

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

IN RE:

THE FAIRBANKS COMPANY,

Debtor.

Chapter 11

Case No. 18-41768-PWB

Judge Bonapfel

NOTICE OF PLEADING, DEADLINE TO OBJECT, AND FOR HEARING

The Fairbanks Company (the “Debtor”), as debtor and debtor-in-possession in the above-captioned chapter 11 case, through its undersigned counsel, has filed the *Debtor’s Motion for an Order Appointing James L. Patton, Jr., as Legal Representative for Future Asbestos Claimants* (the “Motion”) on November 20, 2018. Pursuant to General Order No. 24-1018, the Court may consider the matter without further notice or a hearing if no party in interest files a response or objection with twenty-one (21) days from the date of service of this notice. **If you object to the relief requested in this pleading, you must timely file your objection with the Bankruptcy Clerk** at United States Bankruptcy Court, 600 East First St., Room 339, Rome, GA 30161-3187, and serve a copy on the movant’s attorney, William L. Rothschild, br@oratl.com, at OGIER, ROTHSCHILD & ROSENFELD, PC, 450 Winfield Glen Court, Sandy Springs, GA 30342, and any other appropriate persons by the objection deadline. The response or objection must explain your position and be actually received by the Bankruptcy Clerk within the required time.

A hearing on the pleading has been scheduled for **December 18, 2018, at 10:00 a.m. (prevailing Eastern Time)**, in Room 1401 at the U.S. Courthouse, 75 Ted Turner Drive, SW, Atlanta, GA 30303. If an objection or response is timely filed and served, the hearing will proceed as scheduled. **If you do not file a response or objection within the time permitted, the Court may grant the relief requested without further notice or hearing** provided that an order approving the relief requested is entered at least one business day prior to the scheduled hearing. If no objection is timely filed, but no order is entered granting the relief requested at least one business day prior to the hearing, the hearing will be held at the time and place as scheduled.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have on in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

Dated: November 20, 2018

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IN RE:

THE FAIRBANKS COMPANY,

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Case No. 18-41768-PWB

Judge Bonapfel

**DEBTOR’S MOTION FOR AN ORDER APPOINTING JAMES L. PATTON, JR.,
AS LEGAL REPRESENTATIVE FOR FUTURE ASBESTOS CLAIMANTS**

The Fairbanks Company, the debtor and debtor-in-possession (the “Debtor”) in the above-captioned chapter 11 case (this “Chapter 11 Case”), hereby files this motion (this “Motion”) for the entry of an order appointing James L. Patton, Jr. as the legal representative for future asbestos personal injury claimants of the Debtor (the “Future Claimants’ Representative”) pursuant to sections 105(a), 524(g)(4)(B)(i), and 1109(b) of title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (the “Bankruptcy Code”). In support of this Motion, the Debtor submits the Declaration of James L. Patton, Jr., a copy of which is attached hereto as **Exhibit A** (the “Patton Declaration”), and respectfully states as follows:

JURISDICTION

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are sections 105(a), 524(g)(4)(B)(i), and 1109(b) of the Bankruptcy Code.

BACKGROUND

2. On July 31, 2018 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Georgia, Rome Division (the “Court”).

3. The Debtor continues in the management and operation of its business and property as a debtor-in-possession, pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

4. On October 11, 2018, the Office of the United States Trustee for Region 21 appointed the Official Committee of Asbestos Creditors (the “Committee”), pursuant to section 1102(a) of the Bankruptcy Code. See Doc. No. 92.

5. Information regarding the Debtor and this Chapter 11 Case, including the Debtor’s business, corporate structure, financial condition, and the reasons for and objectives of this Chapter 11 Case, is set forth in the *Declaration of Robert P. Lahre In Support of Chapter 11 Petition and First Day Pleadings* [Doc. No. 3], filed on the Petition Date, and fully incorporated herein by reference.

6. The Debtor during its history manufactured, sold, or distributed a line of bronze and iron valves that contained asbestos packing. As a result, for many years, numerous claims were made against the Debtor, and the Debtor has been named as a defendant or as a cross-defendant in numerous lawsuits, wherein the plaintiffs seek money damages from the Debtor for personal injury and wrongful death alleged as a result of exposure to asbestos-containing products allegedly produced, sold, or distributed by the Debtor (the “Asbestos Claims”).

7. As of the commencement of this Chapter 11 Case, the Debtor estimates that there were more than 1,100 Asbestos Claims outstanding against the Debtor.

8. The Debtor filed this Chapter 11 Case for the purpose of resolving all existing and future Asbestos Claims pursuant to section 524(g) of the Bankruptcy Code.

9. On August 10, 2018, the Debtor filed the *Debtor's Motion for an Order Appointing Lawrence Fitzpatrick as Legal Representative for Future Asbestos Claimants* (the "Fitzpatrick Appointment Motion") [Doc. No. 33]. The Debtor is filing a notice of withdrawal of the Fitzpatrick Appointment Motion contemporaneously with filing the instant Motion.

RELIEF REQUESTED

10. The Debtor respectfully requests the entry of an order authorizing the appointment of James L. Patton, Jr., as the Future Claimants' Representative. The Committee has reviewed this Motion and supports the relief requested herein.

BASIS FOR RELIEF

11. The Debtor's goal in this Chapter 11 Case is to confirm a plan of reorganization under section 524(g) of the Bankruptcy Code. Section 524(g) is a special provision for the reorganization of debtors facing substantial current and future asbestos-related claims. A key element of a plan under section 524(g) is an injunction pursuant to which all current and future asbestos claims involving the Debtor will be channeled to a funded trust for processing and resolution (a "Channeling Injunction"). See 11 U.S.C. § 524(g).

12. Future asbestos claimants are unknown individuals who do not currently hold asbestos claims against the Debtor but are expected to assert asbestos claims or "Demands" against the Debtor in the future (the "Future Claimants"). The rights of such Future Claimants are termed "Demands" herein and in the Bankruptcy Code. See 11 U.S.C. § 524(g)(5).

13. To protect the interests of Future Claimants with respect to their Demands, it is necessary and appropriate for the Court to appoint a legal representative to act as a fiduciary for such Demand holders. The appointment of a future claimants' representative is necessary to represent the interests of Future Claimants and ensure that the relief sought through any plan of reorganization in this case comports with due process and fairness. Additionally, a potential for conflict exists between the interests of the Future Claimants and those asbestos claimants who have already asserted asbestos-related claims against the Debtor, which necessitates the appointment of an independent representative to advocate on behalf of the Future Claimants. Indeed, under the statute, the effectiveness of a Channeling Injunction rests in part on whether “as part of the proceedings leading to issuance of such injunction, the court appoints a legal representative for the purpose of protecting the rights of persons that might subsequently assert demands of such kind.” 11 U.S.C. § 524(g)(4)(B)(i).¹

14. The Debtor, therefore, seeks the appointment of James L. Patton, Jr., as the legal representative of future asbestos personal injury claimants – the “Future Claimants’ Representative.” As set forth in the Patton Declaration, Mr. Patton has more than 30 years of experience with asbestos litigation, bankruptcies, and settlement trusts. He is chairman of the law firm Young Conaway Stargatt & Taylor, LLP (“Young Conaway”) and a partner in its Bankruptcy and Corporate Restructuring section. He specializes in corporate restructurings,

¹ Notably, even prior to the enactment of section 524(g), bankruptcy courts appointed future claimant representatives in chapter 11 cases in which asbestos liabilities were significant. See, e.g., In re Johns-Manville Corp., 36 B.R. 743, 748-49 (Bankr. S.D.N.Y. 1984) aff’d, 52 B.R. 940 (S.D.N.Y. 1985), quoted in In re Amatex Corp., 755 F.2d 1034, 1042-43 (3d Cir. 1985) (reversing lower court’s denial of debtor’s application to appoint futures representative for future asbestos victims, concluding that future claimants are sufficiently affected by the reorganization proceedings to require a voice through their own representative, given the adverse interests of other parties).

mass tort insolvencies and complex asbestos bankruptcies, and post-confirmation asbestos settlement trusts.

15. Mr. Patton is an independent and well qualified candidate, who previously has been found to possess the experience and qualifications necessary to serve as the Future Claimants' Representative. Since May 8, 2006, he has served as the Future Claimants' Representative for the Celotex Asbestos Settlement Trust. He has also served as the Future Claimants' Representative in In re Leslie Controls, Inc., Case No. 10-12199 (Bankr. D. Del.) following his appointment on July 12, 2010, In re United Gilsonite Laboratories, Case No. 5:11-bk-02032 (RNO) (Bankr. M.D. Pa.) following his appointment on June 30, 2011, and In re Yarway Corp., Case No. 13-11025 (Bankr. D. Del.) following his appointment on April 22, 2013. He continues to serve as the Future Claimants' Representative for the asbestos personal injury settlement trusts established from those cases. In addition, Mr. Patton and Young Conaway have represented the Future Claimants' Representatives in connection with numerous asbestos-related bankruptcy cases, as detailed in the Patton Declaration.

16. As set forth more fully in the Patton Declaration, Mr. Patton is not a creditor of the Debtor, nor does he have an interest materially adverse to the Debtor, its estate, or Future Claimants. Accordingly, Mr. Patton is "disinterested" as such term is defined in section 101(14) of the Bankruptcy Code.

17. Mr. Patton intends to seek an order authorizing him to retain and employ Young Conaway as his counsel. The experience of Mr. Patton and Young Conaway in bankruptcy cases under Section 524(g) will enable them to represent the Future Claimants in an efficient and effective manner.

18. The Debtor has agreed to compensate Mr. Patton for his services in this case at his current standard hourly rate of \$1,250, as such may be adjusted from time to time, plus reimbursement of expenses and fees. Mr. Patton may retain professionals, such as counsel, to assist him in the performance of his duties as allowed by this Court, and the Debtor has agreed to compensate such professionals.

The Role of the Future Claimants' Representative

19. The Debtor submits that an order appointing Mr. Patton as the Future Claimants' Representative should confer upon him, in that capacity, the following rights in the Bankruptcy Case:

- a. Standing - The Future Claimants' Representative shall have standing under section 1109(b) of the Bankruptcy Code to be heard as a party-in-interest in all matters relating to the Debtor's chapter 11 case and shall have such powers and duties of a committee, as set forth in 11 U.S.C. § 1103, as are appropriate for a Future Claimants' Representative;²
- b. Engagement of Professionals - The Future Claimants' Representative may, with prior approval from the Court pursuant to sections 105(a), 327 and 1103 of the Bankruptcy Code and consistent with the treatment afforded other professionals in this Chapter 11 Case, retain attorneys and other professionals;
- c. Compensation – The Future Claimants' Representative shall apply for compensation in accordance with the Bankruptcy Code, the Local Rules, and any order entered by the Court establishing procedures for interim compensation and reimbursement of expenses of professionals. Subject to Court approval, Mr. Patton shall be compensated at his hourly rate of \$1,250, subject to periodic adjustment, plus reimbursement of reasonable expenses. The Future Claimants' Representative will look first to the balance in the Administrative Fund established by Liberty Mutual Insurance Company for payment of his fees and expenses incurred in connection with this Chapter 11 Case, but he is not waiving his right to payment from the Debtor's other funds in the event that the Administrative Fund is insufficient or otherwise unavailable for any reason.

² See In re Johns-Manville Corp., 52 B.R. 940, 942 (S.D.N.Y. 1985) (legal representative for future claimants was authorized to exercise powers and perform duties of a committee under section 1103 of the Bankruptcy Code); In re UNR Indus., Inc., 71 B.R. 467, 478 (Bankr. N.D.Ill. 1987) (stating that the future claimants' representative was granted the powers and responsibilities of a committee).

- d. Indemnification – The Debtor shall indemnify, defend and hold harmless the Future Claimants’ Representative from and against any losses, claims, damages, or liabilities (or action in respect thereof) to which the Future Claimants’ Representative may become subject as a result of or in connection with his rendering services hereunder, unless and until it is finally judicially determined that such losses, claims, damages or liabilities were caused by fraud or willful misconduct on the part of the Future Claimants’ Representative in performing his obligations. The foregoing entitlement of the Future Claimants’ Representative shall include, without limitation, the right to be indemnified against any liability related to or resulting from any information provided by the Future Claimants’ Representative that is inaccurate in any respect as a result of misrepresentation, omission, failure to update, or otherwise, unless the Future Claimants’ Representative actually knew of such inaccuracy at the time of the misrepresentation, omission, failure to update, or other occurrence in such action or proceeding, whether such action is concluded, ongoing, or threatened; and the right to be indemnified for any expenses, including reasonable attorney’s fees, that the Future Claimants’ Representative may incur in enforcing this indemnification provision. In the event that full indemnification is not available to the Future Claimants’ Representative as a matter of law, then, to the extent permitted by applicable law, his aggregate liability shall be limited to the total fees collected for the services rendered and, in any event, shall be limited by a final adjudication of his relative degree of fault and benefit received;
- e. Right to Receive Notices – Mr. Patton and any professionals retained by Mr. Patton and approved by the Court shall have the right to receive all notices and pleadings that are required to be served upon any statutory committee and its counsel pursuant to applicable law or an order of the Court.

20. In reliance on the Patton Declaration, the Debtor believes that Mr. Patton is a “disinterested person,” as defined in section 101(14) of the Bankruptcy Code and as required by section 327(a) of the Bankruptcy Code.

21. For all the foregoing reasons, the Debtor submits that the appointment of Mr. Patton as the Future Claimants’ Representative is in the best interest of the Debtor, its estate, and all creditors and parties in interest.

NOTICE

22. Notice of this Motion has been provided to the entities identified on the Master Service List established in this Chapter 11 Case and Mr. Patton. The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be provided.

NO PRIOR REQUEST

23. On August 10, 2018, the Debtor filed the Fitzpatrick Appointment Motion. The Debtor is filing a notice of withdrawal of the Fitzpatrick Appointment Motion contemporaneously with filing the instant Motion. No other prior request for the relief sought in this Motion has been made to this or any other court.

WHEREFORE, the Debtor respectfully requests that the Court enter an order, substantially in the form attached hereto as **Exhibit B**, granting: (i) the relief requested herein; and (ii) such other and further relief as the Court may deem proper.

Dated: November 20, 2018

Respectfully submitted,

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