. Whether a particular notice program is reasonably calculated to reach interested parties depends upon the facts and circumstances of the particular case. See *Tulsa Professional Collection Services v. Pope*, 485 U.S. 478, 484, 108 S.Ct. 1340, 1344 (1988).

The proper notice in a bankruptcy case depends upon whether the claimant is known or unknown. See *Chemetron Corp. v. Jones*, 72 F.3d 341, 346 (3d Cir. 1995) (citing *In re Charter Co.*, 125 B.R. 650, 654 (M.D. Fla. 1991)). A known claimant must be given actual written notice of a bankruptcy filing and the establishment of a bar date. See *In re Crystal Oil Co.*, 158 F.3d 291, 297 (5th Cir. 1998) (citing *City of New York v. New York, N.H. & H.R. Co.*, 344 U.S. 293, 296, 73 S.Ct. 299 (1953)); *Chemetron*, 72 F.3d at 346; Bankr. R. 2002(a)(8). Known claimants include both those claimants actually known to the debtor, as well as those whose identities are "reasonably ascertainable." See *In re Crystal Oil*, 158 F.3d at 297 (citing *Pope*, 485 U.S. at 490, 108 S.Ct. at 1347). By contrast, unknown claimants are entitled merely to constructive or publication notice of the bar

date. See *In re The Charter Co.*, 125 B.R. at 655 (citing *Matter of GAC Corp.*, 681 F.2d 1295, 1300 (11th Cir. 1982)). Unknown claimants "include those whose identities or claims are not reasonably ascertainable and those who have merely conceivable, conjectural, or speculative claims." *In re Hunt*, 146 B.R. 178, 182 (Bankr. N.D. Tex. 1992) (citing *Pope*, 485 U.S. at 490, 108 S. Ct. at 1347; *Matter of GAC Corp.*, 681 F.2d at 1300).

Debtors attached to their Bar Date Motion a detailed Notice Dissemination Plan developed by Hilsoft Notifications. (See Bar Date Mot. Ex. E.) Under the Notice Plan, debtors will mail direct written notice to known claimants. (See *id.* at 32.) They estimate that there are approximately 64,000 known current claims and lawsuits. They will mail a long form notice package to the following groups, to the extent that addresses can be reasonably ascertained:

- All persons with current asbestos personal injury claims pending against debtors (including pre-petition and post-petition claims)
- All known attorneys for current claimants, whether or not the claimants' addresses are known
- All known Apollo-Parks Township claimants
- All known claimants with known addresses whose claims were rejected after January 1995

- All known co-defendants in past claims if identification of these co-defendants can be reasonably accomplished.

(*Id.*) The long form notice package will include the long form Bar Date Notice, complete with a cover letter, the Court's order setting the Bar Date, the definition of claims, and the Claim Form. (*See id.*) The Court finds actual notice by mail to known claimants is reasonable under the circumstances and constitutionally adequate.

Debtors will provide notice of the Bar Date by publication to unknown claimants. They have included in the category of unknown claimants persons who formerly asserted a claim against debtors that was settled and released. Debtors maintain that while individuals may have held claims that were settled and released during the twenty-year period in which debtors settled hundreds of thousands of claims, it is merely speculative or conjectural to believe that they would now hold "current" claims and thus be entitled to actual notice. The Court finds this classification appropriate. Debtors are not required to give actual notice of the bar date to a claimant when the debtors reasonably believe that the claimant has abandoned his claim against them. *See In re The Charter Co.*, 125 B.R. at 655

(citations omitted). For the same reason, the Court finds debtors' proposal not to treat claimants whose claims were rejected prior to January 1, 1995 as known claimants to be reasonable. Constructive notice to this category of claimant is likewise sufficient.

Debtors will provide publication notice of the Bar Date to unknown claimants in geographic areas where claims have arisen or where potential claimants may now be located, including the United States, England, Canada, the Phillippines, and the U.S. territories of Puerto Rico, Guam, and the Virgin Islands. Notice will be disseminated by means of newspapers, magazines, trade publications, television, and websites. All advertising will refer to a website that will contain the complete Court-approved notices and claim forms in English, Spanish, French and Tagalog. (See *id.* at 28.) Debtors will also establish a toll-free number for potential claimants to obtain information and the Court-approved proof of claim form. Further, debtors will provide third-party notice to unknown claimants by notice to known attorneys of current claimants, notices published in leading publications read by asbestos litigators, messages posted to websites, and notices mailed to trade organizations in which potential claimants may be members. (See *id.* at 34.)

The debtors' Notice Plan is designed to reach 94% of their core demographic group in the United States, males aged 55 and over, an average of 4.4 times each. The Committee objects to the debtors' Notice Plan on the grounds that it will not reach 100% of the target audience and may not be seen or read by those whom it does "reach." (See ACC Opp'n Bar Date Mot., at 37-38; Ex. E, Kinsella Aff.) With regard to publication notice, however, debtors are not required to "search for those who might have been or might not have been injured." See *In re The Charter Co.*, 113 B.R. 725, 728 (M.D. Fla. 1990) (citing *In re Waterman Steamship Corp.*, 59 B.R. 724, 727 (Bankr. S.D.N.Y. 1986)). See also *Mullane*, 339 U.S. at 317-318, 70 S.Ct. at 658-659 ("impracticable and extended searches are not required in the name of due process").

Furthermore, the Committee has not rebutted the affidavit of Todd Hilsee, President of Hilsoft Notifications, that the plan's reach and frequency methodology is consistent with other asbestos-related notice programs, mass tort bankruptcies, and other significant notice programs. (See Bar Date Reply Mem. Ex. F, Hilsee Aff. at 5-13.) In fact, Mr. Hilsee notes that the bar date notification program in another complex, asbestos bankruptcy reached 90% of men aged 55 and over an average of 4 times each,

while the debtors' Notice Plan will reach 94% of its core demographic group an average 4.4 times each. (See *id.* at 8-9.) He avers that extending the reach by two or three percentage points could double or even triple the cost of the plan. (See *id.* at 16.) Moreover, the 94% reach calculation is a conservative one, as it considers only paid advertisements, not earned media such as news articles. (See *id.* at 13.) Finally, Mr. Hilsee states that he is unaware of any court-approved notice plan using media notice that even purported to reach 100% of the target audience, when that audience included unknown claimants. (See *id.* at 18.) After reviewing debtors' Notice Plan, and the objections raised to it, the Court finds that the plan is reasonably calculated to apprise unknown claimants of their rights and meets the due process requirements set forth in *Mullane*. See *In re Charter Co.*, 125 B.R. at 655 (debtor does not have the "duty to search out each conceivable or possible creditor and urge the person or entity to make a claim against it") (citing *Matter of Chicago, Rock Island & Pacific R.R. Co.*, 788 F.2d 1280, 1283 (7th Cir. 1986)). Accordingly, the Notice Plan is approved.

C. Asbestos Personal Injury Proof of Claim Form

Debtors propose to include with the Bar Date Notice one of two proof of claim forms, depending on the category of claimant: (1) a customized proof of claim form specifically tailored for all current claimants asserting personal injuries arising from asbestos exposure ["Asbestos Personal Injury Proof of Claim Form"]; or (2) a proof of claim form that contains slight modifications to the Official Form 10 to be completed by all other claimants subject to the Bar Date ["Special Claim Form"]. The latter group of claimants includes all persons or entities with property damage claims due to asbestos exposure ["Asbestos Property Damage Claims"]; all derivative asbestos claims against debtors for contribution, indemnity and subrogation ["Derivative Asbestos Claims"]; and all property damage claims against debtors relating to nuclear contamination or radiation in Apollo and Parks Township, Pennsylvania ["Apollo-Parks Township Claims"]. Debtors also move the Court to approve a nine-page Supplemental Proof of Claim Form to be completed by the Apollo-Parks Township personal injury claimants in addition to the Special Claim Form.

As the Court noted earlier, the purpose of requiring the filing of a proof of claim form by a bar date is to "enable a debtor and his creditors to know, reasonably promptly, what

parties are making claims against the estate and in what general amounts." *In re Kolstad*, 928 F.2d 171, 173 (5th Cir. 1991). Bankruptcy Rule 3001(a) provides that a proof of claim is a written statement setting forth a creditor's claim. At a minimum, the proof of claim must set forth the "ground of liability" on which the claimant bases his claim. See *In re A.H. Robins Co., Inc.*, 862 F.2d 1092 (4th Cir. 1988) (rejecting argument that 2-page questionnaire was inappropriate and nonessential step in filing proof of claim); *Matter of Rimsat, Ltd.*, 223 B.R. 345, 347-48 (Bankr. N.D. Ind. 1998) (although proof of claim not subject to formal pleading requirements, Rule 3001(a) "contemplates that the creditor provide some kind of factual context for the origin of debtor's liability to it"); *In re Scholz*, 57 B.R. 259, 261 (Bankr. N.D. Ohio 1986) (proof of claim "must be sufficiently detailed and substantial so as to allow it to be considered as prima facie evidence of its validity"). To this end, Rule 3001(a) requires that the proof of claim substantially conform to the relevant official form, which in this case is Official Form 10. Official Form 10 is a one-page document that merely requires the creditor's name, address and telephone number; the basis for the claim; the date the debt was incurred or a judgment obtained, if any; the total amount of the

claim; a statement indicating whether the claim is secured or unsecured; and copies of supporting documents.

1. Special Claim Form and Supplemental Apollo-Parks Township Proof of Claim Form

The Court has reviewed the Special Claim Form that debtors propose to use for Asbestos Property Damage Claims, Derivative Asbestos Claims, and Apollo-Parks Township Claims and finds that it substantially conforms to Official Form 10 and is approved. The Special Claim Form is a one and one-half page document that differs only slightly from Official Form 10. (See Bar Date Mot. Ex. J.) Because the proposed bar date would not apply to certain claimants such as trade creditors and other traditional commercial claimants, debtors have modified the form to have claimants specifically identify the category of claim, *i.e.*, Asbestos Property Damage, Derivative Asbestos or Apollo-Parks Township, for which they seek recovery. The Court finds that the content of the Special Claim Form is reasonable and appropriate under the circumstances. The Court will permit attorneys for these three categories of claimants to sign the Special Claims Form on behalf of their clients. See discussion section C(2)(e), *infra*.

However, the Court will not approve the Apollo-Parks Township Supplemental Proof of Claim Form. That nine-page form requests extensive information regarding Apollo-Parks Township claimants' litigation history, medical diagnoses and job exposure. For instance, the supplemental form asks claimants to provide the name of every medical doctor who has concluded that radiation exposure or contamination from the Apollo or Parks Township Facilities caused their disease or condition and to provide specific job site information for every employment period in which they contend exposure or contamination occurred. The information requested by the form is unduly burdensome, and the record reveals that debtors do not need this information on the Apollo-Parks Township claimants. The Hall plaintiffs, a group of 350 alleged victims of radiation exposure allegedly caused by debtors in Apollo and Parks Township, have filed an objection to the supplemental form. These plaintiffs filed suit against debtors in 1994. Debtors took extensive discovery in that case, including depositions of almost all of the radiation exposure tort claimants. Indeed, eight test cases have already gone to trial. Because the Supplemental Apollo-Parks Township Proof of Claim Form is unduly burdensome and will not aid in an efficient

resolution of this matter, the Court declines to approve it. The Special Claim form is sufficient for these claims.

2. Asbestos Personal Injury Proof of Claim Form

The Claimants Committee strenuously opposes debtors' proposed Asbestos Personal Injury Proof of Claim Form. Courts have permitted the use of customized proof of claim forms in appropriate circumstances, including Chapter 11 proceedings involving mass-tort liability and asbestos cases. See, e.g., *In re A.H. Robins Co.*, 862 F.2d at 1093 (two-page questionnaire); *In re Celotex Corp.*, 204 B.R. 586, 593 (Bankr. M.D. Fla. 1996) (three-page proof of claim form). For instance, in *Celotex*, the bankruptcy court approved a special proof of claim form as an alternative to Official Form 10 for asbestos bodily injury claims. (See Bar Date Reply Mem. Ex. H, *In re Celotex Corp.* Nos. 90-10016-8B1 c/w 90-10017-8B1, Order Re. Motion Debtors Entry Order Est. Bar Date dated Dec. 14, 1995, at 4; Bar Date Mot. Ex. 2.) The *Celotex* Proof of Claim for Asbestos Bodily Injury Claims is a three-page document. (See Bar Date Mot. Ex. 2.) It required claimants to identify the debtor(s) against which they asserted a claim and basic identifying information, including name, address, phone number, social security number, date of birth, gender and date of death if deceased. (See *id.* at 1-2.)

The *Celotex* form next asked claimants for injury history. This entailed checking a box to indicate whether the claimant had been diagnosed with mesothelioma, lung cancer, gastro-intestinal cancer, asbestosis, or pleural injury and identifying the year of diagnosis. (*See id.* at 2.). The form also required a statement of the claimant's most recent ILO X-ray results if he had asbestosis or pleural injury and the most recent pulmonary function test ratings, if available. (*See id.*) In its final section, the *Celotex* form asked for exposure history, including whether the claimant had been exposed to asbestos manufactured or supplied by debtors; the total number of years of exposure; the year of first exposure and the year of last exposure; the predominant type of exposure; the appropriate industry code; and the amount of the claim. (*See id.* at 3.)

Debtors assert that they modeled the basic structure and content of the Revised Proof of Claim Form after the *Celotex* form, as well as a Personal Injury Settlement Trust Proof of Claim Form used in the *Johns-Manville* bankruptcy. Debtors state that they then added a limited number of questions specific to the facts of this case and relevant to their anticipated summary judgment motions. They assert that the information requested will also assist in the estimation process. Debtors claim that

much of the information sought on the form has already been gathered by the substantial number of claimants who have already completed the *Celotex* and *Manville* forms, thereby further reducing the burden on claimants to complete it.

The Committee opposes debtors' Revised Proof of Claim Form, asserting that debtors have failed to establish the viability of their summary judgment theories or how the extensive information sought on the form is necessary to test them. They further argue that the time and expense involved in completing the form is prohibitive and will deter claimants from filing claims.

The Court finds that the proposed claim form is unnecessarily detailed and would amount to an undue burden on parties who wish to assert claims. The 21-page *Manville Trust* form relied on by debtors is not a proof of claim form required to meet a bar date but a claim form used by the trust to evaluate each claim individually for the purposes of liquidation and payment. The Court is therefore not persuaded that the extensive information requested in the *Manville Trust* form is an appropriate model for a proof of claim that will subject claimants to a bar date. Further, the Court is not convinced on this record that the burdensomeness of the proposed form is minimized because a substantial overlap exists between the

claimants in this case and those in *Celotex*, who filed claims to satisfy a March 1996 bar date, more than four years ago. This follows because the debtors settled a substantial number of claims prior to filing bankruptcy.

The Court therefore finds that the claim form must be substantially modified. As indicated, disputed claimants must establish, at a minimum, the ground on which they base debtors' liability to them. In this case, that entails establishing a claimant's exposure to asbestos from debtors' products and the injuries that resulted from that exposure. The Court will therefore allow debtors to ask questions that go to this prima facie evidence of liability. After carefully reviewing the parties' submissions, the Revised Proof of Claim Form, the *Celotex* Proof of Claim Form and Official Form 10, the Court orders the debtors to revise the proof of claim form as instructed below.

a. Part 1: Identifying Information

The Court will not require claimants to submit an official death certificate if the injured party is deceased. Nor will the Court require claimants to submit all medical reports. Diagnostic reports may, however, be required.

b. Requested Medical Information

Debtors may require the claimant to furnish the year in which they were diagnosed with a particular asbestos related injury, but they must delete all requests for the precise month and day of diagnosis. The Court also orders debtors to delete question 4 from Section A regarding the bilateral nature of the injured party's pleural condition. In section C, debtors shall delete in question 2 the requirement that claimants identify whether the cancer was primary or metastasized. Finally, debtors shall add to section D, question 1, a box that allows claimants to indicate if lung function test scores are unavailable.

c. Part 3: Exposure History

Debtors request information on exposure history that is excessive. In Part 3 of the proposed form, debtors seek to require claimants to complete detailed information "for each and every period during which the injured party received 'on-the-job' exposure to asbestos. This includes periods when the injured party was exposed to asbestos, even if such exposure is not attributed to Babcock & Wilcox." (See Bar Date Reply Mem. Ex. B, Proof Claim Form Instructions.) For each on-the-job exposure period, claimants are asked to identify, among other items, the month and year in which the job assignment began and ended, as

well as the name of facility or ship. The form seeks the specific types of Babcock & Wilcox boilers involved, including the unit number of the boiler. The extensive information sought here is unduly burdensome and is not justified by the prospect of summary judgment motions.

The Court therefore orders debtors to revise Part 3: Exposure History and its accompanying instructions. Debtors may ask claimants to provide only the following information:

- Whether the injured party was exposed to asbestos from Babcock & Wilcox equipment,
- The total number of years of exposure, the year of first exposure and year of last exposure, and
- The name and location of the facility(ies) at which the injured party was exposed to asbestos from Babcock & Wilcox equipment and the industry and occupation codes associated with each exposure location (Debtors shall include in the occupation codes a category for "non-employment related exposure").

d. Part 4: Litigation and Claims

This part of the Revised Proof of Claim Form must be deleted in its entirety except for section A, which asks the claimants to identify the debtor(s) against which they attribute their asbestos exposure. The Court suggests that debtors move this question to the beginning of the form, to precede the Identifying Information section.

e. Signature by Claimant or Authorized Agent

The instructions to Debtors' revised proof of claim form require the claimant to sign the claim form personally, unless the claimant is dead or incapacitated. The Committee asserts that there is no reason that the claimants' attorneys should be barred from executing the proof of claim forms on behalf of their clients.

Bankruptcy Rule 3001(b) requires that a proof of claim be executed by "the creditor or the creditor's authorized agent." Rule 9010(a) provides that "A debtor, creditor, . . . or other party may (1) appear in a case under the Code and act either in the entity's own interest or by an attorney authorized to practice in the court. . . ." An attorney must provide evidence of his authority to represent a creditor only when the representation is "other than the execution and filing of a proof of claim or the acceptance or rejection of a plan." See Bankr. R. 9010(c). Courts construing these rules have held that an attorney can execute a proof of claim on behalf of a client-creditor without documenting his or her authority to do so. See *In re Trebol Motors Distrib. Corp.*, 220 B.R. 500, 502 (1st Cir. BAP 1998); *Wilson v. Valley Electric Membership Corp.*, 141 B.R. 309, 313 (E.D. La. 1992). Based on this authority, the Court

agrees with the Committee that an attorney may execute the proof of claim forms in this matter. The Court orders debtors to revise the proof of claim form and instructions accordingly. In addition, Debtors must delete the paragraph of instructions contained on page 6 dealing with debtors' intention to seek discovery to verify the information on the claims form.

f. Definition of Current versus Future Claimants

In the instructions to the Revised Proof of Claim Form, debtors have defined "current claimants" subject to the Bar Date to include those claimants who "have or assert that they have an asbestos-related injury as of the Bar Date." In their print notices, debtors state that "[i]n order to file any asbestos claim, an injury must be currently manifested which means that some evidence of an asbestos related injury is evident, showing, or diagnosed . . ." The Court rejects the Committee's initial argument that the term "manifested" is unintelligible. Further, the Court finds that defining current claimants as those who have manifested an injury as of the bar date is appropriate. The Committee argues that defining current claimants in this way would be unfair to claimants who manifest an injury shortly before the Bar Date, but cannot complete the proof of claim form in a timely manner. Other courts have defined claimants subject

to a bar date in a similar manner. See, e.g., *In re Waterman Steamship Corp.*, 200 B.R. 770, 774 (Bankr. S.D.N.Y. 1996) (disallowing asbestos claim if injury manifested before bar date, and claimant did not timely file proof of claim); Bar Date Reply Mem. Exs. G, H, *In re Celotex Corp.* Case No. 90-10016-8B1 c/w 90-10017-8B1, Order Re. Motion of Debtors Est. Bar Date (Bankr. M.D. Fla. Dec. 14, 1995) (same). Moreover, a safety valve exists in the bankruptcy rules for claims filed late as a result of "excusable neglect." See Bankr. R. 9006(b)(1); *Pioneer Investment Servs. Co. v. Brunswick Assocs. Ltd. Partnership*, 507 U.S. 380, 113 S. Ct. 1489 (1993). Based on the foregoing, the Court approves debtors' definition of current claimants subject to the Bar Date.

D. Pre-petition Settlement Claimants

Several interested parties have filed objections to the debtors' Bar Date Motion, asserting that individuals who have settled their claims against debtors pre-petition should not be required to complete the Asbestos Personal Injury Proof of Claim Form. Rather, because their settlements are liquidated and enforceable contract claims, objectors contend that those claims remain with the bankruptcy court in the first instance and, alternatively, they should only have to complete the Official

Form 10. Debtors challenge whether the estimated 45,000 various pre-petition claims are in fact "settled." They assert that it would be more efficient to require all asbestos personal injury claimants, including those who believe in good faith that their claims were settled pre-petition, to submit the Asbestos Personal Injury Proof of Claim Form. They point out that the form makes provisions for claimants to check a box asserting that their claim was settled pre-petition and to provide supporting documentation.

The Court agrees with the pre-petition settlement claimants that their claims are contract claims on which the Court did not withdraw the reference. Accordingly, all proceedings relating to the allowance, disallowance or validity of those claims remain before the bankruptcy court in the first instance, just like all other contract claims. If the bankruptcy court should determine that those claims were not in fact settled and are personal injury claims, the Court will address their status at that time.

F. Appointment of Claims Agent

Debtors assert in their Bar Date Motion that they intend to request that this Court appoint a claims agent to receive, process and maintain proof of claim forms. The Court will

address the approval and appointment of a claims agent upon the filing of a motion in support thereof.

G. Bar Date

Debtors ask the Court to set the bar date five months from the entry of the bar date order. The Committee "declined" to tell the Court what a reasonable bar date would be, insisting that any bar date would be infeasible. The Court finds that to set a bar date five months from now as requested by debtors would not allow sufficient time for claimants to file their proofs of claim. This follows because of the extent of the information to be supplied, the large number of claims, and because a small number of law firms represents thousands of claimants. Accordingly, the Court sets the bar date nine months from the entry of the bar date order.


III. CONCLUSION

For the foregoing reasons, the Court finds it is appropriate to set a bar date for filing proof of claims for Asbestos Personal Injury Claims, Asbestos Property Damages Claims, Derivative Asbestos Claims and Apollo-Parks Township Claims. That bar date will be fixed nine months from the entry of the bar date order. The Court also approves debtors' Bar Date Notice

Dissemination Plan. The Court orders debtors to revise the Special Claims Form for Asbestos Property Damages Claims, Derivative Asbestos Claims and Apollo-Parks Township Claims to provide that a claimants' attorney may sign the form on his client's behalf. The Supplemental Claim Form for Apollo-Parks Township Claims is rejected. Debtors shall revise the Revised Asbestos Personal Injury Proof of Claim Form and instructions to comply with this Order.

Debtors shall submit the revised Asbestos Personal Injury Proof of Claim Form (including revised Instructions) and a revised Order Regarding Debtors' Motion for Entry of an Order Establishing a Bar Date; Approving the Proof of Claim Forms; and Approving the Form and Manner of Notice to the Court no later than Friday, September 8, 2000.

New Orleans, Louisiana, this 25th day of August, 2000.



SARAH S. VANCE
UNITED STATES DISTRICT JUDGE