**UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

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| In re:<br><br>CROWN BOILER CO., LLC<br><br>Debtor. | Case No. 26-20515<br><br>Chapter 11 |
| CROWN BOILER CO., LLC,<br><br>Movant,<br><br>v.<br><br>OFFICIAL COMMITTEE OF UNSECURED CREDITORS & [redacted]<br><br>Respondents. | **Hearing Date: June 25, 2026 @ 11:00 a.m.**<br><br>**Response Deadline: June 18, 2026 @ 4:00 p.m.** |

**DEBTOR'S MOTION TO REMOVE [redacted] FROM THE UNSECURED CREDITORS' COMMITTEE**

Debtor, Crown Boiler Co., LLC ("Debtor" or "Crown"), pursuant to Sections 105(a) and 1102(a)(4) of the Bankruptcy Code and Rule 2020 of the Federal Rules of Bankruptcy Procedure, hereby moves for an order removing [redacted] as a member of the Official Committee of Unsecured Creditors, and states as follows:

## BACKGROUND

1. On February 25, 2026, the Debtor filed its voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "Chapter 11 Case"). Crown was a manufacturer of residential and commercial heating equipment, including cast iron boilers, water heaters, and related HVAC components. Burnham Holdings, Inc. ("BHI") acquired Crown on February 25, 2003, well after the sale of asbestos-containing components and products long since ceased. Crown used components not knowing they potentially contained asbestos fiber.

2. BHI was unaware of both the extent of Crown's exposure to legacy liabilities and the life that asbestos litigation would take on generally, when BHI acquired Crown.

3. On April 1, 2026, the United States Trustee filed its Appointment of Official Committee of Unsecured Creditors (the "Committee") (Doc. 90).

4. The Committee is comprised of three members: James J. Williams, Jr.; Mary Lou Pettit, Personal Representative of the Estate of Randall K. Pettit; and [redacted] ("Sabatino"). Sabatino is represented by the law firm of Weitz & Luxenberg P.C., who in turn has been counsel in over 200 cases against BHI or other affiliates of the Debtor.

5. Pursuant to Section 1102(b)(1) of the Bankruptcy Code, a committee of creditors appointed by the United States Trustee "shall ordinarily consist of the persons, willing to serve, that hold the seven largest claims against the debtor of the kinds represented on such committee, or of the members of a committee organized by creditors before the commencement of the case under this chapter, if such committee was fairly chosen and is representative of the different kinds of claims to be represented." 11 U.S.C. § 1102(b)(1).

6. It is believed that the Committee only consists of creditors asserting asbestos exposure claims.

7. Pursuant to Section 1102, the United States Trustee collects information of prospective creditors, and the United States Trustee does this through a questionnaire (the "Questionnaire").[1]

8. The Questionnaire requires a disclosure on whether the prospective committee member "ha[s] a claim against any entity affiliated with the debtor?" And the Questionnaire asks to "State the name of the entity and the nature and amount of the claims[.]" Because Crown has

[1] A form questionnaire can be found on the United States Department of Justice website at https://www.justice.gov/ust/ust-regions-r08/file/creditorcmt_questionnaire_nash.pdf/dl

not been provided a completed Questionnaire for Sabatino (or any other actual or prospective members of the Committee), Crown is unable to determine whether Sabatino made accurate disclosures.

9. What the Debtor knows is that Sabatino and his counsel possess a conflict of interest that should have prevented him from being appointed to the Committee. The Debtor objects to Sabatino continuing to serve on the Committee and believes that sufficient cause exists to remove Sabatino from the Committee because the conflict of interest prevents him from adequately representing the interests of all unsecured creditors in this Chapter 11 Case.

10. Sabatino's counsel at Weitz & Luxenberg has unsuccessfully pursued multiple actions against BHI, including on theories of direct and alter ego liability for asbestos related claims. *See, e.g.*, *Victor M. Langella v. Amchem Products, Inc.*, *et al.*, in the Supreme Court of the State of New York, New York County Index No. 190226/2023 (Doc. No. 150, Notice of Entry of Decision/Order of the Court); *see also Edward J. Goldkranz v. A.O. Smith Water Products Co., et al.*, in Supreme Court of the State of New York, Suffolk County Index No. 607621/2024 (Doc. No. 147, Order Granting BHI's Motion for Dismissal of Complaint). True and correct copies of these orders are attached as **Exhibits 1 and 2.**

11. Nevertheless, Sabatino's counsel at Weitz & Luxenberg is continuing to pursue BHI and other affiliates directly outside of the case *sub judice*, including on purported alter ego theories. One such case was filed this month in Philadelphia. And as recently as May 12, 2026, Sabatino's lawyers suggested that even though the court has already ruled against them, they intend to continue to pursue BHI or other Crown affiliates on alter ego theories.

12. Likewise, Sabatino himself is a Plaintiff suing Burnham LLC, originally as an alter ego to BHI, in [redacted] *and Cindy Sabatino v. Amchem Products, Inc., et al,* in the

Supreme Court of the State of New York, New York County Case Index No. 190100-25, but the case caption has since changed, after an initial dismissal of the case, from "BURNHAM LLC, Individually and as successor to BURNHAM CORPORATION, and as alter ego to BURNHAM HOLDINGS, INC., et al.," to "BURNHAM LLC, Individually and as successor to BURNHAM CORPORATION". A true and correct copy of Sabatino's Complaint and the stipulation to amend caption is attached as composite **Exhibit 3.**

13. In the case, *sub judice,* the Committee has made it clear it intends to investigate claims against BHI for alter ego, which is their right, although such claims belong to the estate. Indeed, in the Committee's recent Priority Informal Discovery Requests ("Priority Requests"), made pursuant to the Federal Rules of Bankruptcy Procedure and this Court's Order Granting in Part Expedited Motion to Compel, *et al* (Doc. 205). Request No. 2 asks for "All documents relating to the October 17, 2023 Pledge and Security Agreement (and related Credit Agreement) by which Crown became a guarantor to secure a total $72 million in credit facilities for Burnham entities . . ." and Request No. 7 asks for "All documents and communications relating to insurance coverage, allocation of insurance rights or recoveries, asbestos-related insurance matters, and indemnification obligations of the Debtor, Burnham Holdings, and their affiliates[.]"

14. What is not the Committee's right is to have a Committee member or its counsel working outside the Committee to pursue Crown affiliates outside of this case for his own benefit, and to simultaneously, and as part of the Committee, be investigating Crown affiliates and pursue claims. Sabatino's conduct here is precisely why the Office of the United States Trustee askes prospective Committee members to tell them, under oath, whether the prospective committee members "have a claim against any entity affiliated with the debtor." *See* Questionnaire, at fn. 1, *infra*.

15. The Committee's conflict of interest has, as shown by the Committee's Priority Requests, impacted the Committee's conduct in this Chapter 11 Case.

16. Sabatino has an actual, inherent conflict of interest warranting his removal from the Committee. When either Sabatino or his counsel are pursuing the Debtor's affiliates, whether directly or derivative of Debtor's liability, or even unrelated to the Debtor's liability, those claims against affiliates diminish the ability of the estate to also pursue Crown affiliates for the benefit of all creditors, if such claims were to exist.

17. A member of the Committee (or its counsel) cannot both pursue such claims as a fiduciary for all unsecured creditors and for its own individual benefit in litigation outside this Court. Doing so threatens to enrich Sabatino (and his counsel's other clients) at the expense of the rights of all unsecured creditors via the Committee.

## ARGUMENT

### Sufficient Cause Exists to Remove Sabatino from the Committee

18. Section 1102(a)(1) of the Bankruptcy Code provides that "as soon as practicable after the order for relief under chapter 11 of this title, the United States trustee shall appoint a committee of creditors holding unsecured claims and may appoint additional committees of creditors or of equity security holders as the United States trustee deems appropriate." 11 U.S.C. § 1102(a)(1).

19. Pursuant to Section 1102(b)(1), such committee "shall ordinarily consist of the persons, willing to serve, that hold the seven largest claims against the debtor of the kinds represented on such committee, or of the members of a committee organized by creditors before

the commencement of the case under this chapter, if such committee was fairly chosen and is representative of the different kinds of claims to be represented." 11 U.S.C. § 1102(b)(1).

20. Section 1102(a)(4) provides that "[o]n request of a party in interest and after notice and a hearing, the court may order the United States trustee to change the membership of a committee appointed under this subsection, if the court determines that the change is necessary to ensure adequate representation of creditors or equity security holders." 11 U.S.C. § 1102(a)(4).

21. Further, Bankruptcy Rule 2020 expressly provides that "any act" by the US Trustee is subject to review by the bankruptcy court as a contested matter. *See* Fed. R. Bankr. P. 2020 ("A proceeding to contest any act or failure to act by a United States trustee is governed by Rule 9014."); Fed. R. Bankr. P. 2020, Advisory Committee Notes ("[T]he United States trustee is not a judicial officer and does not resolve disputes regarding the propriety of its own actions. This rule, which is new, provides a procedure for judicial review of the United States trustee's acts or failure to act in connection with the administration of the case.").

22. And under Section 105(a) of the Bankruptcy Code "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Thus, "the Bankruptcy Court may review the Trustee's administrative task of appointing committee members, upon motion of a party in interest or upon its own motion." *In re Lykes Bros. S.S. Co., Inc.*, 200 B.R. 933, 940 (M.D. Fla. 1996).

23. It is well-settled that a "member of a creditors' committee owes a fiduciary duty to all creditors represented by the committee." *In re First RepublicBank Corp.*, 95 B.R. 58, 61 (Bankr. N.D. Tex. 1988); *see also In re Imerys Talc Am., Inc.*, 38 F.4th 361, 378 (3d Cir. 2022); *Locks v. U.S. Tr.*, 157 B.R. 89, 93 (W.D. Pa. 1993) ("A member of an official Chapter 11 committee is a fiduciary for the class the Committee represents.").

24. These fiduciary duties include "duties of undivided loyalty and honesty." *In re Imerys*, 38 F.4th at 378; *see also In re Mesta Mach. Co.*, 67 B.R. 151, 156 (Bankr. W.D. Pa. 1986) ("As fiduciaries, counsel and committee members have obligations of fidelity, undivided loyalty and impartial service in the interest of the creditors they represent."). "A committee member violates its fiduciary duty by pursuing a course of action that furthers its self-interest to the potential detriment of fellow committee members." *Westmoreland Human Opportunities, Inc. v. Walsh*, 246 F.3d 233, 256 (3d Cir. 2001).

25. If a creditor on a committee breaches their fiduciary duty, by using their position to advance their own interests, including simultaneously pursuing litigation targets in and outside of the bankruptcy case, then a court may remove such creditor from the committee. *See In re Haskell-Dawes, Inc.*, 188 B.R. 515, 522 (Bankr. E.D. Pa. 1995) ("If a creditor on the committee violates this duty, relief may be sought from the Court to have the creditor removed from the committee."); *see also In re First RepublicBank*, 95 B.R. at 61 ("A committee member holding a conflict of interest cannot continue to serve."); *Westmoreland*, 246 F.3d at 256 ("A committee member violates its fiduciary duty by pursuing a course of action that furthers its self-interest to the potential detriment of fellow committee members.").

26. Here, Sabatino and his counsel cannot perform his fiduciary duties of undivided loyalty when he and his counsel are pursuing a course of action that furthers his own self-interest (and those of other individual creditors) over and in contest with the diverging interests of the general unsecured creditors. *See In re Johns-Manville Corp.*, 26 B.R. at 925 (finding that diverging interests divided a person's loyalty).

27. The Committee admits it is also investigating alter ego claims against BHI. This type of conflict of interest and potential self-dealing is sufficient to allow this Court to remove

Sabatino from the Committee. *In re First RepublicBank*, 95 B.R. at 61 ("[a] committee member holding a conflict of interest cannot continue to serve."); *see also In re Johns-Manville Corp.*, 26 B.R. 919, 925 (Bankr. S.D.N.Y. 1983) ("Conflicts of interest on the part of representative persons or committees are thus not [to] be tolerated."); *In re Mesta*, 67 B.R. at 157 (("A committee member violates his fiduciary duty by using his position to further self interest.").

28. Sabatino has a direct conflict of interest with the unsecured creditors, which are supposed to be represented by the Committee with undivided loyalty, in that Sabatino's claims (and those being pursued by his counsel in other cases), outside the Chapter 11 Case, compete with the claims the Committee is investigating.

29. Sabatino and his counsel cannot both pursue claims individually and use their roles on the Committee to have the Committee pursue the same claims. Sabatino has engaged and continues to engage in self-serving behavior outside of the Chapter 11 Case and cannot continue to serve on the Committee.

30. In fact, Sabatino's presence on the Committee, while he and his lawyers are already pursuing claims against Debtor affiliates, causes problems with certain discovery sought by the Committee and the Debtor's affiliates' willingness to produce requested documents.

31. For these reasons, Sabatino's interests conflict with those of the creditors represented by the Committee and his conduct in and outside of this case divides Sabatino's loyalty.

32. This Court should exercise its authority under Section 1102(a)(4) of the Bankruptcy Code to remove Sabatino from the Committee, as change is necessary to secure adequate representation of the unsecured creditors.

WHEREFORE, for the foregoing reasons, the Debtor respectfully requests that this Court enter an order removing Sabatino as a member of the Committee and granting such other and further relief as this Court deems just and proper.

Respectfully submitted,

**SHUMAKER, LOOP & KENDRICK, LLP**

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Exhibit 1

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

[redacted],

Plaintiff,

-against-

AMCHEM PRODUCTS, INC., *et al*,

Defendants.

Index No. 190226/2023

**NOTICE OF ENTRY**

(Motion Sequence 002)

**PLEASE TAKE NOTICE**, that the within is a true copy of the Decision + Order on Motion of this Court (Silvera, J.S.C.), dated February 18, 2025, and entered with the Court on February 20, 2025.

Dated: New York, New York
February 24, 2025

**REED SMITH LLP**

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**TO: ALL APPEARING PARTIES VIA NYSCEF**

# SUPREME COURT OF THE STATE OF NEW YORK
# NEW YORK COUNTY

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| PRESENT: | HON. ADAM SILVERA, Justice | PART | 13 |
| | | INDEX NO. | 190226/2023 |
| | | MOTION DATE | 08/29/2024 |
| | | MOTION SEQ. NO. | 002 |

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[redacted]

Plaintiff,

- v -

AMCHEM PRODUCTS, INC., N/K/A RHONE POULENC AG COMPANY, N/K/A BAYER CROPSCIENCE INC, AMERICAN BILTRITE INC, ARMSTRONG INTERNATIONAL, INC, ARMSTRONG PUMPS, INC, ATWOOD & MORRILL COMPANY, BLACKMER, BURNHAM HOLDINGS, INC, BURNHAM, LLC, INDIVIDUALLY, AND AS SUCCESSOR TO BURNHAM CORPORATION, BW/IP, INC. AND ITS WHOLLY OWNED SUBSIDIARIES, CANVAS MW, LLC. FORMERLY KNOWN AS THE MARLEY-WYLAIN COMPANY, LLC,CARRIER CORPORATION, CONWED CORPORATION, DOMCO PRODUCTS TEXAS, INC, EATON CORPORATION, AS SUCCESSOR -IN-INTEREST TO CUTLER-HAMMER, INC, FLOWSERVE US, INC. INDIVIDUALLY AND SUCCESSOR TO ROCKWELL MANUFACTURING COMPANY, EDWARD VALVE, INC.,NORDSTROM VALVES, INC., EDWARD VOGT VALVE COMPANY, AND VOGT VALVE COMPANY, FMC CORPORATION, ON BEHALF OF ITS FORMER CHICAGO PUMP & NORTHERN PUMP BUSINESSES, FOSTER WHEELER, L.L.C, GARDNER DENVER, INC, GENERAL ELECTRIC COMPANY, GOULD ELECTRONICS INC, ITT LLC., INDIVIDUALLY AND AS SUCCESSOR TO BELL & GOSSETT AND AS SUCCESSOR TO KENNEDY VALVE MANUFACTURING CO., INC, KAISER GYPSUM COMPANY, INC, KOHLER CO, LENNOX INDUSTRIES, INC, LEVITON MANUFACTURING CO., INC, MORSE DIESEL, INC, MORSE TEC LLC,F/K/A BORG WARNER MORSE TEC LLC AND SUCCESSOR-BY-MERGER TO BORG-WARNER CORPORATION, NORTHROP GRUMMAN CORP. AS SUCCESSOR TO GEORGE A. FULLER COMPANY, PARAMOUNT GLOBAL, F/K/A VIACOMCBS INC., F/K/A CBS CORPORATION, A DELAWARE CORPORATION, F/K/A/ VIACOM INC.,SUCCESSOR BY MERGER TO CBS CORPORATION, A PENNSYLVANIA CORPORATION, F/K/A WESTINGHOUSE ELECTRIC CORPORATION, PFIZER, INC. (PFIZER), REDCO CORPORATION F/K/A CRANE CO, ROCKWELL AUTOMATION, INC.,AS SUCCESSOR IN INTEREST TO ALLEN- BRADLEY COMPANY, LLC,S.A. ARMSTRONG LIMITED, SIEMENS

**DECISION + ORDER ON MOTION**

INDUSTRY, INC.,SUCCESSOR IN INTEREST TO SIEMENS ENERGY & AUTOMATION, INC, SPIRAX SARCO, INC. INDIVIDUALLY AND AS SUCCESSOR TO SARCO COMPANY, TISHMAN LIQUIDATING CORP, TISHMAN REALTY & CONSTRUCTION CO., INC, TURNER CONSTRUCTION COMPANY, U.S. RUBBER COMPANY (UNIROYAL), UNION CARBIDE CORPORATION, WARREN PUMPS, LLC,WEYERHAEUSER COMPANY, WW HENRY CO,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 125, 126, 127, 128, 130, 131, 132, 133, 134, 135

were read on this motion to/for RENEW/REARGUE/RESETTLE/RECONSIDER.

Upon the foregoing documents and for the reasons set forth below, this Court (i) denies the motion by the plaintiff, [redacted] ("Plaintiff"), to reargue the Court's Decision/Order dated August 23, 2024 (the "Prior Decision"), and (ii) denies the cross-motion by defendant Burnham Holdings, Inc. ("BHI") for sanctions and attorney's fees.

I. Plaintiff's Motion to Reargue

The Court denies Plaintiff's motion, pursuant to CPLR § 2221(d), to reargue the Court's Prior Decision, which granted BHI's motion to dismiss for lack of personal jurisdiction.

A party may move for leave to reargue a court's decision if the court "overlooked or misapprehended" the facts or the law in its decision, CPLR § 2221(d)(2), or otherwise "'mistakenly arrived at its … decision.'" *William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22, 27 (1st Dep't 1992), quoting *Schneider v Solowey*, 141 AD2d 813, 813 (2d Dep't 1988). "Reargument is not designed to afford the unsuccessful party successive opportunities to reargue issues previously decided or to present arguments different from those originally asserted." *Id.* (citations omitted). The decision whether to grant or deny a motion for leave to reargue rests in "the sound discretion of the court." *Id.*

Here, Plaintiff claims that this Court's Prior Decision overlooked facts suggesting that BHI could be the alter ego of Burnham LLC ("LLC"). *See* Affirmation in Support of Reargument Motion ("Motion") ¶¶ 3-4. If BHI were the alter ego of LLC, this Court would have jurisdiction over BHI because it has jurisdiction over LLC, according to Plaintiff. *See id.* ¶ 5. At the very least, Plaintiff argues that, given the allegedly overlooked facts, this Court should permit jurisdictional discovery. *See id.* ¶ 3. A close review of the underlying papers, however, establishes that Plaintiff has failed to show that the Court overlooked any facts in its Prior Decision.

Plaintiff argues that the alleged facts[1] below suggest that BHI could be the alter ego of LLC:

1. LLC's predecessor, Burnham Corporation, began facing asbestos liability in the late 1990s.
2. Burnham Corporation renamed itself as LLC and formed BHI on the same day in 2002.
3. LLC is a wholly owned subsidiary of BHI.
4. Prior to the 2002 corporate transactions, Burnham Corporation was financially robust.
5. Recently, LLC has been "undercapitalized" and has had a "consistently steeply negative" net worth, "a dramatic turn-around suggesti[ng]" that BHI may have "siphon[ed] of[f] [LLC's] assets."
6. BHI's employees have served as corporate representatives in LLC's asbestos litigation, and BHI has assisted LLC with litigation strategy.
7. BHI and LLC have had overlapping officers and directors, and BHI has held itself out as the employer of LLC employees.

[1] For purposes of the instant motion, the Court assumes, without deciding, that the alleged facts are true and are not opinions.

8. At least one LLC officer is compensated with BHI stock.
9. BHI manages LLC's insurance.

*See id.* at 5-7.

Plaintiff did not raise the first, second, fourth, and ninth alleged facts in opposition to BHI's motion to dismiss. *See generally* Memorandum of Law in Opposition to Defendant Burnham Holdings, Inc.'s Motion to Dismiss. As "[r]eargument is not designed to afford the unsuccessful party successive opportunities … to present arguments different from those originally asserted," *William P. Pahl Equip. Corp.*, 182 AD2d at 27, Plaintiff cannot now augment his original opposition to the motion to dismiss by backdooring in such facts on a motion to renew. Put differently, this Court could not have overlooked facts that Plaintiff did not raise in his original opposition. As such, the first, second, fourth, and ninth alleged facts are not considered herein.

As to the remaining alleged facts, this Court's Prior Decision specifically considered that BHI and LLC "share some employees and that BHI" wholly owns LLC but noted that "[c]omplete stock control and overlapping of employees to an extent are factors 'intrinsic to the parent-subsidiary relationship and, by themselves, not determinative.'" Prior Decision at 5, quoting *Porter v LSB Indus.*, 192 AD2d 205, 214 (4th Dep't 1993). The Court was clear then, as it is now, that "there is no evidence that BHI fails to observe corporate formalities, interferes with recruitment and assignment of [LLC's] employees, or controls [LLC's] policies and day-to-day operations." *Id.* Plaintiff has failed to show that the Court overlooked any facts in coming to these conclusions; indeed, the record reflects the very opposite. Thus, Plaintiff's motion for reargument must be denied.

II. <u>BHI's Cross-Motion for Sanctions and Attorney's Fees</u>

The Court denies BHI's cross-motion, pursuant to the Rules of the Chief Administrator of the Courts (22 NYCRR) § 130-1.1, for sanctions and attorney's fees.

A court may sanction a party "who engages in frivolous conduct" and may "reimburse[]" the opponent for "reasonable attorney's fees" flowing from the frivolous conduct. 22 NYCRR § 130-1.1(a). Frivolous conduct is conduct "completely without merit in law" that "cannot be supported by a reasonable argument for an extension, modification or reversal of existing law"; conduct "undertaken primarily to delay … the litigation, or to harass or maliciously injure another"; or conduct "assert[ing] material factual statements that are false." *Id.* § 130-1.1(c)(1)-(3). In other words, frivolous conduct involves "extreme behavior." *Hunts Point Term. Produce Coop. Assn., Inc. v New York City Economic Dev. Corp.*, 54 AD3d 296, 296 (1st Dep't 2008). In determining whether conduct is frivolous, the court should carefully consider the context in which the conduct occurs. 22 NYCRR § 130-1.1(c).

Here, BHI seeks sanctions for Plaintiff's allegedly materially false or misleading statements. *See* Affirmation in Opposition to Motion to Reargue and in Support of Cross-Motion for Costs and Fees ("Opposition") ¶¶ 32-33. BHI argues that Plaintiff distorts the testimony of three BHI corporate representatives in other cases (Mr. Roger Pepper, Mr. Jacob Graham, and Roderick G. Strohl) and that Plaintiff presents the distorted testimony as fact. *See id.* ¶ 33; *id.* at 16 n 8, 17 n 9. The Court disagrees, as Plaintiff marshals the representatives' testimony to make legal arguments.

First, Plaintiff cites Mr. Pepper's admission that he was a consultant to BHI and that the consulting agreement "'contemplate[d] … asbestos litigation work on behalf of'" LLC. Motion at 5, quoting Mot. Seq. No. 001, Plaintiff's Affirmation in Opposition to Defendant Burnham

Holdings, Inc.'s Motion to Dismiss ("Plaintiff's Opposition to Motion to Dismiss"), Exh. 8, Trial Tr. of Roger Pepper in *Carilli v Burnham, LLC* (Sup Ct, NY County, No. 190252/2015), dated Oct. 10, 2017, at 1268, lines 20-24. Plaintiff argues that Mr. Pepper's admission shows that BHI "has tightly controlled, retained, selected, and assigned its own individuals to serve as [LLC's] corporate representatives in … asbestos litigation." *Id.* BHI counters that Plaintiff's statement is deliberately misleading because "Mr. Pepper's deposition testimony is devoid of any statement of BHI controlling or retaining and [sic] employees," Opposition ¶ 33, and because Plaintiff allegedly omits Mr. Pepper's testimony elucidating his consulting agreement with BHI. *See id.* at 15 n 7.

Second, Plaintiff quotes Mr. Graham when concluding "that 'nobody at [LLC]' deals with [LLC's] insurer[]." Motion at 7, quoting Plaintiff's Opposition to Motion to Dismiss, Exh. 7, Depo. Tr. of Jacob Graham in *Maseto v A.O. Smith Corp.* (Sup Ct, NY County, No. 190209/2019), dated Mar. 9, 2023 ("Graham Deposition"), at 33, lines 21-25; at 34, lines 1-2. BHI argues that Plaintiff's statement is deliberately misleading because what Mr. Graham in fact said is that "'[n]obody at [LLC] *that [he is] aware of*'" deals with insurer. Opposition at 16 n 8, quoting Graham Deposition at 33, lines 21-25; at 34, lines 1-2 (emphasis added).

Third, Plaintiff claims that Mr. Stohl "averred that BHI 'owned and controlled' its subsidiaries manufacturing boilers." Motion at 6, quoting Plaintiff's Opposition to Motion to Dismiss, Exh. 10, Depo. Tr. of Roderick G. Strohl in *Lewis v Alfa Laval, Inc.* (Dist Ct, Harris County, TX, No. 2004-35053), dated Oct. 23, 2006 ("Strohl Deposition"), at 015, lines 15-18. BHI argues that Plaintiff's statement is deliberately misleading because "Mr. Stohl never stated that"; rather, "in response to a question [whether] '[t]here are residential steeler [sic] boilers currently manufactured by some entity owned or controlled by [BHI,]' Mr. Stohl merely stated[,] '[T]here are.'" Opposition at 17 n 9, quoting Strohl Deposition at 015, lines 15-18.

None of the above is "extreme behavior" by Plaintiff, as would be needed to justify sanctions and attorney's fees against him. *See Hunts Point*, 54 AD3d at 296. After all, "there is a fine line between zealous advocacy and frivolous, sanctionable conduct." *Latorre v Rahman*, 2022 NY Slip Op 32044[U], *4 (Sup Ct, NY County 2022). Plaintiff has toed the right side of that line here. Thus, BHI's cross-motion for sanctions and attorney's fees must be denied.

Accordingly, it is

ORDERED that Plaintiff's motion for reargument, pursuant to CPLR § 2221(d), is denied; and it is further

ORDERED that BHI's cross-motion for attorney's fees and sanctions against Plaintiff, pursuant to 22 NYCRR § 130-1.1, is denied; and it is further

ORDERED that within 30 days of entry BHI shall serve all parties with a copy of this Decision/Order with notice of entry.

This constitutes the Decision/Order of the Court.

2/18/2025
DATE

ADAM SILVERA, J.S.C.

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| CHECK ONE: | [ ] CASE DISPOSED | | [X] NON-FINAL DISPOSITION | |
| | [ ] GRANTED | [X] DENIED | [ ] GRANTED IN PART | [ ] OTHER |
| APPLICATION: | [ ] SETTLE ORDER | | [ ] SUBMIT ORDER | |
| CHECK IF APPROPRIATE: | [ ] INCLUDES TRANSFER/REASSIGN | | [ ] FIDUCIARY APPOINTMENT | [ ] REFERENCE |

Exhibit 2

**SHORT FORM ORDER** **INDEX NO. 607621/2024**

**SUPREME COURT - STATE OF NEW YORK**
**NYS ASBESTOS LITIGATION IAS PART 47 - SUFFOLK COUNTY**

**PRESENT:**

**HON. JERRY GARGUILO**
**SUPREME COURT JUSTICE**

**FINAL SUBMITTED DATE: 8/20/24**
**MOTION SEQ# 002**
**MOTION: MOTDECD**

[redacted]

**ALL PARTIES VIA NYSCEF**

Plaintiff,

-against-

A.O. SMITH WATER PRODUCTS CO., et al.,

Defendants.

Before the Court by way of Order to Show Cause is the application of Defendant Burnham Holdings, Inc., ("BHI") for leave to reargue its motion to dismiss for lack of personal jurisdiction. The prior application was denied by Order dated June 17, 2024. Upon reargument, BHI again, petitions the Court to dismiss the action based on lack of personal jurisdiction. In the alternative, BHI seeks a stay of all proceedings involving BHI pending the hearing and determination of BHI's appeal of the June 17, 2024, order.

In rendering its decision, the Court has reviewed and considered the following submissions:

1. Defendant, Burnham Holdings, Inc's., Order to Show Cause to reargue the Court's prior decision.
2. Affirmation In Opposition to Defendant Burnham Holdings, Inc.'s Motion for Leave to Reargue Denial of Its Motion To Dismiss and Exhibit 1; and
3. Letter/Correspondence to Court informing of Judge Silvera's decision granting BHI's Motion to Dismiss

The Court heard oral argument on August 20, 2024. At the proceeding, Counsel for the Defendant noted:

> Your Honor, it's respectfully submitted that the motion to reargue must be granted because it is apparent that the Court overlooked judicially binding precedent in New York, including this Second Department, that complete stock control by a parent company over its subsidiary and overlapping officers and directors between the two are intrinsic to the parent/subsidiary relationship and by themselves are insufficient to establish personal jurisdiction over a parent company.
>
> Your Honor, in finding that plaintiff made a sufficient start to warrant jurisdictional discovery in your June 17th decision your Honor relied upon this very intrinsic parent/subsidiary relation, stating that Burnham Holdings owned the entirety of voting stock of Burnham, LLC, has overlapping directors, has maintained Burnham, LLC as its oldest subsidiary. But your Honor, because the caselaw is abundantly clear that those factors are intrinsic to the parent/subsidiary relationship and by themselves are insufficient to establish personal jurisdiction it is submitted that those facts -- that caselaw was overlooked and the motion to dismiss should be granted.
>
> If your Honor would allow me, your Honor also referenced undercapitalization based on plaintiff's allegation of being a mere shell company. Plaintiff's counsel's statement is candidly incredulous to state that. Burnham, LLC is fully insured and represented by insurance counsel in this action before your Honor, on several other actions before your Honor and on the NYCAL calendar.

A court may correct a prior order where that order was plainly wrong and thereby prevent the need for costly appeals. *Foley v. Roche*, 86 A.D.2d 887, 887, 447 N.Y.S.2d 528, 829 (2d Dep't 1982). A court can reverse a prior order where circumstances have changed, or the court determines the interests of achieving substantial justice would be furthered. *Kaplan v Finy*, 209 A.D.2d 248, 252, 618 N.Y.S.2d 777, 781 (1 st Dep't 1994).

The primary issue before the Court is whether it erred in denying Defendant's prior application allowing the Plaintiff to conduct "jurisdictional discovery." In considering the application, the Court reviewed one of its prior unrelated decisions concerning the issue of limited jurisdictional discovery. In the matter captioned, In Re Opioid Litigation at index number 400000/2017 (NYSCEF Doc. No 454), the Court noted the following:

> In order for the subsidiary's activities to warrant the exercise of jurisdiction over the parent, the parent's control over the subsidiary's activities must be so complete that the subsidiary is, in fact, merely a department of the parent. A subsidiary will be considered a mere department only if the foreign parent's control of the subsidiary is so pervasive that the corporate separation is more formal than real. Generally, there are four factors used in determining whether a subsidiary is a mere department of the foreign parent: (1) common ownership and the presence of an interlocking directorate and executive staff; (2) financial dependency of the subsidiary on the parent; (3) the degree to which the parent interferes in the selection and assignment of the subsidiary's executive personnel and fails to observe corporate formalities; and (4) the degree of the parent's control of the subsidiary's marketing and operational policies.

In its prior Short Form Order herein dated June 17, 2024, at NYSCEF Doc. #109, concerning limited jurisdictional discovery, the notion of "sufficient start" at page 3 noted:

> When a motion is made to dismiss an action for lack of personal jurisdiction, it is the plaintiff who bears the burden of proving a basis for such jurisdiction (*e.g., Carrs v Avco Corp.*, 124 AD3d 710, 2 NYS3d 533 [2d Dept 2015]). To withstand such a motion, the plaintiff must make a prima facie showing that the defendant is subject to the personal jurisdiction of the court (*e.g. Jacobs v 201 Stephenson Corp.*, 138 AD3d 693, 30 NYS3d 134 [2d Dept 2016]), which is satisfied by presenting "sufficient evidence, though affidavits and relevant documents," demonstrating the court's jurisdiction over the defendant (*Fischbarg v Doucet*, 9 NY3d 375, 381 n 5, 849 NYS2d 501, 506 n 5 [2007]; *Coast to Coast Energy, Inc. v*

> *Gasarch,* 149 AD3d 485, 486, 53 NYS3d 16, 18 [1st Dept 2017]). In deciding whether the plaintiff's burden has been met, the court must accept as true the facts alleged in the complaint and affidavits in opposition to the motion and must accord the plaintiff the benefit of every favorable inference (*Weitz v Weitz*, 85 AD3d 1153, 926 NYS2d 305 [2d Dept 2011]). The defendant may also oppose the motion on the ground that discovery on the issue of personal jurisdiction is [not][1] necessary (see CPLR 3211 [d]), in which case the plaintiff "must come forward with some tangible evidence which would constitute a 'sufficient start' in showing that jurisdiction could exist, thereby demonstrating that its assertion that a jurisdictional predicate exists is not frivolous" (*Mandel v Busch Entertainment Corp.*, 215 AD2d 455, 455, 626 NYS2d 270, 271 [2d Dept 1995]; *see Peterson v Spartan Indus*., 33 NY2d 463, 354 NYS2d 905 [1974]). Upon such a showing, a court may, in the exercise of its discretion, grant jurisdictional discovery and postpone resolution of the issue (*Goel v Ramachandran,* 111 AD3d 783, 975 NYS2d 428 [2d Dept 2013]).

BHI presents, pursuant to the Commercial Division Rules, a decision and order on motion in a matter entitled Victor M. Langella v. Amchem Products, Inc., et al. It is an order rendered by the Hon. Adam Silvera. The issues before Mr. Justice Silvera are identical and involve the same movant. Justice Silvera noted:

> Upon the foregoing documents, it is ordered that defendant Bumham Holdings, Inc.'s (BHI) motion to dismiss pursuant to CPLR 3211(a)(8) is decided below. In this asbestos action, moving defendant BHI seeks to dismiss the complaint against it arguing that it has no connection to New York such that the Court has no personal jurisdiction over it. Plaintiff opposes and seeks jurisdictional discovery. Defendant BHI replies.
>
> Defendant BHI seeks to dismiss this action, arguing that it is merely a holding company which was incorporated in

[1] The word "not" was inadvertently omitted in the Short Form Order.

> Delaware and with its principal place of business in Pennsylvania. Defendant BHI further argues that as a holding company, it has never placed any products in the stream of commerce such that it has no ties to the State of New York and personal jurisdiction pursuant to CPLR § 302(a) is lacking herein. Therefore, according to moving defendant BHI, the instant action must be dismissed as against it. In opposition, plaintiff argues that defendant BHI is Burnham Holdings' alter ego such that they should be treated as one entity for personal jurisdiction purposes, thus justifying personal jurisdiction and/or jurisdictional discovery.

Again, it is noted that this Court entertained oral argument in connection with the application. Oral argument was held on August 20, 2024. The Court heard oral arguments for and against the renewal application.

In what the Court considers a Reply by BHI dated August 6, 2024, it was presented:

> First, Plaintiff mischaracterizes or misstates BHI's legal argument in support of the motion. BHI is not seeking to relitigate its prior motion to dismiss. To the contrary, and as stated in Plaintiff's moving papers at length [NYSCEF Doc No. 130], BHI respectfully submits that, in issuing the June Decision, this Court overlooked or misapprehended controlling and dispositive New York State jurisprudence uniformly holding that "mere ownership by a parent company of a subsidiary that is subject to personal jurisdiction is insufficient to establish jurisdiction over the parent" (emphasis supplied). *See Moreau v. RPM, Inc.*, 20 AD3d 456, 457 (2d Dept 2005). While Porter is an Appellate Division Fourth Department case, Moreau is a Second Department case, which is binding and controlling authority. Regardless, the law is well-established – whether in the First, Second, or Fourth Department – that mere ownership by a parent company of a subsidiary and overlapping officers and directors are intrinsic to the parent-subsidiary relationship, and by themselves, are not determinative of whether there is jurisdiction over the parent. *See e.g., Wolberg v. IAI N. Am., Inc.*, 161 AD3d 468,

> 468 (1st Dept 2018) ("While IAINA is a wholly owned subsidiary of IAI, common ownership is intrinsic to the parent subsidiary relationship and, by itself, is not determinative") (internal quotations omitted); *Porter v. LSB Indus.*, 192 AD2d 205, 213-214 (4th Dept 1993) ("There is complete stock control and the directors and officers of the two entities overlap to an extent, but those factors are intrinsic to the parent-subsidiary relationship and, by themselves are not determinative"). Because the Court relied upon these two factors in finding that Plaintiff made a "sufficient start" (which it did not), BHI respectfully submits that this Court overlooked or misapprehended the controlling legal authority on this issue.

During oral argument, it became apparent that Plaintiff presented at best, sketchy arguments substantiating jurisdiction, either general or specific. It did resemble a so-called fishing expedition.[2] The Court pointed out and counsel confirmed that Defendant, Burnham, LLC, is represented by its own counsel, by its own insurance carrier, with a liability policy in place.

Justice Silvera noted the following in his decision:

> Here, plaintiff failed to establish that Burnham LLC is an alter ego of BHI. Although BHI's submissions indicate the entities share some employees and that BHI owns 100% of the voting shares of Burnham LLC, such submissions are insufficient to prove that Burnham LLC is an alter ego of moving defendant such that this Court would have personal jurisdiction over BHI. Complete stock control and overlapping of employees are factors 'intrinsic to the parent-subsidiary relationship and, by themselves, not determinative.' *Porter v LSB Indus., Inc.*, 192 AD2d 205, 214 (4th Dep't. 1993*); see Wolberg v IAI N. Am., Inc.*, 161 AD3d 468, 468 (1st Dep't 2018). Further, in paragraph 5 of BHI's Reply Affirmation dated April 3, 2024, Ms. Fugagli states that BHI is dependent on Burnham LLC, and New York Courts have held that a holding company's

[2] Plaintiff offered comment concerning the underfunding of Burnham LLC suggesting an empty pocket in the event of a punitive award. The Court views this as mere speculation of an outcome yet to be reached and perhaps, never to be reached.

> financial dependence on subsidiaries deems the subsidiary not a 'mere department' of the holding company. See Porter. *supra; FIA Leveraged Fund Ltd. v Grant Thorton LLP*, 150 AD3d 492, 493 (1st Dep't 2017). In addition, there is no evidence that BHI fails to observe corporate formalities, interferes with recruitment and assignment of Burnham LLC's employees, or controls Burnham LLC's policies and day-to-day operations. See Porter, supra. As such, general or specific jurisdiction over moving defendant BHI has not been established. The instant motion to dismiss is granted pursuant to CPLR § 3211(a)(8) on the grounds that this Court lacks personal jurisdiction over moving defendant and the Court declines to order jurisdictional discovery herein.

**ORDERED** that the motion by Defendant BHI for leave to reargue the prior dismissal motion which was denied by order of this Court dated June 17, 2024, is granted; and it is further

**ORDERED** that, upon reargument, the motion for dismissal of the complaint as against Defendant BHI is **GRANTED**.

Any matter not herein addressed is deemed denied.

The foregoing constitutes the decision and **ORDER** of this Court.

**Dated: October 1, 2024**

Jerry Garguilo

**HON. JERRY GARGUILO, JSC**

Exhibit 3

[redacted]

[redacted]

[redacted]

[redacted]

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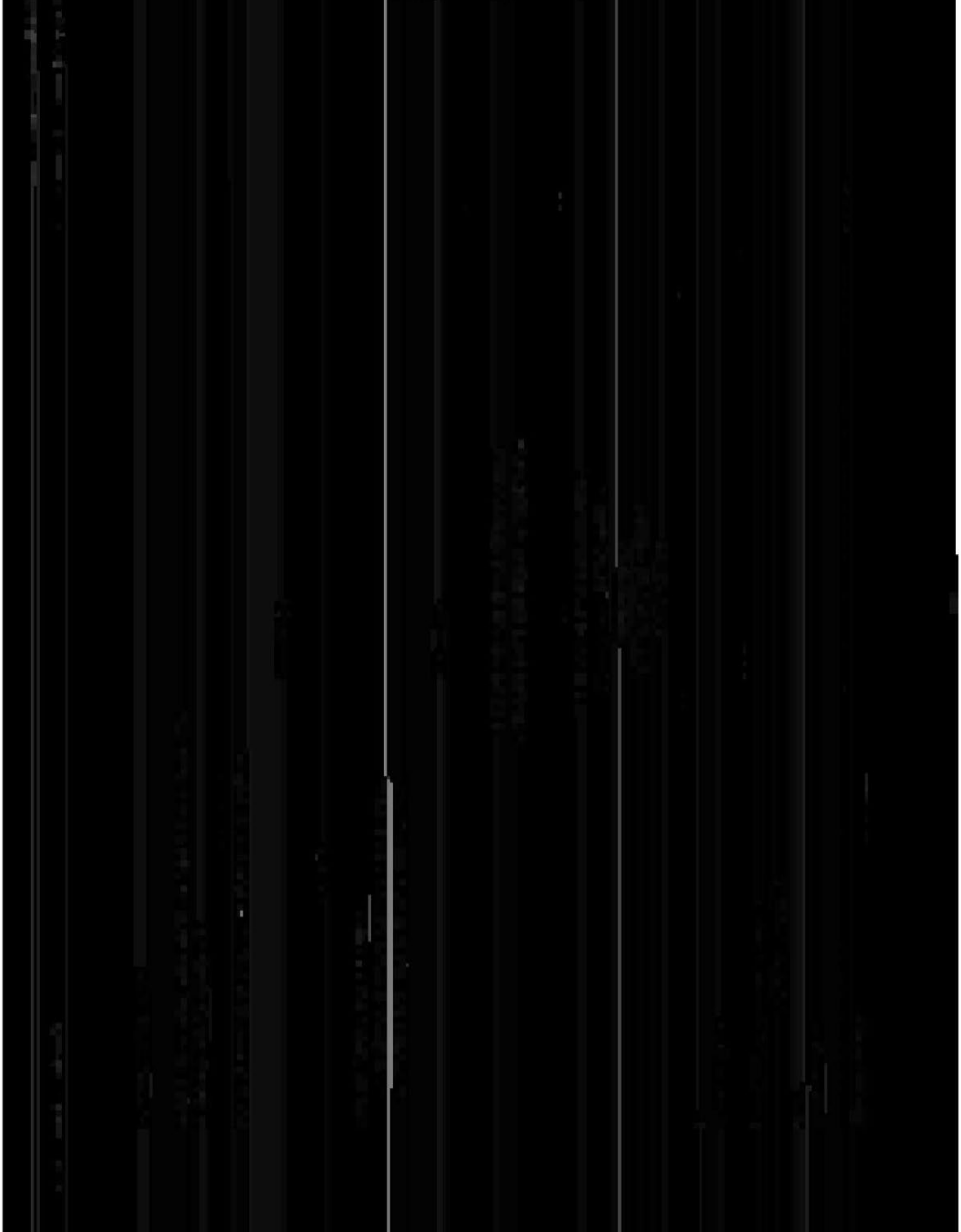
[redacted]



SUPREME COURT OF THE STATE OF NEW YORK
ALL COUNTIES WITHIN THE CITY OF NEW YORK
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IN RE: NEW YORK CITY ASBESTOS LITIGATION
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|---|---|
| *In re All Cases incorrectly naming Burnham Holdings, Inc. as alleged "alter ego" of Burnham LLC, including:* | **STIPULATION TO AMEND CAPTION (pursuant to CPLR 3025(b))** |
| [redacted] | Index No. 190050/2024 |
| [redacted], | Index No. 190076/2025 |
| [redacted] | Index No. 190287/2023 |
| [redacted] | Index No. 190092/2022 |
| [redacted], | Index No. 190191/2023 |
| [redacted], | Index No. 190193/2025 |
| [redacted]SON, | Index No. 190077/2025 |
| [redacted] | Index No. 190219/2025 |
| [redacted] | Index No. 190221/2025 |
| [redacted] Individually, | Index No. 190039/2022 |
| [redacted], | Index No. 190055/2025 |
| [redacted] | Index No. 190155/2025 |
| [redacted], | Index No. 190211/2024 |
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| [redacted] | Index No. 190178/2024 |
| [redacted], | Index No. 190118/2024 |
| [redacted], | Index No. 190147/2024 |

Plaintiff(s),

-against-

BURNHAM LLC, Individually and as successor to BURNHAM CORPORATION, and as alter ego to BURNHAM HOLDINGS, INC., et al.,

Defendants.

-----------------------------------------------------------------------x

**WHEREAS** the parties stipulate to remove any and all references to **"BURNHAM HOLDINGS, INC."** from the captions in the above-referenced matters, the parties hereby stipulate to amend the caption in each of the above-referenced matter from:

> **"BURNHAM LLC, Individually and as successor to BURNHAM CORPORATION, and as alter ego to BURNHAM HOLDINGS, INC., et al.,"**

to **"BURNHAM LLC, Individually and as successor to BURNHAM CORPORATION"**

**IT IS HEREBY STIPULATED AND AGREED,** by and between the undersigned attorneys for the parties, that pursuant to CPLR 3025(b), and upon consent of all parties who have appeared herein, the caption in each of the above-referenced matters shall be so amended.

This stipulation may be filed with the Clerk of the Court without further notice or order.

Dated: New York, New York
September 26, 2025

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*Attorneys for Defendant Burnham LLC*

**UNITED STATES BANKRUPTCY COURT**
**FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

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|---|---|
| In re:<br><br>CROWN BOILER CO., LLC<br><br>Debtor. | Case No. 26-20515<br><br>Chapter 11 |
| CROWN BOILER CO., LLC,<br><br>Movant<br><br>v.<br><br>OFFICIAL COMMITTEE OF UNSECURED CREDITORS & [redacted]<br><br>Respondents. | Related to Docket No: ______ |

**ORDER GRANTING DEBTOR'S MOTION TO REMOVE [redacted]**
**FROM THE UNSECURED CREDITORS' COMMITTEE**

THIS CASE came before this Court for a hearing on _______________, 2026 at ____ a.m/p.m. ("Hearing Date") on the Debtor's Motion to Remove [redacted] from the Unsecured Creditors' Committee (Doc. ____) (the "Motion"). This Court reviewed the Motion, heard argument of counsel for the Debtor and others, and is otherwise fully advised in the premises. For the reasons stated orally and recorded in open court, which shall constitute the decision of this Court, sufficient cause exists to remove Sabatino from the Committee because Sabatino holds a conflict of interest that prevents him from fulfilling his fiduciary duties to all unsecured creditors, and therefore he cannot continue to serve. Accordingly, it is hereby

**ORDERED:**

1. The Motion is **GRANTED**.

2. [redacted] is hereby removed as a member of the Official Committee of Unsecured Creditors in this Chapter 11 case, effective immediately.

3. The United States Trustee is directed to take such action as may be necessary or appropriate to reflect the removal of Sabatino from the Committee, including, but not limited to, amending the appointment of the Committee to remove Sabatino as a member.

4. The United States Trustee shall, in accordance with Section 1102 of the Bankruptcy Code, appoint a replacement member to the Committee.

5. The Court retains jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

______________________________
John C. Melaragno, Judge
United States Bankruptcy Court