

UNITED STATES BANKRUPTCY COURT FOR THE  
SOUTHERN DISTRICT OF OHIO, WESTERN DIVISION

In Re:

EAGLE-PICHER INDUSTRIES, INC., et al.,  
Debtors.

Consolidated Case No. 1-91-10100

Chapter 11

Hon. Jeffery Hopkins, U.S.B.J.

Declaration in Support of  
Trustees' Motion

**DECLARATION OF MELANIE K. IMPASTATO IN SUPPORT OF THE MOTION**  
**OF THE TRUSTEES PURSUANT TO SECTIONS 105 AND 524(g) OF THE**  
**BANKRUPTCY CODE AND SECTION 5804.12 OF THE OHIO TRUST CODE**  
**FOR AN ORDER AMENDING THE TRUST AGREEMENT**

I, MELANIE K. IMPASTATO, declare under penalty of perjury as follows:

1. I am an attorney duly admitted to the Bar of the State of Illinois. I serve as the Executive Director of the Eagle-Picher Industries, Inc. Personal Injury Settlement Trust (the "Trust") and as the President of the Claims Processing Facility, Inc. (the "CPF"), a subsidiary of the Trust that processes the Trust's claims and the claims five other Bankruptcy Code Section 524(g) asbestos trusts. I have been affiliated with the Trust, the CPF, or other trusts for over twenty years. I submit this Declaration in support of the Motion of the Trustees Pursuant to Sections 105 and 524(g) of the Bankruptcy Code and Section 5804.12 of the Ohio Trust Code for an Order Amending the Trust Agreement (the "Motion") based on my personal knowledge of the subject matter of this Declaration and on the basis of my familiarity with the exhibits to the Motion and the various public documents cited within it.

**A. History of the Eagle-Picher Trust.**

2. Asbestos litigation began in the 1960s and by the late 1980s and early 1990s had become a significant, precipitating cause of Chapter 11 filings. On January 7, 1991, Eagle-

Picher Industries, Inc. ("Eagle-Picher") filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code, primarily due to the large volume of asbestos personal injury lawsuits against the company. Eagle-Picher's Third Amended Consolidated Plan of Reorganization dated August 28, 1996 was approved by the Order of Confirmation dated November 18, 1996 issued by this Court and the United States District Court for the Southern District of Ohio, Western Division. *See In re Eagle-Picher Indus., Inc.*, 203 B.R. 256 (Bankr. S.D. Ohio 1996) (the "Confirmation Order").

3. Pursuant to the Confirmation Order, the Trust was established under Section 524(g) of the Bankruptcy Code. *See id.* at 279-81. The Trust is governed by the Eagle-Picher Industries, Inc. Personal Injury Settlement Trust Agreement (the "Trust Agreement"), effective November 29, 1996. A true and correct copy of the Trust Agreement is attached as Exhibit A to the Motion.

4. The Trust was one of the first trusts established under Bankruptcy Code Section 524(g). Today there are more than forty Section 524(g) trusts established and governed by bankruptcy courts across the country. Many, if not all, have trust agreements and claims procedures that largely mirror Eagle-Picher's governing documents in nearly all material respects.

5. The Trust was initially funded with \$730.2 million, principally comprised of its ownership in reorganized Eagle-Picher. (*See* Annual Report and Account of the Trustees of the . . . Trust for the Year Ending December 31, 1996, Schedule A ("1996 Annual Report").)

6. At the time of the earliest actuarial forecasts of asbestos-related personal injury claims in the early 1980s experts forecast asbestos claims until approximately 2027. By the time of the hearing on the confirmation of Eagle-Picher's bankruptcy plan, it was expected that

the Trust would receive claims for about forty years (that is, until approximately 2036) and would exhaust its assets during that timeframe. *See* Confirmation Order, 203 B.R. at 266.

7. As of May 31, 2016, the Trust had processed 636,713 claims and paid over \$763.5 million to victims of asbestos disease or their survivors. The Trust remains very active, with 8,258 new asbestos disease claims filed in 2015. (*See* Annual Report and Account of the Trustees of the . . . Trust for the Year Ending December 31, 2015, ECF No. 6904, at 3.) Additionally, more than 8,000 claims have already been filed in 2016, including more than 5,000 in the month of April alone.

8. Despite facing a greater volume of claims than originally anticipated, sound management has enabled the Trust to significantly grow its assets, and a sizeable fund remains available to pay claims. As of May 31, 2016, the Trust maintained gross assets valued at approximately \$369.5 million. Current actuarial forecasts predict claims filings until the year 2049.

#### **B. History of the Eagle-Picher Trustees.**

9. The Trust Agreement appoints three trustees to transact the business and affairs of the Trust, with one of these trustees acting as a chairperson. (Trust Agr., Arts. 2.1, 5.1.). At inception, a fourth trustee was also appointed to serve a single five-year term. (*Id.* at Art. 5.1(a).).

10. The Confirmation Order and Trust Agreement designated James J. McMonagle, Ruth McMullin (chairperson trustee), Daniel M. Phillips (five-year trustee), and W. Thomas Stephens as initial trustees of the Trust. (*See id.*) *See* Confirmation Order, 203 B.R. at 279. Mr. Stephens resigned effective February 27, 1998 to accept a CEO position, and the remaining trustees voted to transfer Mr. Phillips from the five-year trustee position to the regular trustee

position vacated by Mr. Stephens. (*See Annual Report and Account of the Trustees of the . . . Trust for the Year Ending December 31, 1998, at 18-19*). Mr. Phillips died on August 22, 2000, and the remaining trustees appointed David L. McLean to serve as the third trustee beginning July 1, 2001. (*See Annual Report and Account of the Trustees of the . . . Trust for the Year Ending December 31, 2001, at 4 (“2001 Annual Report”).*) Ms. McMullin, Mr. McMonagle, and Mr. McLean continued to serve together as trustees for the next twelve years.

11. Upon attaining mandatory retirement age of 72, Mr. McLean retired on April 30, 2013 and was succeeded by Stephen A. Madva. (*See Annual Report and Account of the Trustees of the . . . Trust for the Year Ending December 31, 2012, ECF No. 6875, at 4.*) Ms. McMullin, who was about to attain age 72, retired on December 31, 2013. (*See Annual Report and Account of the Trustees of the . . . Trust for the Year Ending December 31, 2013, ECF No. 6892, at 4 (“2013 Annual Report”).*) Laura R. Walker succeeded her as a trustee, and Mr. McMonagle, the sole initial trustee still serving, was elected as chairperson by a unanimous vote. (*Id.* at 4-5.) Mr. McMonagle, Mr. Madva, and Ms. Walker (the “Trustees”) have served together as trustees since 2013.

12. The Trustees’ compensation is governed by the Trust Agreement. The Trust Agreement provides for \$50,000 in annual compensation for each trustee, as well as an additional \$50,000 in annual compensation for the chairperson, for \$200,000 in total annual trustee remuneration. (Trust Agr., Art. 5.5(a).) The Trust agreement also provided for a per diem rate of \$2,000 for the trustees. (*Id.*) After the first year of the Trust, compensation was to be increased annually at a rate tied to inflation. (*Id.*) As a result, compensation for 2016 under the present terms of the Trust Agreement results in \$74,844 in annual compensation for each trustee, as well as an additional \$74,844 in annual compensation for the chairperson, for total

compensation of \$299,376. The per diem rate, when similarly adjusted for inflation, is \$2,992 for 2016.

**C. History of the Trust Advisory Committee.**

13. The Court's Confirmation Order appointed a Trust Advisory Committee ("TAC") in accordance with the Terms of the Trust Agreement. *See* Confirmation Order, 203 B.R. at 267. The TAC is a committee of three members who serve as advisors to the trustees and are charged with acting in the best interest of Trust claimants. (*See* Trust Agreement, Art. 6.1.) In doing so, the TAC effectively acts as the voice of the beneficiaries.

14. All past and present TAC members are prominent lawyers for claimants, and each TAC member was involved in Eagle-Picher's bankruptcy. The Confirmation Order and Trust Agreement appointed Gene Locks, Robert E. Sweeney, and Robert B. Steinberg to serve as the TAC for the duration of the Trust (or until his death, resignation, or removal). *See* Confirmation Order, 203 B.R. at 267. (Trust Agr., Art. 6.3.) Mr. Sweeney resigned from the TAC for personal reasons in 2001 and was ultimately succeeded by Michael P. Thornton. (*See* 2001 Annual Report at 5; 2013 Annual Report at 7.) As required by the Trust Agreement, in reflection of their role as claimant representatives, the TAC endeavors to act in the best interests of claim holders.

**D. Trustees' Proposed Amendments to the Trust Agreement.**

15. On October 1, 2016, Mr. McMonagle will attain the age of 72, which is the mandatory retirement age for trustees under the current Trust Agreement. (*See* Trust Agreement, Art. 5.1(d).) Upon receiving notification of Mr. McMonagle's impending retirement, the remaining Trustees (Mr. Madva and Ms. Walker) initiated a search for Mr. McMonagle's successor, in coordination with Trust counsel. However, after beginning to undertake a search, and in coordination with Trust counsel, it was the judgment of these remaining Trustees that it

would instead be in the beneficiaries' best interest for Mr. McMonagle—the only fiduciary to serve for the entire life of the Trust since its inception in 1996—to continue to serve as a trustee.

16. Mr. McMonagle's impending retirement demonstrated to the Trustees the value of extending trustee tenure under the Trust Agreement, and the Trustees determined that extending the mandatory retirement age for an additional five years would improve administration of the Trust in the interest of the Trust's beneficiaries. Specifically, the Trustees judged that longer trustee tenure through age 77 will helpfully provide more time for newer trustees to accrue historical knowledge passed on from longer-serving trustees, thereby assisting trustees in trying to achieve Section 524(g)'s goal of treating past, current, and future Trust claimants in as substantially the same manner as possible. The Trustees further determined that annual elections for trustees past the age of 72 would be prudent and in keeping with the mandatory retirement provision.


17. After the Trustees agreed that they would petition the Court to modify the Trust Agreement's provisions on trustee terms of service, they unanimously concluded that it would be beneficial to modify the provisions on trustee compensation at the same time. The Trustees concluded that it would be more equitable to adjust compensation in light of the apportionment of trustee responsibilities during the present stage of the Trust when Trustees' duties have further equalized, with the chairperson and fellow Trustees shouldering more similar duties than at the Trust's inception, when the chairperson had more extensive duties in connection with the formation of the claims process and monetization of the Trust corpus. Accordingly, the Trustees agreed that the annual compensation for the chairperson should be reduced by 22%, with such amount reallocated to the non-chairperson trustees and split equally. Under this formula, 2016 annual compensation for each trustee would be \$91,310 per annum, as well as an additional

\$25,446 in annual compensation for the chairperson. Following the recommended change, total annual compensation would remain unchanged at \$299,376.

18. The Trustees then consulted with the TAC regarding their recommendation to amend the Trust Agreement's provisions as detailed herein and in the Motion. The TAC unanimously supported the Trustees' recommendation to amend the Trust Agreement as to both Trustee tenure and Trustee compensation.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: June 13, 2016  
Naperville, Illinois

  
Melanie K. Impastato

UNITED STATES BANKRUPTCY COURT FOR THE  
SOUTHERN DISTRICT OF OHIO, WESTERN DIVISION

In Re:

EAGLE-PICHER INDUSTRIES, INC., et al.,  
Debtors.

Consolidated Case No. 1-91-10100

Chapter 11

Hon. Jeffery Hopkins, U.S.B.J.

Certificate of Service of Notice of  
Hearing, Trustees' Motion to  
Amend Trust Agreement, and  
Impastato Declaration

CERTIFICATE OF SERVICE

I, Christopher K. Kiplok, hereby certify:

1. I am a member of the Bar of the State of New York and I am a partner of Hughes Hubbard & Reed LLP, counsel for the Trustees of the Eagle-Picher Industries, Inc. Personal Injury Settlement Trust.

2. On June 14, 2016, I served copies of the Notice of Hearing, the Motion of the Trustees Pursuant to Sections 105 and 524(g) of the Bankruptcy Code and Section 5804.12 of the Ohio Trust Code for an Order Amending the Trust Agreement and all exhibits thereto, and the supporting Declaration of Melanie K. Impastato on the persons listed on the following service list by causing to be mailed a true copy thereof, securely enclosed in a post-paid, properly addressed wrapper, in the mail box under the exclusive care and custody of the United States Postal Service at Bowling Green Station, New York, New York.

Dated: New York, New York  
June 14, 2016

/s/ Christopher K. Kiplok  
Christopher K. Kiplok



Service List

Gene Locks, Esq.  
Locks Law Firm LLC  
The Curtis Center  
601 Walnut Street, Suite 720 East  
Philadelphia, PA 19106

Robert B. Steinberg, Esq.  
Rose, Klein & Marias  
801 South Grand Avenue, 11th Floor  
Los Angeles, CA 90017

Michael P. Thornton, Esq.  
Thornton Law Firm LLP  
100 Summer Street, 30th Floor  
Boston, MA 02110

Stephen Karotkin, Esq.  
Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, NY 10153-0119

Edmund J. Adams, Esq.  
Frost Brown Todd LLC  
2500 PNC Center  
201 East Fifth Street  
Cincinnati, OH 45202-4182

Eagle-Picher Management Corporation  
Legal Department  
801 W. Ann Arbor Trl #220  
Plymouth, MI 48170

Monica V. Kindt, Esq.  
Assistant United States Trustee  
36 East 7th Street  
Suite 2030  
Cincinnati, OH 45202