Docket #0188 Date Filed: 4/23/2021

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re ALDRICH PUMP LLC, *et al.*, Debtors,	Chapter 11 No. 20-30608 (JCW) (Jointly Administered)
ALDRICH PUMP LLC and MURRAY BOILER LLC, Plaintiffs, v. THOSE PARTIES TO ACTIONS LISTED ON APPENDIX A TO COMPLAINT and JOHN AND JANE DOES 1-1000. Defendants.	Adversary Proceeding No. 20-03041 (JCW)

DEBTORS' REPLY IN SUPPORT OF MOTION OF THE DEBTORS FOR AN ORDER (I) PRELIMINARILY ENJOINING CERTAIN ACTIONS AGAINST NON-DEBTORS, OR (II) DECLARING THAT THE AUTOMATIC STAY APPLIES TO SUCH ACTIONS, AND (III) GRANTING A TEMPORARY RESTRAINING ORDER PENDING A FINAL HEARING

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Plaintiffs Aldrich Pump LLC and Murray Boiler LLC, debtors and debtors in possession in these chapter 11 cases (together, the "Debtors"), file this Reply in further support of the *Motion of the Debtors for an Order (I) Preliminarily Enjoining Certain Actions Against Non-Debtors, or (II) Declaring That the Automatic Stay Applies to Such Actions, and (III) Granting a Temporary Restraining Order Pending a Final Hearing* [Adv. Pro. Dkt. 2] ("PI Motion") and in response to the *Opposition* [Adv. Pro. Dkt. 151] ("Objection") and the *Supplemental Opposition* [Adv. Pro. Dkt. 179] ("Supplemental Objection") to that motion filed by the Official Committee of Asbestos Personal Injury Claimants (the "ACC").[1]

PRELIMINARY STATEMENT

While filed as an objection to the PI Motion, the ACC's objection seeks an effective dismissal of these chapter 11 cases. The ACC has "made it clear from the beginning" that they "don't want to be in this case and in this Court." Mar. 25, 2021 Hr'g Tr. at 12; see also id. at 51 (FCR counsel: "They have been very clear that they want to exit to the tort system."). The ACC has *not*, however, filed motions to dismiss the Debtors' chapter 11 cases.[2]

This may be because the ACC cannot credibly dispute the legitimate purpose of these

[1] Defined terms not otherwise defined herein have the meanings given to them in the PI Motion. With respect to the Debtors' request for a declaration that the automatic stay applies to any Aldrich/Murray Asbestos Claims asserted against non-debtors, the Debtors incorporate herein the arguments and authorities set forth in the *Debtors' Motion for Partial Summary Judgment That All Actions Against the Protected Parties to Recover Aldrich/Murray Asbestos Claims Are Automatically Stayed by Section 362 of the Bankruptcy Code* [Adv. Pro. Dkt. 90] (the "Summary Judgment Motion") and the reply in support of that motion, filed contemporaneously herewith. Materials cited in support of this reply, including pleadings in matters filed outside this Court, expert reports, interrogatory responses, and excerpts of deposition testimony are included as Exhibits to the *Declaration of Brad B. Erens*, filed contemporaneously herewith (the "Erens Declaration"). Deposition excerpts are provided in Exhibit 1 to the Erens Declaration, organized alphabetically by surname.

[2] In the Fourth Circuit, the party moving to dismiss a chapter 11 case as a bad faith filing "must prove: (i) that the Chapter 11 case is objectively futile, *and* (ii) that the debtor filed the Chapter 11 case in subjective bad faith." In re Dunes Hotel Assocs., 188 B.R. 162, 168 (Bankr. D.S.C. 1995) (citing Carolin Corp. v. Miller, 886 F.2d 693, 700 (4th Cir. 1989)). "[T]he Fourth Circuit standard for dismissal of a Chapter 11 case as a bad faith filing is one of the *most stringent articulated by the federal courts*." In re Jade Invs., LLC, No. 2:18-bk-50025, 2018 WL 2074459, at *1 (Bankr. S.D.W. Va. May 1, 2018) (quoting Dunes Hotel Assocs., 188 B.R. at 168) (emphasis added).

cases—seeking a fair, final, and global resolution of thousands upon thousands of current and future Aldrich/Murray Asbestos Claims. The same counsel representing the ACC here have acknowledged that "section 524(g) may provide a sufficient business purpose for an otherwise solvent debtor to seek chapter 11 relief …." In re Bestwall LLC, No. 17-31795 [Dkt. 653] at 11; In re Bestwall LLC, 605 B.R. 43, 49 (Bankr. W.D.N.C. 2019) ("Attempting to resolve asbestos claims through 11 U.S.C. § 524(g) is a valid reorganizational purpose, and filing for Chapter 11, especially in the context of an asbestos or mass tort case, need not be due to insolvency. The Committee agrees.").

Nor does the ACC dispute that the Debtors meet the threshold statutory requirements for seeking section 524(g) relief—they face and will continue to face thousands of uncertain asbestos-related personal injury claims (11 U.S.C. § 524(g)(2)(B)(i)(I)-(III)). The Debtors and their predecessors never mined or used asbestos to manufacture a product. Nonetheless, they have been besieged by asbestos claims for more than four decades, trapped in the plaintiffs' "endless search for a solvent bystander."[3] They are named in some 2,500 mesothelioma claims per year—the vast majority of such cases filed—amounting to a new claim every working hour of every weekday, every week of the year. *Declaration of Allan Tananbaum in Support of Debtors' Complaint for Injunctive and Declaratory Relief, Related Motions, and the Chapter 11 Cases* ("Tananbaum Decl.") [Dkt. 29] ¶¶ 18, 20. This volume is utterly implausible given the encapsulated, lower-potency chrysotile nature of the asbestos products embedded within the Debtors' equipment that is generally at issue. Id. ¶ 12. Today, the Debtors face pending asbestos claims numbering in the tens of thousands, each of which can cost more than $1 million to

[3] 'Medical Monitoring and Asbestos Litigation'–A Discussion with Richard Scruggs and Victor Schwartz, Mealey's Litigation Report: Asbestos, at 5 (Mar. 1, 2002) (quoting Mr. Scruggs) (Erens Decl., Ex. 2).

defend through trial. Id. ¶¶ 20, 22; *Informational Brief of Aldrich Pump LLC and Murray Boiler LLC* [Dkt. 5] ("Information Brief"), at 30-31. It is simply not possible to defend this unending volume of claims.

The ACC's 77-page Objection fails to dispute the central reason why a preliminary injunction is critical to the Debtors' reorganization: Without it, asbestos claimants would seek to prosecute the exact same asbestos-related personal injury claims pending against the Debtors against their affiliates (the "Non-Debtor Affiliates"), other indemnitees, and insurers in literally tens of thousands of individual actions across the country. Such efforts would "defeat the very purpose of section 524(g) and the Debtor[s'] Chapter 11 case[s]." In re Bestwall LLC, 606 B.R. 243, 249 (Bankr. W.D.N.C. 2019). That, of course, is why every court asked to enjoin such piecemeal litigation to permit a debtor to pursue a global, section 524(g) resolution has done so. See PI Mot. at 22-23.[4]

To allow these tens of thousands of pending tort claims to proceed outside of chapter 11 would—given the Debtors' indemnification obligations to Protected Parties—effectively lift the section 362 automatic stay of litigation against the Debtors, the real parties in interest. At the same time, it would usurp this Court's ability to preside over these section 524(g) cases and the treatment and resolution of the claims herein.[5] This unprecedented result would amount to a constructive dismissal of these cases, the very result the ACC seeks. The Fourth Circuit has rejected this result and affirmed extension of the automatic stay to such third-party tort actions. See A.H. Robins Co., Inc. v. Piccinin, 788 F.2d 994, 999 (4th Cir. 1986) ("To refuse application

[4] The ACC's Objection does not oppose the Debtors' request for a preliminary injunction over prosecution of the Aldrich/Murray Asbestos Claims against the Indemnified Parties or the Insurers. See PI Mot. at 14-18.

[5] See In re Brier Creek Corp. Ctr. Assocs. Ltd., 486 B.R. 681, 697 (Bankr. E.D.N.C. 2013) ("Many courts have also stayed non-debtor litigation when such litigation would impair the court's jurisdiction over the bankruptcy case or an adversary proceeding pending before the court.") (citing cases).

of the statutory stay in that case would defeat the very purpose and intent of the statute."); see also Brier Creek, 486 B.R. at 689-92.

The Motion satisfies each of four factors that bankruptcy courts typically consider in reviewing a request to enjoin litigation against non-debtors. See PI Mot. at 5-8, 24-35. Courts do not require a prepackaged plan or an "agreement in principle" on a plan at the beginning of a bankruptcy to demonstrate the likelihood of a successful reorganization, as the ACC suggests. The injunction provides an "opportunity to formulate a plan of reorganization." Robins, 788 F.2d at 998. The ACC's unpled, unsupported suggestion that the 2020 Corporate Restructuring "bears the hallmark of a fraudulent transfer" is irrelevant to the likelihood of a successful reorganization; numerous cases that resulted in confirmed plans under section 524(g) have involved such allegations. See Section II, *infra*.

The Debtors have shown that their reorganizations would be irreparably harmed without the requested injunction. The ACC does not seriously dispute that the preliminary injunction is critical to the fundamental purpose of the cases—to reach a fair, final, and global resolution of their asbestos liabilities. That, alone, is sufficient to demonstrate the irreparable harm that would result absent an injunction. The ACC's responses to other harms identified by the Debtors are internally inconsistent, mischaracterize the 2020 Corporate Restructuring, and ignore directly applicable precedent. See Section III, *infra*.

The balance of harms weighs decidedly in favor of maintaining the preliminary injunction and giving the Debtors' reorganization effort an opportunity to succeed. As a result of the 2020 Corporate Restructuring, liability for the Aldrich/Murray Asbestos Claims lies with the Debtors, who have the resources necessary to satisfy those claims. Any asbestos claims against the Non-Debtor Affiliates would be in the nature of successor liability, alter ego, or the like,

which, as explained in the Debtors' Summary Judgment Motion, are estate causes of actions.

Halting the pursuit of these groundless claims imposes no material harm. Claimant recoveries from Old IRNJ and Old Trane historically accounted for an estimated 3% of all tort system and trust recoveries for claimants who sued those entities. Rarely, if ever, did recoveries from Old IRNJ and Old Trane constitute a material percentage of any claimant's total recovery. "Nothing about maintaining the injunction in this case prohibits the plaintiffs from continuing to proceed against any remaining defendants in state court." Bestwall, 606 B.R. at 257.

The balance of harms must also take into account the *benefits* to current and future asbestos claimants of a section 524(g) resolution of these cases—benefits that cannot be achieved without the preliminary injunction. A section 524(g) trust will provide those claimants "with an efficient means through which to equitably resolve their claims." Id. (citing In re Federal-Mogul Global, Inc., 684 F.3d 355, 357-62 (3d Cir. 2012)). The Future Claimants' Representative's initial submission in support of the PI Motion further describes the advantages of section 524(g) resolution here. See Adv. Pro. Dkt. 129 at 3 (noting the tort system "is a decidedly inferior result for the classes of both current and future asbestos claims when compared to the benefits provided by an asbestos trust"); Section IV.A, *infra*.

The public interest also supports granting the Motion. The ACC argues that the public interest cannot support a section 524(g) case following the corporate restructuring that took place here. The ACC, however, cannot show that the 2020 Corporate Restructuring placed assets "beyond the reach" of asbestos claimants or otherwise "shield[ed] assets from creditors." Obj. at 2, 7, 35, 66. The Funding Agreements ensure the exact opposite. And there is no adequately pled action or expert opinion to support the ACC's baseless charge that the 2020 Corporate Restructuring "bears the hallmarks" of a fraudulent transfer.

The ACC's familiar refrain that the Payors under the Funding Agreements, Trane Technologies Company LLC ("New Trane Technologies") and Trane U.S. Inc. ("New Trane"), cannot be permitted the "benefits of bankruptcy" without "ever being subject to its burdens," (Obj. at 62), falls flat for several reasons. It ignores that section 524(g) expressly authorizes providing injunctive relief to non-debtor funders. And the assertion that New Trane Technologies and New Trane have not "subject[ed] the[ir] assets … to the jurisdiction of this Court," (Obj. at 3), ignores the Debtors' ability (and, if necessary, the Court's ability) to enforce the Funding Agreements against New Trane Technologies and New Trane.

From the outset, the Debtors transparently have maintained that the 2020 Corporate Restructuring was designed to permit the option of seeking a global, full, and fair resolution of the Aldrich/Murray Asbestos Claims under section 524(g) without unnecessarily subjecting the entire Old IRNJ and Old Trane businesses and their numerous stakeholders (vendors, employees, customers, business partners, public shareholders, and others) to value-destructive and complex chapter 11 proceedings. This approach is hardly unprecedented in asbestos cases. In addition to Coltec, there are numerous other examples of solvent, non-debtor entities receiving the benefits of a § 524(g) channeling injunction by making substantial contributions to a debtor-affiliate's § 524(g) trust. Moreover, the approach taken here—preserving the full paying power of assets owned by the former Old IRNJ and Old Trane through the Funding Agreements—was designed to ensure the solvency of the Debtors to pay claims and avoid the collateral disputes seen in multiple prior asbestos bankruptcies. See Section V, *infra*.

The ACC acknowledges that the broader bankruptcy it claims is necessary to afford Old IRNJ and Old Trane the "benefits of bankruptcy," (id. at 3), would have negatively impacted multiple stakeholders. But it suggests that the companies and those stakeholders should have

suffered these business disruptions *so that the ACC could exert increased leverage in plan negotiations*. Id. at 62-63. This is the precise type of detrimental "pressure" that the Fourth Circuit has held *warrants* an injunction of non-debtor litigation. Robins, 788 F.2d at 1003.

And the asbestos claimants themselves would not have been any better off with a broader bankruptcy. Their claims would still be stayed, no additional assets would be available to fund a section 524(g) trust, and the underlying merit and value of their claims would be the same.

The ACC's claim that granting the preliminary injunction will lead to a "trend" of improper non-asbestos mass tort bankruptcies following divisional mergers fares no better. The ACC's own expert admits that no such trend exists. And the ACC's charge shows little faith in the legal system's ability to protect against any such "abuse[s]" of the bankruptcy system." Obj. at 67. Asbestos is a unique tort given, among other reasons, the multitude of plaintiffs and defendants, the difficulty determining which defendant (if any) is responsible, the long latency period for the injuries alleged, and the number of defendants to have already filed for bankruptcy. As Congress recognized when it implemented section 524(g), bankruptcy is uniquely situated to fairly and efficiently address asbestos liability. Not only will the requested injunction help foster a successful chapter 11 reorganization here, which is always in the public interest (PI Mot., 34-35), it will do so by fostering a rational resolution of the Debtors' asbestos liability for all parties in interest. See Section V, *infra*.

The ACC's final ground for opposing entry of a preliminary injunction—that the 2020 Corporate Restructuring is "preempted" by Section 524(g)—rehashes an argument rejected by Judge Beyer in Bestwall and abandoned on appeal by the Bestwall asbestos committee. There is no basis for either "conflict" or "field" preemption here. The 2020 Corporate Restructuring did not permit anyone to "shed" or "escape" the Aldrich/Murray Asbestos Claims without the

procedural and due process protections under § 524(g). Nor has anyone attempted to resolve those claims outside of the chapter 11 process. All of the procedural and substantive protections afforded under section 524(g) remain in place. See Section VI, *infra.*

ARGUMENT

I. LEGAL STANDARD

Courts consider various factors in evaluating a request for a preliminary injunction under section 105 to stay litigation against a non-debtor, including the traditional four-pronged test applicable to preliminary injunctions generally. But "the Fourth Circuit has made very clear that the *critical*, *if not decisive*, issue over whether injunctive relief should be granted is whether and to what extent the non-debtor litigation interferes with the debtors' reorganization efforts." Brier Creek, 486 B.R. at 694 (emphasis added); Chicora Life Ctr., LC v. UCF 1 Trust 1 (In re Chicora Life Ctr., LC), 553 B.R. 61, 64-65 (Bankr. D.S.C. 2016) ("[T]he bankruptcy court 'may enjoin a variety of proceedings … which will have an adverse impact on the Debtor's ability to formulate a Chapter 11 plan.'") (quoting Willis v. Celotex Corp., 978 F.2d 146, 149 (4th Cir. 1992)).[6]

"[W]here the facts are sufficient to demonstrate that the non-debtor litigation adversely impacts the debtors' reorganization efforts, injunctive relief is warranted."[7] The Debtors have

[6] The Debtors do not "brush aside Supreme Court precedent" or seek to "escape their burden" to show a preliminary injunction is warranted under the traditional four-prong test. Obj. at 27. The PI Motion contains a separate section devoted to each prong. PI Mot. at 24-35. The Debtors noted that Brier Creek, citing numerous authorities, observed that bankruptcy courts need not necessarily apply the traditional four-pronged test for preliminary injunctions. See id. at 24 n.13; see also In re Springfield Hosp., Inc., 618 B.R. 70, 100 (Bankr. D. Vt. 2020), *motion to certify appeal granted*, 618 B.R. 109 (Bankr. D. Vt. 2020) ("Additionally, the Second Circuit—and the bankruptcy courts within this Circuit—have held that bankruptcy courts have the authority to issue injunctions under § 105 when necessary to enjoin conduct that 'might impede the reorganization process,' and may do so even if the plaintiff has not established the four usual required elements for an injunction described above.") (citing cases).

[7] Brier Creek, 486 B.R. at 695; accord Caesars Ent. Operating Co. Inc. v. BOKF, N.A. (In re Caesars Ent. Operating Co., Inc.), 808 F.3d 1186, 1188-89 (7th Cir. 2015) (if denying a third-party preliminary injunction will "endanger the success of the bankruptcy proceedings, the grant of the injunction would … be 'appropriate to carry out the provisions' of the Bankruptcy Code") (quoting § 105(a)); see McKillen v. Wallace (In re Irish Bank Resol. Corp. Ltd.), No. 13-12159, Civ. No. 18-1797, 2019 WL 4740249, at *5 (D. Del. Sept. 27, 2019) (in considering extension of the automatic stay to third parties, explaining that "[t]he standard for the grant of a stay is generally

shown, under the traditional preliminary injunction factors as adapted in bankruptcy, why a preliminary injunction is warranted. See PI Mot. at 24-35. Notwithstanding the ACC's general assertion that injunctions are a "drastic and extraordinary remedy," (Obj. at 25), injunctions of the type requested in the PI Motion have "previously and uniformly been issued in numerous other asbestos-related cases, including in this jurisdiction." Bestwall, 606 B.R. at 254 (citing cases).

II. THE DEBTORS HAVE SATISFIED THE "LIKELIHOOD OF SUCCESS" PRONG.

A. Satisfying the Likelihood of Success Prong Does Not Require a "Prepackaged or Prearranged Bankruptcy" or an "Agreement in "Principle."

The ACC does not dispute that in bankruptcy proceedings, "success on the merits is to be evaluated in terms of the likelihood of a successful reorganization." Id. (quoting Sudbury, Inc. v. Escott, 140 B.R. 461, 466 (Bankr. N.D. Ohio 1992)); Obj. at 28. Nor does it dispute that "[e]stablishing that a reorganization is likely to be successful is not intended to be a particularly high standard." Bestwall, 606 B.R. at 254; Solidus Networks, Inc. v. Excel Innovations, Inc. (In re Excel Innovations, Inc.), 502 F.3d 1086, 1097 (9th Cir. 2007) ("it is not a high burden to show a reasonable likelihood of success in reorganization"). There is no dispute that the Debtors have the financial wherewithal to carry out a reorganization.[8]

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whether the litigation could interfere with the reorganization of the debtor") (quoting Gerard v. W.R. Grace & Co. (In re W.R. Grace & Co.), 115 F. App'x. 565, 570 (3d Cir. 2004)).

[8] See Chicora Life Ctr., 553 B.R. at 66 (looking primarily to debtor's financial ability to reorganize, as well as debtor's efforts to negotiate with a tenant, in assessing likelihood of success prong); Litchfield Co. of S.C. Ltd. P'ship v. Anchor Bank (In re Litchfield Co. of S.C. Ltd. P'ship), 135 B.R. 797, 807 (W.D.N.C. 1992) (finding likelihood of success on the merits based on showing of "probability of successfully effectuating a plan of reorganization"). The ACC argues financial wherewithal cannot be the standard because "virtually every chapter 11 debtor" would meet it. Obj. at 31. That is no answer to the case law and, in any event, it is incorrect. See, e.g., Cello Energy, LLC v. Parsons & Whittemore Enters. Corp. (In re Cello Energy, LLC), No. 10-04877, Adv. No. 11-00031, 2011 WL 1332292, at *2-3 (Bankr. S.D. Ala. Apr. 7, 2011) (debtors failed to satisfy the success on the merits prong because they did not show they were able to "secure financing that would ensure a successful reorganization").

The ACC instead suggests the Debtors have not met their burden because "[t]here is no § 524(g) plan on file that asbestos claimants will support, or even an agreement in principle for one." Obj. at 28. It cites no authority and provides no justification for applying such a high standard at the beginning of a chapter 11 proceeding or before the parties have even attempted to negotiate a resolution. The ACC cites a single case, In re Duro Dyne Nat'l Corp., No. 18-27963 (Bankr. D.N.J. Sept. 7, 2018), for the notion that "[o]ther asbestos reorganizations have involved prepacked or prearranged plans of reorganization." Obj. at 28. But none of the numerous prior asbestos bankruptcies uniformly granting the injunctive relief sought here, (see PI Mot. at 22-23; Bestwall, 606 B.R. at 254), have required an "agreement in principle" on a plan.

The ACC maintains the Debtors "have not and cannot" obtain the supermajority vote required to confirm a section 524(g) plan. Obj. at 30. It is far too early to reach such a conclusion, particularly when the ACC has been unwilling to negotiate. See Tananbaum Dep. 261:9-263:2. Even the most contested asbestos bankruptcies, such as Garlock and Specialty Products, have resulted in confirmed plans. The Debtors have already been negotiating productively with the FCR, who represents the interests of some 80 to 90% of the claimants who would recover from a section 524(g) trust. He has expressed optimism that a consensual plan can be reached. See Adv. Pro. Dkt. 129 at 17.[9] A section 105 injunction is designed to provide "an opportunity to formulate a plan of reorganization." Robins, 788 F.2d at 998 (emphasis added).

[9] See also Tananbaum 30(b)(6) Dep. 185:5-19 ("Well, I think the communication of the draft term sheet is one tangible step. The discussions that have been proceeding between our counsel, myself, Mr. Grier's counsel and Mr. Grier are all moving in the direction of reaching a consensual plan and the continued discussions that the debtors have with their insurance representatives are also moving in that same direction. We're basically talking to everybody except the ACC, which again we would love to begin doing as well, and those are all movements that get us closer.").

Despite the ACC's litigation posturing and refusal to engage in negotiations on the terms of a section 524(g) plan thus far in these proceedings, it is the claimants—not the ACC—who will vote on a plan. In any event, courts have rejected the same kind of futility argument the ACC advances here. See, e.g., In re Purdue Pharm. L.P., 619 B.R. 38, 58 (S.D.N.Y. 2020) (affirming section 105 injunction enjoining mass tort claims against non-debtors, noting "Appellants cannot say that a reorganization is unlikely simply because they intend to object to the plan as presently constituted"); In re Caesars Entertainment Operating Co., Inc., 561 B.R. 441, 452 (Bankr. N.D. Ill. 2016) (granting preliminary injunction notwithstanding creditors' argument that proposed restructuring support agreement "cannot serve as the basis for a successful reorganization," noting "[w]hatever merit the guaranty creditors' criticisms of the [restructuring support agreement] may have, they do not suggest a successful reorganization is less than likely. . .Objections to the specifics of the [restructuring support agreement]. . .prove that the parties have disagreements about the [restructuring support agreement], not that a resolution of those disagreements is out of the question"); cf. Carolin, 886 F.2d at 701 (stringent bad-faith dismissal standard supported by policy of not "prejudging" the likelihood of a successful rehabilitation).[10]

The ACC's suggestion that to obtain a section 105 preliminary injunction the Debtors must now show that all Protected Parties must have made a "commitment to contribute funds to a § 524(g) trust" and are "eligible" to receive permanent injunctive relief under section 524(g),

[10] The ACC's suggestion that the Debtors' " various behaviors"—such as "threaten[ing] oppressive and unwarranted discovery"—"only serve to make a consensual resolution less likely," (Obj. at 29), is frivolous. Courts in numerous asbestos bankruptcies—Bestwall, Garlock, Specialty Products, USG, G-I Holdings, and W.R. Grace to name a few—have approved the exact type of discovery sought by the Debtors here to properly evaluate the number, merit, and value of pending claims. See *Debtors' Motion for an Order Directing Submission of Personal Injury Questionnaires by Pending Mesothelioma and Lung Cancer Patients* [Dkt. 297]. Each of these cases ultimately resulted in approval of a consensual section 524(g) plan of reorganization.

(Obj. at 29-30), is equally bereft of authority. Whether Protected Parties are entitled to a section 524(g) channeling injunction will be decided at confirmation.[11]

Moreover, both New Trane Technologies and New Trane have already committed through the Funding Agreements to provide funds, as necessary, to confirm a section 524(g) plan, see, e.g., Aldrich Funding Agreement[12] at 5-6 (section (d) "Permitted Funding Use" definition), and all of the Protected Parties are plainly "eligible" for permanent relief under a section 524(g) channeling injunction. The Non-Debtor Affiliates would be eligible for section 524(g) relief based on the text of the statute and the undisputed facts of the 2020 Corporate Restructuring. Section 524(g)(4)(A)(ii) entitles a non-debtor to protection if it is "alleged to be directly or indirectly liable for the conduct of, claims against, or demands on the debtor" and such alleged liability arises from one of the specified circumstances, which includes the non-debtor's "involvement in a transaction changing the corporate structure … of the debtor or a related party." 11 U.S.C. § 524(g)(4)(A)(ii). If the Non-Debtor Affiliates are sued for Aldrich/Murray Asbestos Claims, they would be based on one or more of the theories directly addressed by this provision of section 524(g). See In re Quigley Co., Inc., 676 F.3d 45, 60 (2d Cir. 2012) (noting section 524(g)(4)(A)(ii)(IV) covers allegations under, inter alia, "successor liability" and "mere continuation" theories).[13]

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[11] See In re Bestwall LLC, Adv. No. 17-03105, slip op. at 5-6 [Adv. Pro. Dkt. 190] (Bankr. W.D.N.C. Jan. 31, 2020) (at claimants' request, clarifying that the order granting a section 105(a) preliminary injunction covering the debtor's affiliates "did not address whether New GP [a non-debtor affiliate] is entitled to 11 U.S.C. § 524(g) relief…The [C]ourt will address whether any of the parties qualify for a § 524(g) channeling injunction in connection with confirmation."); In re W.R. Grace & Co., 386 B.R. 17, 33 (Bankr. D. Del. 2008) ("The ACC asserts that Debtors cannot prevail on the merits because [non-debtor third party] BNSF will never be entitled to a § 524(g) injunction on the basis of derivative liability. That, however, is not the test in a bankruptcy reorganization case.") (internal citation omitted).

[12] Copies of the Aldrich and Murray Funding Agreements are attached to the *Declaration of Ray Pittard in Support of First Day Pleadings* [Dkt. 27] at Annex 2.

[13] As noted, the ACC makes no argument that the preliminary injunction should not be maintained as to the Indemnified Parties and Insurers. Insurers are plainly eligible for relief under section 524(g)(4)(A)(ii)(III) (noting a "third party's provision of insurance to the debtor or a related party" is grounds for a permanent injunction), while

Finally, the ACC argues that the "Court should not be swayed by the Debtors' self-serving claims of making a "good-faith filing" and a "good-faith effort to reorganize." Obj. at 31. The ACC has never suggested—nor has any court ever held—that filing bankruptcy to globally resolve mass asbestos claims lacks a valid reorganizational purpose. See Bestwall, 605 B.R. at 49. Nor does the ACC cite any evidence or basis to suggest the Debtors lack a good-faith desire to reach a fair and consensual resolution. The evidence is all to the contrary.[14]

B. The ACC's Unsupported Allegation that the 2020 Corporate Restructuring "Bears the Hallmarks of a Fraudulent Transfer" Provides No Basis to Deny the Preliminary Injunction.

The ACC next argues that "[t]he Debtors also cannot demonstrate a substantial likelihood of confirmation given that the 2020 Corporate Restructuring bears the hallmarks of a fraudulent transfer." Obj. at 32. This suggestion is entirely unsupported, as many successful asbestos bankruptcies have involved the same or similar allegations. Claimant representatives investigated, sought standing, and/or litigated fraudulent transfer and similar claims in, among others, the Keene, Babcock & Wilcox, G-I Holdings, W.R. Grace, Combustion Engineering, Specialty Products, Garlock, and Kaiser Gypsum asbestos bankruptcies.[15] Each of these cases

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the Indemnified Parties are clearly covered by section 524(g)(A)(ii)(IV), as their liability relates to corporate transactions under which the Debtors and their corporate predecessors agreed to indemnify the Indemnified Parties. See, e.g., W.R. Grace, 386 B.R. at 28, 34-37 (expanding preliminary injunction to non-debtor third-party, BNSF, which had express "contractual indemnification rights" against the debtors).

[14] See, e.g., Tananbaum 30(b)(6) Dep. 211:19-25 ("We either have to slog it out in the tort system one case at a time for the next 20, 30, 40 years, who knows? Or we can all put our heads together, we can all come to the table productively and with open minds to try to resolve something efficiently and fairly."); Tananbaum Dep. 262:11-263:2 ("I know the ACC likes to complain that we're all about delay but it's actually just the opposite. We would love to sit down tomorrow and negotiate a plan. This is not some vacation from the tort system where we're rubbing our hands saying how wonderful to be out of the tort system another year. It's -- that's not it at all. This bankruptcy filing was driven for the desire for finality, not for a desire to save a buck. And we stand ready, willing and able to sit down immediately to commence and deepen those discussions."); Pittard Dep. 137:25-138:8 ("[I]t's been my understanding that our team has made every effort to move forward as fast as possible, both with yourselves on the ACC side, as well as the future claimants, and that the -- we stand ready today to open negotiations on an estimation and ready today to try to set this in motion and finalize this.").

[15] See Lippe v. Bairnco Corp., 225 B.R. 846, 849-50 (S.D.N.Y. 1998), *on reargument in part*, 229 B.R. 598 (S.D.N.Y. 1999), *aff'd*, 99 F. App'x 274 (2d Cir. 2004) (Keene); In re Babcock & Wilcox Co., 274 B.R. 230, 234 (Bankr. E.D. La. 2002); *First Am. Discl. Stmt. for Second Am. Joint Plan of G-I Holdings Inc. and ACI Inc.*

ended in confirmed section 524(g) plans. And each granted the same type of section 105 injunction sought here.[16]

In any event, the ACC has neither filed nor credibly pled or supported any actual or constructive fraudulent transfer action. See In re Caremerica, Inc., 409 B.R. 759, 766 (Bankr. E.D.N.C. 2009) ("A claim alleging an actual fraudulent transfer under § 548 must satisfy the particularity requirement of Rule 9(b)."); COLLIER ON BANKRUPTCY ¶ 548.05[3][a] (16th ed. 2021) ("The calculation of insolvency is often technical and will require expert testimony as to the value of the assets and the exposure on the liabilities."); In re Dullea Land Co., 269 B.R. 33, 35 (B.A.P. 8th Cir. 2001) (parties presented expert testimony regarding whether debtor received reasonably equivalent value for transfer). Despite retaining a financial expert (FTI Consulting) at the beginning of these cases—whose charge included "[e]valuating, analyzing, and performing a forensic review of avoidance actions, including fraudulent conveyances and preferential transfers," (e.g., [Dkt. 277] at 4)—the ACC's testifying expert confirmed at his deposition that [redacted] Diaz Dep. 45:9-17.[17]

Pursuant to Ch. 11 of the U.S. Bankr. Code at 35 (Erens Decl., Ex. 3); Sealed Air Corp. 2011 Form 10-K at 16-17 (Erens Decl., Ex. 4) (W.R. Grace); In re Combustion Eng'g, Inc., 295 B.R. 459, 470-71 (Bankr. D. Del. 2003), *subsequently vacated sub nom,* In re Combustion Eng'g, Inc., 391 F.3d 190 (3d Cir. 2004), as amended (Feb. 23, 2005); In re Specialty Prods. Holding Corp., No. 10-11780 [Dkt. 1799] (Bankr. D. Del. Nov. 14, 2011) (Erens Decl., Ex. 5); In re Garlock Sealing Techs, LLC, No. 10-31607 [Dkt. 2150] (Bankr. W.D.N.C. Apr. 30, 2012) (Erens Decl., Ex. 6); In re Kaiser Gypsum Co., Inc., No. 16-31602 [Dkt. 1009] (Bankr. W.D.N.C. June 8, 2018). The claimant representatives are also investigating fraudulent transfer allegations in Paddock—involving a similar restructuring to that in these cases—which ACC counsel suggested at the DBMP hearing was proceeding toward a consensual plan. See Mar. 1, 2021 DBMP Hr'g Tr. at 48; Mar. 3, 2021 DBMP Hr'g Tr. at 597; In re Paddock Enters., LLC, No. 20-10028 [Dkts. 160, 164] (Bankr. D. Del. Mar. 11, 2020) (noting ACC and FCR in Paddock have commenced investigation into restructuring, which allegedly "bears the hallmarks of a textbook fraudulent transfer") (Erens Decl., Exs. 7,8).

[16] See PI Mot. at 23 (citations to preliminary injunctions issued in Babcock & Wilcox, G-I Holdings, W.R. Grace, Combustion Engineering, Specialty Products, Garlock, and Kaiser Gypsum); In re Keene Corp., 164 B.R. 844, 846-48 (Bankr. S.D.N.Y. 1994) (staying successor liability, alter ego, and fraudulent conveyance claims against non-debtor Corporate Defendant affiliates and directors and officers concerning prepetition spinoff transactions).

[17] The purported "badges of fraud," (see Obj. at 33-35), are meritless. The 2020 Corporate Restructuring was not undertaken shortly after the Debtors have "been sued or threatened with suit," as is contemplated by N.C.

A fraudulent transfer is "an act which has the effect of improperly placing assets beyond the reach of creditors." Henry v. Lehman Commercial Paper, Inc. (In re First All. Mortg. Co.), 471 F.3d 977, 1008 (9th Cir. 2006). Nothing of that sort happened in the 2020 Corporate Restructuring, and no claimant was harmed by the 2020 Corporate Restructuring. Rather, the Funding Agreements with New Trane Technologies and New Trane, detailed in the PI Motion (at 11-12), ensure that all the assets of New Trane Technologies and New Trane remain available to pay asbestos claims to the exact same extent those assets were available before the 2020 Corporate Restructuring. As ACC counsel acknowledged in Bestwall —which involved a corporate restructuring using the same Texas divisional merger and funding agreement structure—the restructuring did not "technically run[] afoul of fraudulent transfer laws." In re Bestwall LLC, No. 17-31795 [Dkt. 495] at 4 (Bankr. W.D.N.C. Aug. 15, 2018).[18]

GEN. STAT. ANN. § 39-23.4(b)(4) and other state statutes. The Debtors have been sued in the tort system for decades. [redacted]. See Rebuttal Report of Laureen M. Ryan at 5 (Erens Decl., Ex. 9). Nor was the 2020 Corporate Restructuring "concealed." All of the filings necessary to effectuate the 2020 Corporate Restructuring were filed with the applicable Secretary of State offices and became known to the plaintiffs' bar within days by voluntarily disclosure by the Debtors in various tort cases around the country. The fact that various corporate projects that could lead to the potential transactions effectuated here were subject to confidentiality agreements—as are many corporate projects (see Roeder Dep. 63:24-64:13; Kuehn Dep. 123:14-124:5)—does not qualify as a badge of fraud. Nor is it hardly surprising that New Trane Technologies and New Trane did not "disclose" the 2020 Corporate Restructuring "to asbestos claimants or their attorneys" in advance. Suppl. Obj. at 3, 10. The ACC cites no basis to suggest that would be the norm, advisable, or in any way legally required. Finally, the ACC advances no argument or supporting expert opinion that the Debtors were insolvent or did not receive reasonably equivalent value in connection with the 2020 Corporate Restructuring, central inquires to any fraudulent transfer analysis.

The ACC's suggestion that the Reverse Morris Trust transaction with Gardner Denver (the "RMT") was in any way designed to "shield assets from asbestos claimants," (Obj. at 7), is completely baseless. As many witnesses have confirmed, the RMT was in the works well before Project Omega and was designed to separate Ingersoll-Rand's and Trane's industrial and climate businesses for entirely legitimate business reasons. It was not at all driven by asbestos liabilities. See, e.g., Brown Dep. 180:16-181:6; Turtz Dep. 71:4-12; 72:23-24, 75:20-23, 86:12-25. The ACC cites nothing—there is nothing to cite—to support their groundless allegation.

[18] The ACC's fixation with the notion that bankruptcy was the "one and only 'option'" after the 2020 Corporate Restructuring, (Obj. at 2-3; see also Suppl. Obj. at 3-6), is irrelevant and inconsistent with the evidence. The minutes of the Aldrich and Murray Board meetings reflect that the Boards carefully considered a number of alternatives over multiple meetings. See Minutes of Joint Meeting of Boards of Managers of Aldrich Pump LLC and Murray Boiler LLC for the meetings held on May 15, 2020, May 22, 2020, May 29, 2020, and June 5, 2020 (Erens Decl. Ex. 10); Pittard Dep. 256:12-22; 282:18-283:22; Tananbaum 30(b)(6) Dep. 260:18-262:13; Tananbaum Dep. 290:25-292:11; Roeder Dep. 139:8-19; Zafari Dep. 40:25-41:20, 111:3-11, 113:20-114:13. Of course the

III. THE DEBTORS AND THEIR REORGANIZATIONAL EFFORTS WILL BE IRREPARABLY HARMED WITHOUT A PRELIMINARY INJUNCTION.

A. The Requested Injunction is Necessary to Achieve the Reorganizational Goals of These Cases.

As stated above, "the critical, if not decisive, issue" in determining whether to enjoin litigation against non-debtors is whether the litigation would, absent an injunction, "interfere[] with the debtors' reorganization efforts." Brier Creek, 486 B.R. at 694; Kreisler v. Goldberg, 478 F.3d 209, 215 (4th Cir. 2007) (section 105(a) injunction is appropriate if third-party action would "put detrimental pressure on [the debtors'] reorganization effort"); Robins, 788 F.2d at 1003 (injunction is appropriate when third-party litigation "would adversely or detrimentally influence and pressure the debtor through the third party") (internal citation omitted). The ACC misreads Robins. The Fourth Circuit did not issue a preliminary injunction solely due to shared insurance assets or diminishment of estate assets. Obj. at 42-43. Instead, various sources of harm, including (a) the debtor's indemnification and discovery obligations in thousands of pending suits and (b) potentially inconsistent judgments for defendants with indemnification claims, informed the ruling. See Robins, 788 F.2d at 1008-09.

The entire purpose of these cases—an equitable, final, and global resolution of tens to hundreds of thousands of current and future Aldrich/Murray Asbestos Claims—would be thwarted without a preliminary injunction. There is no dispute that the ACC seeks to lift the

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Board minutes "creat[ed] a record" of the Board's deliberations of those options, (Suppl. Obj. at 4); that is the purpose of Board minutes. The fact that pursuing a section 524(g) resolution emerged as the "leading" and a "very viable" option (Suppl. Obj. at 5)—and the unremarkable existence of documents detailing that option prior to the bankruptcy—does not change that. Nor is it surprising that Mr. Turtz provided the Debtors' Board members with information pertinent to the section 524(g) option early in the process. Id. at 4. The evidence demonstrates the independence of the Boards' decision-making process, (see Tananbaum Dep. 250:2-7; 300:9-304:10; Turtz Dep. 238:12-20, 241:11-242:3, 257:24-258:3; Brown Dep. 72:13-73:10; 141:20-142:10), and that those signing the documents that effectuated the 2020 Corporate Restructuring were sufficiently familiar with the documents they executed. See Valdes Dep. 128:14-129:15; Kuehn Dep. 62:22-67:11, 206:24-207:21; Daudelin Dep. 264:8-266:14; Turtz Dep. 172:19-173:9; 176:9-16; 269:6-17; Brown Dep. 155:2-156:2; Roeder Dep. 166:10-167:12; 174:8-19; 238:19-239:5.

injunction so that asbestos claimants can pursue in the tort system the exact same claims pending against the Debtors—involving the same plaintiffs, the same products, the same time periods, and the same liability and damage allegations—against the Non-Debtor Affiliates. That is precisely what occurred before the filing of these cases and the entry of the TRO. New Trane Technologies and New Trane had been named in or added (or sought to be added) as a defendant more than 100 times during the 48 days between the 2020 Corporate Restructuring and the chapter 11 filings. See PI Mot. at 4; Tananbaum Decl. ¶ 34.

An injunction protects a debtor from "uncontrollable" and "uncoordinated proceedings in different courts," allowing that debtor an "opportunity to formulate a plan of reorganization." Robins, 788 F.2d at 998. Putting "pressure" on the Debtors and seeking an effective dismissal of these cases through what is tantamount to lifting the stay against the Debtors to permit uncoordinated, piecemeal tort litigation in hundreds of different courts across the country in literally tens of thousands of cases is exactly what the ACC hopes to achieve in objecting to the PI Motion. Tellingly, the 21 pages that the ACC devotes to the issue of irreparable harm includes no response to the Debtors' central assertion that lifting the preliminary injunction would lead to the unprecedented result of effectively lifting the automatic stay for all tort claims, thereby, in all but name, divesting this Court of jurisdiction over these cases—an effective dismissal. See Obj. at 36-57.[19] That is because the ACC cannot deny that these *are* the very goals of their Objection.

[19] The closest the ACC comes is a snippet from the deposition of the Debtors' Chief Restructuring Officer, Ray Pittard, who testified that it would be more costly and difficult—but "not impossible"—for the Debtors to reorganize without a preliminary injunction. Obj. at 38. Because Mr. Pittard is not an attorney and had no involvement in managing the Debtors or their corporate predecessors' asbestos litigation, there is little if any foundation for this testimony. In any event, the standard is not that a reorganization would be "impossible" without a preliminary injunction. It is whether third-party litigation, if not enjoined, "would adversely or detrimentally influence and pressure the debtor through the third party." Robins, 788 F.2d at 1003; see also Kreisler, 478 F.3d at 215.

In the recent DBMP hearing, the claimant representatives argued that a preliminary injunction was not necessary to successfully confirm a section 524(g) plan. They provided the Court a slide purporting to list "Numerous cases [to] have confirmed a plan without a preliminary injunction." Mar. 1, 2021 DBMP Hr'g Tr. at 48, 64; Mar. 3, 2021 DBMP Hr'g Tr. at 515-16; FCR Slide 2 (Erens Decl., Ex. 11). The cases listed are readily distinguishable.

The claimant representatives made no showing that there were non-debtor affiliates in those cases actively being pursued in the tort system, as plainly would be the case here. About half of the cases were prepackaged, pre-negotiated, or included "standstill" agreements by plaintiffs not to pursue lawsuits against various non-debtors, so no preliminary injunction was necessary.[20] Many of the cases included as debtors, in those cases or independent bankruptcy cases, the entities that had been sued for asbestos liabilities pre-bankruptcy; so, again, no preliminary injunction was needed.[21] Many were small and/or are not properly characterized as asbestos bankruptcies.[22] Finally, in Paddock, the debtor and its corporate predecessor had

[20] Prepackaged, pre-negotiated, or prearranged bankruptcies listed in the slide include In re Maremont Corp., No. 19-10118 (Bankr. D. Del. 2019); In re Duro Dyne Nat'l Corp., No. 18-27963 (Bankr. D.N.J. 2018); In re Metex Mfg. Corp., No. 12-14554 (Bankr. S.D.N.Y. 2012); In re API, Inc., No. 05-30073 (Bankr. D. Minn. 2005); In re Congoleum Corp., No. 03-51524 (Bankr. D.N.J. 2003); In re Swan Transportation, No. 01-11690 (Bankr. D. Del. 2001). Those with "standstill" agreements include In re Plant Insulation Co., No. 09-31347 (Bankr. N.D. Cal. 2009) and In re Thorpe Insulation Co., No. 07-19271 (Bankr. C.D. Cal. 2007).

[21] See In re Federal-Mogul, 300 F.3d 368, 372-73 (3d Cir. 2002); In re Swan Transportation Co., 596 B.R. 127, 130 (Bankr. D. Del. 2018); In re The Muralo Co., 301 B.R. 690, 692-95 (Bankr. D.N.J. 2003); In re USG Corp., No. 01-2094, 2012 WL 1463988, at *4-5 (Bankr. D. Del. Apr. 23, 2012); In re Owens Corning Corp./Fibreboard, *Disclosure Statement with Respect to Sixth Amended Joint Plan of Reorganization for Owens Corning and its Affiliated Debtors and Debtors-in-Possession,* No. 00-03837 (Bankr. D. Del. July 10, 2006) (Erens Decl., Ex. 12); In re Artra Grp., Inc., No. 02-21522 (Bankr. N.D. Ill. 2002) (entity who had been sued under successor liability theories, Muralo, filed its own bankruptcy petition).

[22] See In re Duro Dyne Nat'l Corp., No. 18-27963 [Dkt. 20] at 13 (Bankr. D.N.J. Sept. 7, 2018) (956 pending claims) (Erens Decl., Ex. 13); In re The Budd Co., Inc., No. 14-11873 [Dkt. 14] ¶ 5 (Bankr. N.D. Ill. Apr. 1, 2014) (356 product liability/asbestos claims) (Erens Decl., Ex. 14); In re Reichhold Holdings, U.S. Inc., No. 14-12237 [Dkt. 1246] at 33 (Bankr. D. Del. Nov. 19, 2015) (125 pending claims as of the petition date; case was a chapter 11 liquidation and no section 524(g) trust was created) (Erens Decl., Ex. 15); In re Thorpe Insulation Co., No. 07-19271 [Dkt. 1221] at 10 (Bankr. C.D. Cal. July 30, 2008) (approximately 2,000 asbestos cases pending as of the petition date) (Erens Decl., Ex. 16); In re API, Inc., 331 B.R. 828, 834 (Bankr. D. Minn. 2005) (roughly 700 pending claims as of the petition date); In re JT Thorpe, Inc., No. 02-14216 [Dkt. 471] at 3 (Bankr. C.D. Cal. Mar. 7, 2005) (approximately 1,000 pending asbestos suits as of the petition date) (Erens Decl., Ex. 17).

"Administrative Claims Agreements" in place for handling asbestos claims *outside the tort system*; Paddock had only 900 pending asbestos claims as of its petition date. See In re Paddock Enters., LLC, No. 20-10028 [Dkt. 2] ¶¶ 9-10 (Bankr. D. Del. Jan. 6, 2020) (Erens Decl., Ex. 18). As the FCR noted in its support for the PI Motion, it seems likely that the plaintiffs' bar entered into such agreements because it was not in its interest to have the last, non-bankrupt insulation manufacturer as a defendant in the tort system (to which other co-defendants could point to assess liability). Adv. Pro. Dkt. 129 at 14-15. For the same reason, the plaintiffs' bar has no reason to seek to pursue Paddock's affiliates in the tort system now to attempt to hold them responsible for Paddock's liability in front of the same co-defendants.

Denying the injunction also would prevent these cases from achieving equal treatment across similarly situated claimants. In each of the thousands of suits that might proceed in the tort system against Protected Parties, motions to dismiss would be filed since, among other things, none of the Protected Parties manufactured or sold asbestos-containing products that give rise to asbestos claims against the Debtors. Motions to dismiss should be granted in each of the cases that would ensue absent an injunction. But given the thousands of cases that could proceed were the injunction lifted, results may differ. Some plaintiffs would then be permitted to prosecute their cases against a Protected Party and some would not. Similarly situated claims, all of which are in actuality claims against the Debtors, would then receive different treatment—time to payment may vary; amount of payment may vary; mechanism of payment undoubtedly would vary. Unequal treatment across similar claimants defeats one of the goals of the Debtors' reorganizational effort and, therefore, is harm to the estates.

The ACC cannot genuinely dispute that the preliminary injunction is fundamentally necessary to achieve the reorganizational goals of these cases. That, alone, is sufficient to satisfy

the likelihood of irreparable harm to the Debtors' estates.

B. The ACC's Other Arguments Denying Harm to the Estates Are Equally Unavailing.

The PI Motion identified three additional harms to the Debtors that would arise if the claimants are permitted to prosecute the Aldrich/Murray Asbestos Claims against the Protected Parties: (1) indemnification claims against the Debtors would be fixed or liquidated; (2) continued litigation of the Aldrich/Murray Asbestos Claims would risk binding the Debtors through *res judicata* and collateral estoppel and impose evidentiary prejudice; and (3) the burden of managing and assisting with the asbestos litigation would divert the Debtors' personnel from restructuring efforts. See PI Mot. at 27-31. Judge Beyer recognized each of these risks as harm in Bestwall, see 606 B.R. at 249-51, 255-57, as have courts in numerous other asbestos and mass tort bankruptcies. See PI Mot. at 27-31. The ACC's responses to this weight of authority are meritless.

1. Alleged "Self-Infliction"

The ACC suggests none of these harms matter because they are "self-inflicted" through the 2020 Corporate Restructuring. Obj. at 36, 38-44. But there is nothing unusual about parties involved in a corporate restructuring agreeing to *reciprocal* indemnification. These undertakings are routine in any transaction involving the allocation of assets and liabilities and were not created here strictly to "set up an argument" for preliminary injunction purposes. Obj. at 42.[23] In fact, the Debtors conducted a search of the SEC's EDGAR database to identify spin-off transactions over the last 15 years—transactions, like divisional mergers, that involve asset and liability allocation among two or more parties. *Each and every one of the approximately 150*

[23] See, e.g., Bestwall, 606 B.R. at 250 ("it makes sense that the Debtor would, and the Debtor has agreed to, indemnify its affiliates" against claims for liabilities allocated to it in the divisional merger).

transactions identified included mutual indemnification obligations with respect to the liabilities allocated in the transaction. See Erens Decl., Ex. 19 (exhibit lists each transaction and provides a link to documents filed with the SEC).[24]

Nor is downsizing the Debtors' in-house asbestos defense team "contrived" or otherwise self-inflicted harm. It is prudent stewardship given the expectation that the Aldrich/Murray Asbestos Claims would be resolved through a section 524(g) plan, instead of across hundreds of courts across the country.

The ACC's "self-inflicted" argument contravenes authority granting preliminary injunctions after similar, as well as other, prepetition restructurings in mass tort bankruptcy cases.[25] As evidenced by the many preliminary injunctions granted uniformly in prior asbestos cases, such injunctions are not unique to divisional merger cases. The ACC's authority involves neither a corporate restructuring nor a bankruptcy, but rather vastly different factual situations in general litigation.[26] The priorities and considerations for injunctive relief in bankruptcy differ from general litigation. See, e.g., FiberTower Network Servs. Corp. v. Federal Commc'n Comm'n (In re FiberTower Network Servs. Corp.), 482 B.R. 169, 188 n.38 (Bankr. N.D. Tex.

[24] "Judicial notice is appropriate of the content of S.E.C. filings, to the extent that this establishes that the statements therein were made, and the fact that these documents were filed with the agency." In re Mun. Mortg. & Equity, LLC, Sec. & Derivative Litig., 876 F. Supp. 2d 616, 626 n.7 (D. Md. 2012), *aff'd sub nom*. Yates v. Mun. Mortg. & Equity, LLC, 744 F.3d 874 (4th Cir. 2014) (citation omitted).

[25] See Bestwall, 606 B.R. at 247-48, 258-59 (enjoining actions against the debtor's non-debtor affiliate created through a divisional merger, and other non-debtor affiliates); In re Garlock Sealing Techs. LLC, *Order Granting Preliminary Injunction*, No. 10-31607, Adv. No. 10-03145 [Adv. Pro. Dkt. 14] (Bankr. W.D.N.C. June 21, 2010) (enjoining actions against non-debtor affiliates, including Garlock's parent, Coltec) (Erens Decl., Ex. 20).

[26] See Di Biase v. SPX Corp., 872 F.3d 224, 235 (4th Cir. 2017) (plaintiff-retirees complained of loss of insurance coverage but failed to secure replacement insurance coverage offered to them); Salt Lake Tribune Publ'g Co., LLC v. AT&T Corp., 320 F.3d 1081, 1106 (10th Cir. 2003) (plaintiff sought to enjoin contract counterparty from exercising a purchase right that was explicitly included in agreement with plaintiff); Caplan v. Fellheimer Eichen Braverman & Kaskey, 68 F.3d 828, 839 (3d Cir. 1995) (plaintiff sued insurer for settling action without its consent, notwithstanding plaintiff's affirmative agreement to allow it); Dotster, Inc. v. Internet Corp. for Assigned Names & Nos., 296 F. Supp. 2d 1159, 1163 (C.D. Cal. 2003) (citing Caplan, 68 F.3d at 839) (damages cap in a contract plaintiffs negotiated with the defendant cannot constitute irreparable harm).

2012) (rejecting arguments that harm to the debtors' estates was self-inflicted and could not constitute irreparable harm, regardless of whether, outside the bankruptcy context, debtors' conduct "would otherwise be sufficient to taint" their request). The logic of the ACC's "self-inflicted" argument—that anytime a debtor has some involvement in events that later lead to the need for a preliminary injunction the injunction should be denied—is untenable, particularly in the bankruptcy context.

2. The Suggestion That Harm to the Debtors is Only "Possible"

Next, the ACC suggests the Debtors have identified only the "possibility" of harm. Obj. at 36-37 ("the Debtors repeatedly frame their irreparable harm argument in terms of what 'may' or 'could' happen absent injunctive relief"). That is false.

(a) Indemnification

The Debtors have identified specific contractual indemnification obligations that *would be* implicated and stated that the pursuit of the Aldrich/Murray Asbestos Claims against the Protected Parties "*would* prevent the Debtors from establishing a section 524(g) trust to consolidate and collectively resolve all asbestos claims against them—current and future—through the Chapter 11 Cases." PI Mot. at 27-28 (emphasis added).

The ACC argues that the uncapped Funding Agreements prevent the Debtors from suffering any "harm" caused by their indemnification obligations. Obj. at 44; see also Suppl. Obj. at 12-13. This argument relies on the false premise that all asbestos liabilities will solely be paid by New Trane Technologies and New Trane. But as the ACC earlier acknowledges, the Funding Agreements are only a *backstop* against the Debtors' obligations with respect to asbestos

liabilities.[27] The Debtors must first use their own assets to satisfy their obligations. Accordingly, the "net result" is *not* a "wash." Suppl. Obj. at 13.

The ACC also suggests that the indemnification claims against the Debtors would be stayed as prepetition claims and therefore may not "inflict 'irreparable harm' on the Debtors." Obj. at 45-46. The ACC ignores that the prosecution of the Aldrich/Murray Asbestos Claims against the Protected Parties, and the resulting settlements and any verdicts, will irreparably fix what are otherwise contingent claims against the Debtors. The Debtors would be stuck with those settlement amounts and verdicts—and the indemnification obligations that flow from them. To accept the ACC's argument would be to ignore Robins, which held that injunctive relief is appropriate when a "judgment against the third-party defendant will in effect be a judgment or finding against the debtor." 788 F.2d at 999.

(b) *Res judicata*, collateral estoppel, and evidentiary prejudice

The Debtors have established that prosecution of the claims against the Protected Parties "*would* litigate the same key facts." PI Mot. at 29 (emphasis added). The Debtors have made clear that they "*would have no choice* but to participate in the defense" of claims brought against the Protected Parties. Id. at 30. Thus, there is nothing "speculative" about the Debtors' concern that prosecution of the Aldrich/Murray Asbestos Claims against the Protected Parties would create risks of *res judicata*, collateral estoppel, and evidentiary prejudice. See e.g., Bestwall, 606 B.R. at 256 ("evidence generated in other proceedings against the Protected Parties will be used to try to establish Bestwall Asbestos Claims against the Debtor") (emphasis added).

That Mr. Tananbaum could not identify a prior instance of an asbestos plaintiff using *res*

[27] Obj. at 19 ("TTC and Trane are each obligated to fund a § 524(g) trust only if their respective Debtor's 'other assets are insufficient to fund amounts necessary or appropriate to satisfy … Asbestos Related Liabilities in connection with the funding of such trust.'"). See also Tananbaum 30(b)(6) Dep. 270:8-273:8.

judicata against the Debtors or their predecessors, (Obj. at 47; Suppl. Obj. at 13-14), is unremarkable. The Debtors' chapter 11 filings and the Court-ordered TRO have stayed claims against the Protected Parties. See Tananbaum 30(b)(6) Dep. 197:18-201:6. The ACC's further claim that the Debtors' concerns "do not hold up under sensible logic, and scrutiny,"(Obj. at 47), is ironic. The ACC contends that these risks would not exist *if* a Section 524(g) reorganization is achieved. Id. at 47-48 ("But in 524(g) reorganizations, a debtor's liability for each asbestos claim is 'established,' … and the Debtors would have reorganized and obtained the protection of a discharge and § 524(g) channeling injunction in any event."). The "logic" of the ACC's argument presumes *there will be a successful reorganization* and an establishment of a section 524(g) trust, a premise at odds with the remainder of the Objection. But even if a plan were achieved, as the Debtors expect, that does not change the unfavorable *res judicata*, collateral estoppel, and evidentiary prejudice impacts of litigation concluded prior to the effective date of that plan, which will result in inconsistent treatment of similarly situated asbestos claims.[28]

The ACC further asserts that because Ingersoll-Rand and Trane "were in the tort system defending against asbestos claims for decades," any prejudicial evidence that could be created against the Debtors already exists. Obj. at 50. But the plaintiffs now are different, the claims are different, the counsel are different. The Aldrich/Murray Asbestos Claims, by definition, have not yet been resolved.

Lastly, because *res judicata*, collateral estoppel, and evidentiary prejudice are not the sole

[28] Moreover, *res judicata*, collateral estoppel, and evidentiary prejudice may affect the determination of the Debtors' liability through an estimation proceeding or the treatment of asbestos claims under Trust Distribution Procedures ("TDPs") governing the section 524(g) trust. For example, even under a confirmed plan, TDPs would permit all claimants to litigate claims in the tort system in lieu of an agreed settlement. See, e.g., In re Bestwall LLC, No. 17-31795 [Dkt. 1172-2] at 15-16, 24-25, 36-37 (Bankr. W.D.N.C. May 21, 2020) (committee's proposed TDPs); id. [Dkt. 1284] at 36-37, 46, 53 (Bankr. W.D.N.C. Aug. 13, 2020) (debtor's proposed TDPs); In re Specialty Prods. Holding Corp., No. 10-11780 [Dkt. 5117-3] at 19, 46 (Bankr. D. Del. Oct 23, 2014) (Erens Decl., Ex. 21).

bases for the PI Motion, the ACC's citation of cases holding that such risks, *alone*, do not merit an injunction are irrelevant. Obj. at 48, 50-51.[29] As in other mass-tort cases, these risks are just "one of many factors" that together justify protection.

(c) Diversion of Key Personnel

The ACC disputes the Debtors' contention that key personnel would be overwhelmed with litigation-related activity, and therefore diverted from their reorganization activities, if the PI Motion was denied. Obj. at 39, 55-56; Suppl. Obj. at 14-16. But to argue that the Debtors' personnel would *not* be materially diverted if tens of thousands of asbestos claims suddenly recommenced in the tort system is absurd.

Mr. Tananbaum explained how he, Mr. Sands, Ms. Roeder, and Ms. Bowen would all be pulled away from their reorganization activities if the preliminary injunction were lifted. See Tananbaum Dep. 65:11-76:11; see also Sands Dep. 108:21-112:25. Prior to the bankruptcy, managing asbestos litigation was an all-consuming responsibility for Mr. Sands and Mr. Tananbaum.[30] Even when they had a larger team of attorneys and paralegals, it "was a full-time job for that entire team." Tananbaum Dep. 67:22-68:14. It would be an "overwhelming task" for Mr. Tananbaum and Mr. Sands to manage that litigation today, leaving no time for their ongoing reorganization work. Id. 68:13-69:4; Tananbaum 30(b)(6) Dep. 228:7-20. Mr. Tananbaum further explained that non-legal personnel, Ms. Roeder and Ms. Bowen, would be under great

[29] The Objection's citations to Queenie, Ltd. v. Nygard Int'l, 321 F.3d 282 (2d Cir. 2003) and Cook v. Blazer, No. 7:15-cv-456, 2016 WL 3453663, at *1 (W.D. Va. June 20, 2016), do not help the ACC. There, the courts declined to extend the automatic stay to certain of the debtors' co-defendants in the tort system who had their own independent, non-derivative liability. In fact, Queenie *did* extend the stay to the debtor's wholly owned company, citing Robins and noting the adjudication of the claim against the company "will have an immediate adverse economic impact on" the debtor. 321 F.3d at 277-78. Judge Beyer cited Queenie in granting the preliminary motion in Bestwall. See 606 B.R. at 255 n.13.

[30] Tananbaum Dep. 67:8-21 ("[W]hen asbestos is unleashed and fully operating in the tort system, it's a daily barrage of settlement demands and negotiations and mediations and discovery that needs to be responded to…. I mean there's always some emergency going on and it's all consuming.").

strain if the motion were denied. Tananbaum Dep. 72:2-73:20; see also Tananbaum 30(b)(6) Dep. 236:20-237:20. Ms. Roeder and Ms. Bowen are not seconded to the Debtors and, in addition to their "day jobs," would now be forced to manage "looking at the payments of professionals, looking into the reserving of liabilities and assets and the like." Tananbaum Dep. 73:4-17; accord Roeder Dep. 61:23-62:16.

The ACC says the Debtors could just hire more personnel, (Obj. at 56)—as if suitable reinforcements were standing ready—or borrow other in-house lawyers at Trane Technologies with little to no demonstrated experience with asbestos claims. Suppl. Obj. at 15. But the reality is that the work that must be performed requires prior experience with the Debtors, their product histories, their defenses; and it is unlikely that employees downsized nearly a year ago remain available and willing to resume their prior positions today. See Tananbaum Dep. 324:13-16 ("So as a very practical matter, it just is as clear as rain that the only way these cases could be successfully defended is with [my and Mr. Sands'] intercession.").[31]

3. The List of Protected Parties

The ACC's final complaint—that the "Debtors have loaded up their list of Protected Parties with companies that appear never to have been sued at all for asbestos liability," (Obj. at 37)—is misguided. As ACC counsel well knows, it is common in asbestos bankruptcies to broadly identify non-debtor affiliates and other entities that have been or *could in the future* be sued.[32] It would be inefficient to exclude entities that could be sued in the future—and would

[31] Nor is there any basis to second-guess Mr. Tananbaum's selection as the Debtors' Chief Legal Officer or suggest that he and Mr. Sands are not integral to the Debtors' reorganization efforts. Suppl. Obj. at 15. That Mr. Tananbaum, unsurprisingly, relied on outside bankruptcy counsel to prepare routine bankruptcy filings, (id.), does not change the fact that he has been fully occupied by multiple tasks throughout these cases, including, among other tasks, discussing strategy with counsel and other advisors on a daily basis; coordinating and attending the Debtors' Board meetings; reviewing draft pleadings and briefs; approving counsel and expert invoices; and participating extensively in the ACC's wide-ranging discovery efforts. See Tananbaum Dep. 43:14-53:3.

[32] See, e.g., In re Bestwall LLC, No. 17-31795, Adv. No. 17-03105 [Adv. Pro. Dkt. 164] at 15-16, Appendix B (Bankr. W.D.N.C. July 29, 2019) (enjoining derivative lawsuits against over 120 "Protected Parties");

appropriately be covered by the injunction—and then have to later amend the terms of the injunction. If asbestos claimants *intend* to sue any Protected Party, then there is a valid reason to include them on the list. If the asbestos claimants do *not* intend to sue any such entity, there is no prejudice to claimants from including them.[33]

IV. THE LIMITED HARM TO CLAIMANTS CLEARLY SUPPORTS MAINTAINING THE PRELIMINARY INJUNCTION.

The kinds of limited and theoretical consequences for claimants from maintaining preliminary injunctions like the one in force here have been addressed in many other asbestos bankruptcy cases; yet the relief has "uniformly been issued in numerous other asbestos-related cases, including in this jurisdiction." Bestwall, 606 B.R. at 254 (citing cases); PI Mot. at 23. The ACC ignores this history, the facts which demonstrate that any harm to asbestos claimants is indeed limited, and the benefits to claimants afforded by a section 524(g) plan.

A. Asbestos Claimants Are Not Materially Harmed by a Stay of Claims Against the Protected Parties.

As the Court is now well aware, the Texas Business Organizations Code (the "TBOC") permits a single entity to divide into two or more new entities (at which point the existing entity can cease to exist) and to allocate the assets and liabilities of the old entity among the new

In re Kaiser Gypsum Co., Inc., No. 16-31602, Adv. No. 16-03313 [Adv. Pro. Dkt. 2] at Appendix B (Bankr. W.D.N.C. Sept. 30, 2016) (listing nearly 200 "Protected Parties" to be covered by the preliminary injunction), [Adv. Pro. Dkt. 18] at 5 (Bankr. W.D.N.C. Nov. 4, 2016) (granting preliminary injunction); In re Garlock Sealing Techs. LLC, No. 10-31607, Adv. No. 10-03145 [Adv. Pro. Dkt. 14] at 6, Exhibit A (Bankr. W.D.N.C. June 21, 2010) (enjoining derivative lawsuits against over 60 non-debtor "Affiliates") (Erens Decl., Ex. 20); In re Leslie Controls, Inc., No. 10-12199, Adv. No. 10-51394 [Adv. Pro. Dkt. 1] at Exhibits 1-2 (Bankr. D. Del. July 12, 2010) (listing over 120 non-debtor affiliates to be covered by the preliminary injunction), [Adv. Pro. Dkt. 12] at 5-6 (Bankr. D. Del. Aug. 9, 2010) (granting preliminary injunction) (Erens Decl., Exs. 22, 23).

[33] The ACC's suggestion, citing to Mr. Tananbaum's testimony, that of the Protected Parties only New Trane Technologies, New Trane, Trane plc, and Thermo King have been sued is misleading. Numerous Indemnified Parties, such as Ingersoll-Rand Pump Company and Dresser Industries Inc., have been sued and have tendered those cases to the Debtors and their corporate predecessors. See PI Mot. at 14-16; Tananbaum Dep. 316:21-317:10 (noting Indemnified Parties have been sued on Aldrich/Murray Asbestos Claims and sought indemnification).

entities. To effect the division of a single Texas entity into two or more new entities, such transaction must be set forth in a written "plan of merger." See TBOC Section 10.001(a). The plan of merger must be in writing and must include (i) the name and organizational form of the entity that is to be divided and will cease to exist; (ii) the name and organizational form of each new entity that is to be created; (iii) the allocation among the new entities of the property of the entity that is to be divided and will cease to exist; and (iv) the allocation among the new entities of the liabilities of the entity that is to be divided and will cease to exist. Id. Sections 10.002 and 10.003. Once the divisional merger becomes effective, the allocation of such assets and liabilities among the newly created entities becomes effective, as well. Id. Section 10.008.

There is no dispute that the 2020 Corporate Restructuring fully complied with these provisions of the TBOC and that the restructuring allocated asbestos liabilities only to the Debtors. As a result, there are no cognizable Aldrich/Murray Asbestos Claims against the Protected Parties and, thus, no harm from enjoining them. And any such claims for successor liability, alter ego, and the like would be speculative, at best, given the solvency of the Debtors and the fact that the Funding Agreements already obligate New Trane Technologies and New Trane to pay asbestos claims against the Debtors to the extent necessary. In any event, as explained in the Summary Judgment Motion, such derivative claims are property of the Debtors' estates to be pursued, if at all, by estate fiduciaries, not by thousands of asbestos claimants in their individual capacities. See PI Mot. at 32, 35-39.

Regardless, the Debtors' evidence shows that asbestos claimants would not be materially harmed by a stay of any claims against the Protected Parties during these bankruptcies. As the Court has itself recognized, the reality that asbestos claimants have numerous sources of recovery likely qualifies as an "adjudicative fact" capable of judicial notice. Feb. 25, 2021 Hr'g

Tr. at 31-34. The ACC objects that the Debtors' "generalized and offensive assertion" that "some victims may be able to obtain compensation from other defendants" is based only on "a general statement by the Debtors[']chief legal officer." Obj. at 59. But the statement is premised on decades of experience in the tort system and publicly available data.[34]

The evidence indicates that the availability of alternative sources of recovery is particularly true of claimants who have historically sued Old IRNJ and Old Trane. [redacted]

[34] Tananbaum Decl. [Dkt. 29] ¶ 41 ("Plaintiffs in asbestos-related suits in the tort system typically name multiple parties as defendants."); *cf.* In re Garlock Sealing Techs., LLC, 504 B.R. 71, 96 (Bankr. W.D.N.C. 2014) (finding that the "typical claimant alleges exposure to products of 36 parties").

[35] Expert Report of Charles H. Mullin, PhD (the "Mullin Report") ¶¶ 16-18 (Erens Decl., Ex. 24). In 2012, a randomized sample of 850 claimants in Garlock submitted information about their claims to the bankruptcy court through Personal Injury Questionnaires.

[redacted] The ACC's suggestion that there is some meaningful number of claimants "whose strongest evidence of asbestos exposure pertains to Ingersoll-Rand and Trane asbestos," or who would be materially impacted by "'empty chairs' left by TTC and Trane in the courtroom," Obj. at 59, is therefore groundless.

[redacted]

In fact, the ACC has not proffered *any* evidence of harm to asbestos claimants that would result from the preliminary injunction. The ACC merely cites the Fourth Circuit's decision in Williford v. Armstrong World Indus., Inc., 715 F.2d 124, 128 (4th Cir. 1983). Williford is inapposite. It denied a request from 24 co-defendants of the debtors (none related to the debtors) to stay the trial of an asbestos claimant against *all defendants* pending completion of the reorganization proceedings. See id. at 126. If anything, Williford supports the Debtors' position

[36] See [redacted] Responses and Objections ([redacted]); [redacted] Responses and Objections [redacted]); [redacted] l Responses and Objections [redacted]); [redacted] Objections ([redacted]); [redacted] Responses and Objections ([redacted]) (compiled as Erens Decl., Ex. 25).

here, as it observes that the continued prosecution of claims against unrelated co-defendants allows claimants to recover against those defendants.

Any harm from delay on account of a preliminary injunction also must be weighed against the important benefits—including to asbestos claimants—that would result from preserving the Debtors' ability to successfully reorganize under section 524(g).[37] As Judge Beyer recognized in Bestwall, a section 524(g) trust "will provide all claimants—including future claimants who have yet to institute litigation—with an efficient means through which to equitably resolve their claims."[38] Once established, claimants can obtain recoveries from trusts as quickly as 90 days after completing their claims forms.[39]

By contrast, asbestos litigation is rarely efficient and often drags on for years. As of the Petition Date, nearly 80% of the tens of thousands of asbestos claims pending against the Debtors had been filed more than ten years ago, resulting in claims remaining open for years or even decades. See Tananbaum Decl. ¶ 42. A more efficient trust process also likely will reduce all parties' legal costs. See Mullin Report ¶¶ 41-43.[40] The FCR has correctly emphasized these benefits, noting that the tort system is a "decidedly inferior result for the classes of both current and future asbestos claims when compared to the benefits provided by an asbestos trust." Adv.

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[37] See Bestwall, 606 B.R. at 257 (finding it is "not necessarily the case" that the requested injunction would "delay [claimants'] attempts to obtain compensation," and adding that "the process and timing to effectuate a section 524(g) trust are, to a large extent, within the control of the parties").

[38] Bestwall, 606 B.R. at 257 (citing In re Federal-Mogul Global, Inc., 684 F.3d 355, 357-62 (3d Cir. 2012) (noting asbestos trusts' "effectiveness in remedying some of the intractable pathologies of asbestos litigation" and citing empirical research that suggests section 524(g) trusts offer more efficient resolution of asbestos claims); *see also* Mullin Report ¶ 11 ("A bankruptcy reorganization by the Debtors resulting in a trust to administer the Debtors' asbestos claims is an economically more efficient, more equitable way to compensate claimants than asbestos litigation in the tort system."); see also id. ¶¶ 22-27, 39-51.

[39] See Mullin Report ¶¶ 22, 43; h[redacted]

[40] See also Federal-Mogul, 684 F.3d at 362 ("Empirical research suggests the trusts considerably reduce transaction costs and attorneys' fees over comparable rates in the tort system.") (citing studies).

Pro. Dkt. 129 at 3, see also id. at 3-4, 8-9.[41]

Finally, a section 524(g) trust also resolves claims far more equitably, using a common set of objective factors designed to ensure that claimants with similar fact patterns receive similar compensation, than the "lottery-like" outcomes experienced in the tort system." See Mullin Report ¶¶ 44-51. And, of course, lifting the injunction will not only impair the ability to treat similarly situated asbestos claims similarly under a section 524(g) resolution of these chapter 11 cases, it will foster unequal treatment of such claims now for the reasons described in Section III.A., *supra*.[42]

B. The 2020 Corporate Restructuring Did Not "Treat Asbestos Claimants Inequitably."

The ACC further contends that the "fraudulent nature" of the 2020 Corporate Restructuring "also tips the equitable balance against imposition of the sought-after inunction," asserting that "the fraudulent conveyances at issue have severely undermined the recourse available to asbestos claimants." Obj. at 60. The argument falls at its first step. No fraudulent conveyance action has been or could be commenced, much less supported with credible evidence. See Section II.B, *supra* at 13. The 2020 Corporate Restructuring did not "undermine"

[41] The ACC's citation to a Trane email suggesting that "[p]laintiffs [sic] lawyers" are "the most at-risk group" from an effort to resolve the Aldrich/Murray Asbestos Claims under section 524(g), (Obj. at 9), is not to the contrary. The reference is to asbestos *lawyers*, not asbestos *claimants* (though, as noted, there are significant benefits to claimants from a section 524(g) resolution). The possibility that the ACC is influenced by powerful and influential plaintiff law firms whose financial interests could be impacted by a section 524(g) resolution of asbestos claims in this and other pending asbestos bankruptcies raises questions about whether the ACC's objection to the PI Motion (and attempt to effectively dismiss these cases) is consistent with its charge to represent the current class of asbestos claimants as a whole. See Adv. Pro. Dkt. 129 at 9-10, 12 (FCR submission). In any event, the Debtors fully expect that plaintiffs' counsel would be adequately compensated in connection with a 524(g) resolution of the Aldrich/Murray Asbestos Claims, as has been the case with other section 524(g) trusts.

[42] The ACC also asserts that if an asbestos claimant dies while the injunction is in force, he or she may lose the right to certain alleged damages in certain jurisdictions on the stayed claims. Obj. at 58-59. Such circumstances generally are addressed by TDPs. See, e.g., In re Specialty Prods. Holding Corp., No. 10-11780 [Dkt. 5117-3] TDPs § 7.6 (Bankr. D. Del. Oct. 23, 2014) ("If the claimant was alive at the time the initial pre-petition complaint was filed . . . the case shall be treated as a personal injury case with all personal injury damages to be considered even if the claimant has died during the pendency of the claim.") (Erens Decl., Ex. 21); In re Leslie Controls, Inc., No. 10-12199 [Dkt. 505-3] TDPs § 7.6 (Bankr. D. Del. Jan. 18, 2011) (same) (Erens Decl., Ex. 26).

claimants or allow anyone to walk away with valuable assets. Obj. at 60-61. Rather, asbestos claimants will be able to recover the full amount of their allowed claims from the Debtors, whether through a confirmed 524(g) trust, or otherwise. Claimants have not been harmed.

The ACC suggests the Funding Agreements are an inadequate recourse for asbestos claimants' recoveries, but it provides no evidence of this. In fact, ACC counsel took the opposite position in DBMP, arguing: "Given the considerable resources behind the Funding Agreement, there is no reason to believe that the resources of New CT would be inadequate to the task of funding all asbestos claims as they arise."[43]; see also Bestwall, 606 B.R. at 252 ("[B]ecause of the Funding Agreement, the Debtor's ability to pay valid Bestwall Asbestos Claims after the 2017 Corporate Restructuring is identical to Old GP's ability to pay before the restructuring.").

The ACC says but fails to explain how the Funding Agreements are in any way "contingent." Obj. at 60. Nor does the ACC identify any reason why New Trane Technologies and New Trane's obligations under the Funding Agreement should be "guaranteed" or "secured" by some other entity. Obj. at 20, 60. Asbestos claimants did not have such guarantees or security before the 2020 Corporate Restructuring. And there is no basis to suggest that the 2020 Corporate Restructuring "structurally subordinated" asbestos claimants. Obj. at 60. [redacted]. See generally Diaz Report (Erens Decl., Ex. 27).

Nor does the ACC explain how any of the other alleged "flaws" in the Funding Agreements, (Obj. at 20-21), could conceivably prejudice asbestos claimants. As stated in Mr.

[43] *Mot. of the Official Comm. of Asbestos Personal Injury Claimants to Lift the Stay Pursuant to 11 U.S.C. § 362 as to Certain Asbestos Personal Injury Claims* [Dkt. 614; Adv. Pro. Dkt. 195] ¶ 62 (Bankr. W.D.N.C. Jan. 13, 2021).

Diaz's report, [redacted] See id. ¶ 47. In context, there is simply no credible basis to suggest that prohibitions on paying dividends (to countless shareholders and investors),[44] entering into new debt agreements, or compensating executives, (Obj. at 3, 20; Suppl. Obj. at 17-18), is necessary to protect asbestos claimants' sources of recovery.[45] Finally, as in Bestwall, any real issues with the Funding Agreements "can be addressed in the confirmation process." 606 B.R. at 255.[46]

Far from "treat[ing] asbestos claimants inequitably," the 2020 Corporate Restructuring was particularly sensitive to and protective of the interests of asbestos claimants.

C. A Preliminary Injunction Would Not "Encourage Delay" in this Case.

After accusing the Debtors of trying to use the preliminary injunction, in conjunction with the 2020 Corporate Restructuring, to pressure asbestos claimants to accept a settlement, the ACC suggests that the Court should deny injunctive relief to *pressure* the *Debtor* into a swifter resolution of this Chapter 11 Case. Obj. at 62-64. This argument only *highlights* the need for

[44] The ACC's Supplemental Objection details distributions made by Old IRNJ and Old Trane prior to the 2020 Corporate Restructuring. Suppl. Obj. at 7, 17-18. It makes no argument, nor could it, that these distributions in any way prejudiced asbestos claimants, constituted fraudulent conveyances, or were otherwise illegal. They were not. As Mr. Daudelin testified, Trane assesses any impact on creditors before dividends are approved and paid. Daudelin Dep. 92:6-22, 93:19-94:8.

[45] The ACC's statement that the Funding Agreements "explicitly allow TTC and Trane to engage in consolidations and mergers, and to transfer 'all or substantially all' of their assets," (Obj. at 21), is misleading. The Funding Agreements explicitly provide that in the event of such transaction the surviving entity must assume the obligations under the Funding Agreements. See Aldrich Funding Agreement § 4(b).

[46] The Debtors are not aware of any complications arising out of similar Keepwell agreement used in the Coltec/Garlock matter. See Diaz Dep. 258:17-259:8 [redacted]).

injunctive relief to prevent irreparable harm. See Robins, 788 F.2d at 1003 (injunction appropriate when third-party litigation "would adversely or detrimentally influence and pressure the debtor through the third party").

The ACC also ignores that if asbestos claimants could return to the tort system to pursue Aldrich/Murray Asbestos Claims against the Protected Parties, the *asbestos claimants* would lose their incentive to negotiate with the Debtors on a consensual plan. The Debtors have no desire to languish in this bankruptcy case.[47] The ACC's suggestion to the contrary, (Obj. at 62-63), ignores sworn testimony from multiple witnesses.[48] As made perfectly clear in the FCR's submission, it is not the Debtors that need to be "incentivized" to move these cases forward. See Adv. Pro. Dkt. 129 at 8 n. 21 ("Despite multiple invitations from the FCR and the Debtors, the ACC has been unwilling to engage in any plan-related discussions."). The Debtors' invitation to the ACC to commence negotiations of a plan remains open, but unaccepted.[49]

The ACC's charge that asbestos claimants "must either agree to a steep 'bankruptcy discount" or "remain locked inside chapter 11 for the foreseeable future," (Obj. at 63), is baseless. Given its refusal to negotiate, the ACC has no basis to make such an assertion, which is refuted by the Debtors' sworn testimony.[50] Likewise, the ACC's reference to the Bestwall case as a "cautionary example" case is inapt. [redacted]

[47] *See* Pittard First Day Decl. ¶23 ("The Debtors are prepared immediately to commit the necessary effort and resources to satisfy the various requirements of section 524(g), including the negotiation of an agreement with the claimants' representatives on an acceptable and confirmable plan of reorganization as soon as possible. Throughout this process, the Debtors are also committed to working cooperatively with their insurers toward the goal of a consensual plan.").

[48] See, e.g., note 14, *supra* (testimony of Messrs. Tananbaum and Pittard).

[49] The ACC's complaint that the Debtors are "basically talking to everyone except the [Committee] regarding a § 524(g) plan," (Suppl. Obj. at 10 (quoting Tananbaum 30(b)(6) Dep.)), is a situation of their own making.

[50] See Tananbaum Dep. 253:7-254:3, 262:13-263:2, 296:12-297:9; Pittard Dep. 325:3-326:20; Valdes Dep. 172: 3-11; Brown Dep. 307:21-308:8, 308:18-309:9; Regnery Dep. 261:17-262:7; Roeder Dep. 157:13-158:17, 247:22-248:24; Zafari Dep. 155:6-20; Sands Dep. 213:4-18.

[redacted]. See Diaz Dep. 112:21-115:9. Instead, in that case, it is the claimant representatives that have singularly focused on frustrating efforts to address the central issue in dispute: the amount of trust funding necessary to fairly resolve asbestos claims.

Separately, the ACC's suggestion that "two new and problematic features" in the Funding Agreements impair its ability to reach a consensual plan is false. Obj. at 19-20, 63. The ACC implies that it is somehow improper for the Funding Agreements to provide that New Trane Technologies and New Trane be granted the protections of a section 524(g) injunction. Obj. at 19. However, there are many section 524(g) cases where trust funding was provided by non-debtors who were covered by the channeling injunction. See Section V, *infra*. Any suggestion that New Trane Technologies and New Trane should provide significant contributions to an asbestos trust, yet nonetheless remain subject to unending suits in the tort system, is nonsensical. The ACC further argues that the Funding Agreements' termination after New Trane Technologies and New Trane eliminates any alternative to a lump-sum payment. Obj. at 19-20. While the Debtors would assume that the claimants prefer an upfront, lump-sum payment to the trust, there is nothing that prevents the parties from negotiating a different arrangement.

V. THE PUBLIC INTEREST SUPPORTS THE PRELIMINARY INJUNCTION

All of ACC's arguments on the public-interest prong involve attacking the 2020 Corporate Restructuring that preceded these chapter 11 cases. Obj. at 64-68. Those attacks are misguided. There has been no effort to "perpetuate fraud or to shield assets from creditors." Obj. at 66. Beyond that, courts have consistently affirmed the public's interest in a successful reorganization, which may be at its greatest in mass-tort bankruptcies.[51] The Debtors' successful

[51] See, e.g., Robins, 788 F.2d at 1008 (noting "the unquestioned public interest in promoting a viable reorganization:); In re Gander Partners LLC, 432 B.R 781, 789 (Bankr. N.D. Ill. 2010) ("[P]romoting a successful reorganization is one of the most important public interests.") (quoting In re Integrated Health Servs., Inc., 281 B.R. 231, 239 (Bankr. D. Del. 2002)).

reorganization also would promote Congress's particular goal in section 524(g) by establishing an asbestos trust that would efficiently and equitably resolve hundreds of thousands of asbestos claims.[52] As detailed above, the preliminary injunction is a critical ingredient to the Debtors' successful reorganization.

The ACC asserts that the public interest requires denial of the preliminary injunction because, as a result of the divisional merger in the 2020 Corporate Restructuring, the Non-Debtor Affiliates, New Trane Technologies and New Trane in particular, are afforded the "benefits of bankruptcy" without "ever being subject to its burdens." Obj. at 62. The argument is flawed for several reasons.

First, the preliminary injunction will not "allow any party to escape any asbestos related liabilities," and a permanent channeling injunction will only be granted in connection with a confirmed plan of reorganization that meets the requirements of section 524(g).[53] There will be no "offloading [of] mass-tort liability," no lack of "responsibility to [tort] victims," and no avoidance of bankruptcy courts or the requirements of 524(g). Obj. at 67.

Second, the ACC's assertion that New Trane Technologies and New Trane did not "subject the[ir] assets … to the jurisdiction of this Court," (Obj. at 3), ignores the Funding Agreements. Neither the Debtors nor any Non-Debtor Affiliate dispute that this Court has the power, if necessary, to enforce the Funding Agreements against New Trane Technologies or New Trane. The ACC's "benefits of bankruptcy without its burdens" attack is instead designed to require that any effort to resolve asbestos liability under section 524(g) be accompanied by

[52] See W.R. Grace, 386 B.R. at 36 ("completing the reorganization process … [will] resolv[e] thousands of claims in a uniform and equitable manner"); In re Congoleum Corp., 362 B.R. 198, 201 (Bankr. D.N.J. 2007) ("Section 524 was created to provide a comprehensive resolution to asbestos liabilities both present and future.").

[53] In re Bestwall LLC, No. 17-03105 [Adv. Pro. Dkt. 190] slip op. at 5 (Bankr. W.D.N.C. Jan. 31, 2020).

reputational damage and adverse business disruptions, not legitimate concerns about available sources of recovery for asbestos claimants.

Third, the 2020 Corporate Restructuring that preceded the chapter 11 filings was a commercially sensible approach and sensitive to the interests of company's various stakeholders, including trade creditors, asbestos claimants, business partners, customers, suppliers, employees, and shareholders. As more fully discussed in the Non-Debtor Affiliates' reply in support of the preliminary injunction, the Non-Debtors' initial response in support of the PI Motion [Adv. Pro. Dkt. 84], and the expert report of Laureen M. Ryan ("Ryan Report") (Erens Decl., Ex. 28), [redacted] See Majocha Dep. 199:16-206:7; Ryan Report; Adv. Pro. Dkt. 84. The ACC does not dispute any of this. [redacted] See Obj. at 62; Diaz Report ¶ 36; Diaz Dep. 76:20-78:7, 197:2-12, 203:12-20, 205:16-207:20.[54]

[54] [redacted] (see Diaz Report ¶ 54(a)), See Diaz Dep. 210:5-214:17 [redacted] See id. 211:18-212:11. [redacted]. See id. 215:11-224:3. [redacted] Purdue Pharma and Mallinckrodt, actually had preliminary injunctions enjoining claims against non-debtors. See id. 229:12-231:23; In re Purdue Pharm. L.P., 619 B.R. 38 (S.D.N.Y. 2020); In re Mallinckrodt PLC, No. 20-12522 [Adv. Pro. Dkt. 202] (Bankr. D. Del. Jan. 27, 2021) (Erens Decl., Ex. 29).

But none of these impacts are necessary to enable the parties to reach a sensible section 524(g) resolution of the Aldrich/Murray Asbestos Claims. The approach urged by ACC is decidedly *not* the one that would best serve all interested parties. And, in fact, the claimants themselves would not have been any better off if all of Old IRNJ and Old Trane had filed for bankruptcy. In that scenario, asbestos claims would still be stayed (by 11 U.S.C. § 362(a)), no additional assets would be available to fund a § 524(g) trust, and the underlying merit and related value of asbestos claims would be the same.

Fourth, the divisional mergers that occurred here do not seek unprecedented relief for non-debtors. Obj. at 64. Rather, numerous prior asbestos cases involved solvent companies resolving their asbestos liabilities under section 524(g) without subjecting the entirety of their businesses to a chapter 11 proceeding. These entities received the benefits of a section 524(g) channeling injunction (and pre-confirmation, a section 105 preliminary injunction) in return for making substantial contributions or commitments to a debtor-affiliate's section 524(g) trust—just as is contemplated here.[55]

This Court is well aware of the restructuring in Coltec, where Coltec transferred most of its assets to "NewCo" while its asbestos liabilities, a consulting business, certain insurance rights, and rights under a "Keepwell" agreement were allocated to "OldCo," which then filed for chapter 11 protection. The explicit purpose of the restructuring was to afford opportunity for a section

[55] The ACC observes that "many asbestos defendants with operating businesses—such as Celotex, Pittsburgh Corning, Federal-Mogul, USG Corporation, W.R. Grace & Co., and Garlock—filed chapter 11 and successfully reorganized with § 524(g) relief" and states "[t]here is no reason why TTC, Trane, and their nondebtor affiliates could not do the same." Obj. at 3. But, as detailed below, at least half these asbestos defendants also engaged in prepetition restructuring transactions to insulate operating businesses from a chapter 11 filing. Moreover, all but Garlock were among or akin to the "big dusties" who produced insulation, building materials, and plaster products, see In re Garlock Sealing Techs. LLC, 504 B.R. 71, 83-84 (Bankr. W.D.N.C. Jan. 10, 2014), and there were competing demands between asbestos claimants and others creditors for the debtors' assets. See, e.g., Mt. McKinley Ins. Co. v. Pittsburgh Corning Corp., 518 B.R. 307, 312, 315 (W.D. Pa. 2014); In re W.R. Grace & Co., 475 B.R. 34, 79 (D. Del. 2012); In re USG Corp., 290 B.R. 223, 224, 226 (Bankr. D. Del. 2003); In re Celotex Corp., 204 B.R. 586, 600 (Bankr. M.D. Fla. 1996).

524(g) plan while "avoid[ing] disruption and damage to" to the broader business. Garlock Discl. Statement, at 12-34 (Erens Decl., Ex. 30).

Similarly, in In re North American Refractories Co., No. 02-20198 (Bankr. W.D. Pa.) ("NARCO"), Honeywell resolved its liability on up to 116,000 pending and future asbestos claims without itself filing bankruptcy.[56] Honeywell and NARCO entered into an agreement where NARCO would file for chapter 11 protection—and seek an injunction under sections 362 and 105 to stay asbestos litigation against Honeywell arising out of the NARCO business—while Honeywell agreed to participate in the negotiation and funding of a plan of reorganization that provided Honeywell and its insurers with a section 524(g) channeling injunction.[57] NARCO confirmed a section 524(g) trust supported by claimant representatives and funded by Honeywell. See 2007 WL 7645287 at *2-3, 23.

Further examples of solvent, non-debtor entities receiving the benefits of a section 524(g) channeling injunction by making substantial contributions to a debtor-affiliate's trust include, among others, In re Quigley Co., Inc., No. 04-15739 (Bankr. S.D.NY.);[58] In re Babcock & Wilcox, No. 00-10992 (Bankr. E.D. La.);[59] In re Leslie Controls, No. 10-12199 (Bankr. D.

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[56] Honeywell's liability stemmed from its prior ownership of an entity called North American Refractories Company ("NARCO"). As explained in Judge Fitzgerald's opinion approving the NARCO plan, when Honeywell (then known as Allied Chemical) sold NARCO in 1986, the Purchase Agreement governing the sale provided that Honeywell would retain direct liability for a category of products defined as the "Discontinued Products." In re N. Am. Refractories Co., No. 02-20198, 2007 WL 7645287, at *2 (Bankr. W.D. Pa. Nov. 13, 2007).

[57] See *Combined Disclosure Statement to Accompany the Third Amended Plans of Reorganization Dated December 28, 2005 of North American Refractories Company and its Subsidiaries and Global Industrial Technologies, Inc. and Its Subsidiaries* [Dkt. 3888] at 24 (Bankr. W.D. Pa. Dec. 28, 2005) (Erens Decl., Ex. 31).

[58] See *Quigley Company, Inc. Fifth Amended and Restated Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [Dkt. 2670-1] at 14-15 (Bankr. S.D.N.Y. July 2, 2013) (non-debtor Pfizer's contribution to the trust included, among other things, a Cash Contribution of approximately $260 million, forgiveness of intercompany and DIP debt owed by Quigley to Pfizer, and relinquishment of its rights under certain insurance policies) (Erens Decl., Ex. 32).

[59] See *Summary Disclosure Statement as of September 28, 2005 Under Section 1125 of the Bankruptcy Code With Respect to the Joint Plan of Reorganization as of September 28, 2005 Proposed by the Debtors, the Asbestos Claimants' Committee, the Future Asbestos-Related Claimants' Representative, and McDermott Incorporated*, 2005 WL 8168731, at *6 (Bankr. E.D. La. Sept. 29, 2005) (non-debtor MI and McDermott

Del.);[60] and In re T H Agriculture & Nutrition, No. 08-14692 (Bankr. S.D.N.Y.).[61] The cases cited by ACC for the proposition that only entities that have "undertaken the rigors of bankruptcy should enjoy the benefits of bankruptcy," (Obj. at 50, 66), neither resemble this (or any other asbestos bankruptcy) nor involve a non-debtor entering into a Funding Agreement enforceable by a bankruptcy court.[62]

In fact, the divisional merger approach taken here was preferable to other strategic restructuring options that mass tort defendants have implemented in the past. The ACC ignores a long list of asbestos bankruptcies that followed corporate restructurings that separated asbestos liabilities from other parts of the company's operating businesses and effectively capped the assets available to pay asbestos claims.[63] But attempts to value asbestos liability and retain assets sufficient to fund those liabilities *almost inevitably* has led to lengthy, counter-productive, and often unsuccessful litigation if and when a bankruptcy proceeding ensues.[64] The approach

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International Inc.'s ("MMI") contribution included transfers of MMI common stock valued at $123.1 million, $92 million of promissory notes, and certain tax benefits) (Erens Decl., Ex. 33).

[60] See *Findings of Fact, Conclusions of Law, and Order Confirming the First Amended Plan of Reorganization of Leslie Controls, Inc. Under Chapter 11 of the Bankruptcy Code* [Dkt. 382] at 25, 46 (Bankr. D. Del. Oct. 28, 2010) (Erens Decl., Ex. 34).

[61] See *First Amended Prepacked Plan of Reorganization of T H Agriculture & Nutrition, L.L.C. Under Chapter 11 of the Bankruptcy Code* [Dkt. 465-1] at 13-14 (Bankr. S.D.N.Y. May 29, 2009) (non-debtor parent PENAC contribution included cash sufficient for the total trust contributions from all parties to equal $900 million, assumption of environmental and retirement liabilities, forgiveness of intercompany debt, and relinquishment of its rights under certain insurance policies) (Erens Decl., Ex. 35).

[62] See In re Rankin, 546 B.R. 861 (Bankr. D. Mont. 2016) (chapter 13 trustee moved to compel individual debtor to account for undisclosed inheritance); In re Venture Props., Inc., 37 B.R. 175 (Bankr. D.N.H. 1984) (rejecting debtor-general partner's attempt to enjoin defendant's sale of real property for which non-debtor had purchase rights); In re Clifford Res., Inc., 24 B.R. 778 (Bankr. S.D.N.Y. 1982) (declining to require litigation of claim against non-debtor general partnership in bankruptcy court after plaintiff dismissed debtor-general partner from action).

[63] See note 15, *supra*.

[64] See, e.g., Lippe v. Bairnco Corp., 225 B.R. 846, 850 (S.D.N.Y. 1998), *aff'd*, 99 F. App'x 274 (2d Cir. 2004)) (dismissing, after years of litigation, claims alleging prepetition spinoffs constituted fraudulent conveyances); In re Babcock & Wilcox Co., 274 B.R. 230 (Bankr. E.D. La. 2002) (dismissing, after lengthy discovery and six-day trial, claims alleging prepetition spinoffs to non-debtor parent constituted fraudulent conveyances); *First Am. Discl. Stmt. for Second Am. Joint Plan of G-I Holdings, Inc. and ACI Inc. Pursuant to Ch. 11 of the U.S. Bankr. Code* at 18, 37-38 (Erens Decl., Ex. 3) (discussing fraudulent conveyance claims relating to prepetition "Pushdown"

taken here—retaining the full paying power of assets owned by the former Old IRNJ and Old Trane through the Funding Agreements—avoids the collateral disputes seen in multiple prior asbestos bankruptcies, ensures the solvency of the debtor to pay claims, and allows the parties to focus on the amount of trust funding necessary to fairly compensate current and future asbestos claimants.

Viewed in this light, the divisional merger in these cases is not, as the ACC asserts, a groundbreaking and troubling new strategy to address asbestos liabilities which should prevent the issuance of a preliminary injunction uniformly granted in asbestos bankruptcy cases (including cases with prepetition restructurings that produced allegations of fraudulent transfer, successor liability, and alter ego assertions akin to the ACC's contentions here).[65] Instead, it is a fair and reasonable way of finally and efficiently addressing a company's asbestos liabilities, a fact other courts have noted in previously granting preliminary injunctions on similar facts. See id.; Bestwall, 606 B.R. at 254 (citing cases). If preliminary injunctions were justified in those prior cases, they clearly are justified here.

Finally, the ACC speculates that the Bestwall, DBMP, Paddock, and Aldrich/Murray cases are "only the start of what will likely become a trend for mass-tort defendants, companies with extensive environmental liabilities, and perhaps others, if this Court grants the Motion." Obj. at 67 (citing Diaz Report). [redacted]. See Diaz Dep. 186:20-187:22 ([redacted]). It shows little faith in the U.S. legal system, including its available safeguards (e.g., state and federal fraudulent-transfer law, the ability to dismiss a bankruptcy case if filed in bad faith and objectively futile,

transaction); In re W.R. Grace & Co., 475 B.R. 34, 68 (D. Del. 2012) (discussing fraudulent conveyance claims relating to prepetition transfers of W.R. Grace's National Medical Care and Cyrovac packaging businesses).

[65] See note 15, *supra.*

and the plan-confirmation requirements under the Bankruptcy Code). None of those protections is affected by the preliminary injunction. Moreover, as described in the Debtors' Information Brief, asbestos is a unique tort involving, among other things, hundreds of potential defendants, tens of thousands of individual claimants each bringing a separate lawsuit (thereby involving huge costs to defend thousands of claims), long latency periods, and the inability often to know which, if any, of the multitude of defendants caused an individual plaintiff's harm.

These challenges highlight the final, and one of the most salient reasons, why the public interest supports the granting of a preliminary injunction in these cases. It will enable a rational resolution of asbestos claims involving the Debtors, compared to the past four decades of litigation in the tort system and three more decades predicted to come. Defending a single mesothelioma suit can cost $1 million or more, meaning it would cost the Debtors *billions of dollars per year* in defense costs to truly defend the mass of claims against them. Tananbaum Decl., ¶¶ 20, 22; Informational Brief at 5. Due to the volume of claims, the tort system is forced to prioritize claims in a way that results in legitimate claimants suffering delay in the prosecution of their cases and, therefore, the receipt of any recovery. As the Supreme Court has recognized, "dockets in both federal and state courts continue to grow; long delays are routine; trials are too long; the same issues are litigated over and over; transaction costs exceed the victims' recovery by nearly two to one; exhaustion of assets threatens and distorts the process; and future claimants may lose altogether." Amchem Prod., Inc. v. Windsor, 521 U.S. 591, 598 (1997) (quoting *Report of The Judicial Conference Ad Hoc Committee on Asbestos Litigation* 2-3 (Mar. 1991)).

As noted above, a vast majority of the tens of thousands of claims pending against the Debtors have been pending for ten years or more. The Debtors' goal in these chapter 11 cases is to provide current and future claimants with a simpler, more streamlined process to get funds to

legitimate claimants in a timely manner. There should be a strong public interest in seeing that result come to fruition for the benefit of all parties in interest for the reasons argued persuasively by the FCR in these cases. That result, however, cannot be reached without maintaining the preliminary injunction.

VI. THE 2020 CORPORATE RESTRUCTURING IS NOT PREEMPTED BY SECTION 524(G).

Implicitly conceding that Texas law allocated exclusive liability for Old IRNJ and Old Trane's asbestos liability to the Debtors in the 2020 Corporate Restructuring, the ACC argues that using the Texas divisional merger provisions to "eliminate [New Trane Technologies and New Trane's] direct liability, as successors to Ingersoll-Rand and 'old' Trane," is preempted by section 524(g). Obj. at 71 n. 316. But there is no basis for preemption given that the Texas statutes and section 524(g) (and the rest of the Bankruptcy Code) work together seamlessly in addressing different purposes. Because there is no basis to find preemption, Bestwall rejected similar arguments, and the asbestos committee in that case abandoned them in its pending appeal.[66]

Here, the ACC argues only for implied preemption, which can occur either through conflict or field preemption. Obj. at 68-73. But there is a "strong presumption against inferring Congressional preemption" of state law.[67] And "[t]his presumption is strongest when Congress legislates 'in a field which the States have traditionally occupied'"—such as the field of corporate organization relevant to the Texas provisions. S. Blasting Servs., Inc. v. Wilkes Cty., N.C., 288 F.3d 584, 590 (4th Cir. 2002) (internal citation omitted).

[66] See Bestwall, 606 B.R. at 251; *Br. of Appellant Official Comm. of Asbestos Claimants of Bestwall LLC*, No. 20-00103 [Dkt. 6] (W.D.N.C. Apr. 15, 2020).

[67] Integrated Sols., Inc. v. Serv. Support Specialties, Inc., 124 F.3d 487, 493 (3d Cir. 1997).

First, conflict preemption occurs "when compliance with both federal and state regulations is a physical impossibility, or when state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." Id. There is no conflict here because, as the Bestwall court confirmed, the Texas divisional merger provisions and section 524(g) "concern completely different subjects and work readily in tandem." 606 B.R. at 251. There is certainly no conflict apparent in the "[s]tatutory text and structure" of the provisions, which are "the most reliable guideposts in th[e] [preemption] inquiry."[68]

Thus, the ACC argues that the Texas divisional merger provisions, "as applied" to the 2020 Corporate Restructuring, create an obstacle to the purpose of section 524(g) because the Texas provisions (1) allow asbestos liabilities to vest in one entity created through a divisional merger, and not the other, (2) without the "procedural and due process protections" of section 524(g), and (3) without requiring the dividing company to file for bankruptcy. Obj. at 70-71. This argument confuses both the nature of the divisional merger *and* the purposes of section 524(g).

The procedural measures listed by the ACC, (Obj. at 70), are required under section 524(g) for the *discharge* of demands asserted after the close of the chapter 11 case and the channeling of all claims to a trust. All of the procedural and substantive protections afforded under section 524(g) remain in place. The 2020 Corporate Restructuring did not finally resolve any of Old IRNJ or Old Trane's asbestos liabilities; it only restructured which entity is subject to those liabilities within the greater corporate enterprise (and, even then, did so in a way that did not harm asbestos claimants). See Section IV.A, *supra.* If a divisional merger is carried out in a

[68] PPL EnergyPlus, LLC v. Nazarian, 753 F.3d 467, 474 (4th Cir. 2014), *aff'd sub nom.*, Hughes v. Talen Energy Mktg., LLC, 136 S.Ct. 1288 (2016).

way that harms creditors, fraudulent-transfer laws would apply.[69] Nor did Old IRNJ or Old Trane "escape," discharge, or somehow eliminate their asbestos liabilities through the divisional mergers. They are both obligated under the Funding Agreements to fund a section 524(g) trust to the extent the Debtors' assets are insufficient.

Second, there also is no basis to find field preemption of "the field of asbestos-related corporate reorganizations." Obj. at 72. "Field preemption" occurs when "federal law so thoroughly occupies a legislative field as to make reasonable the inference that Congress left no room for the States to supplement it." Cipollone v. Liggett Grp., Inc., 505 U.S. 504, 516 (1992). Field preemption is rare and requires a showing that Congress has "regulat[ed] so pervasively that there is no room left for the states to supplement federal law," or that "there is a 'federal interest so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject.'"[70]

The ACC seeks to support its argument for field preemption with a lone case, MSR Exploration, Ltd. v. Meridian Oil, Inc., that actually *confirms* the absence of field preemption here. In that case, the court found that Congress had regulated the field of bankruptcy procedures. 74 F.3d 910, 913-14 (9th Cir. 1996). As a result, title 11 as a whole preempted the debtor's attempt to litigate outside of bankruptcy proceedings (via a malicious-prosecution action) its objections to conduct occurring within them. Id. Here, by contrast, the Debtors are not collaterally attacking or seeking to address asbestos claims outside of the chapter 11 process. Instead, the Debtors are seeking to utilize, in bankruptcy, section 524(g) of the Bankruptcy Code,

[69] As pointed out in Bestwall, Texas has adopted the Uniform Fraudulent Transfer Act, and fraudulent transfer law is also a part of the Bankruptcy Code. See Bestwall, 606 B.R. at 252.

[70] Bestwall, 606 B.R. at 252 (citing United States v. South Carolina, 720 F.3d 518, 528-29 (4th Cir. 2013); *accord* Hillsborough Cty., Fla. v. Automated Med. Labs., Inc., 471 U.S. 707, 713 (1985).

with all the procedural and due-process protections afforded to claimants.

Section 524(g) itself confirms the absence of preemption of some field of restructuring of entities with asbestos liabilities, because it expressly contemplates such prepetition corporate restructurings without establishing any requirements for them.[71] It reflects the Supreme Court's long-standing recognition that corporate governance is traditionally left to the States: "No principle of corporation law and practice is more firmly established than a state's authority to regulate domestic corporations."[72] It is implausible that a single sub-section of the Bankruptcy Code would occupy the field of state-law corporate restructuring of asbestos liability when it *does not even address* corporate restructurings, other than to allow for them.

Even if the Court were to (incorrectly) interpret the "demands on the debtor" language in section 524(g)(4)(A)(ii) to require that the enjoined claims against the non-debtor third party be "derivative" of claims against the debtor, the Aldrich/Murray Asbestos Claims against the Protected Parties would still satisfy the eligibility requirement. See, e.g., In re Combustion Eng'g. Inc., 391 F.3d 190, 235 (3d Cir. 2004). The liabilities in W.R. Grace and other cases where affiliate liabilities were "wholly separate" from the debtor's liabilities, and thus not eligible to be channeled, all stemmed from the independent *actions* (or failures to act) of the non-debtor parties.[73] Not so for Aldrich/Murray Asbestos Claims against the Protected Parties. Those

[71] See 11 U.S.C. § 524(g)(4)(A)(ii)(IV) (discussing transactions "changing the corporate structure" of asbestos debtors).

[72] CTS Corp. v. Dynamics Corp. of Am., 481 U.S. 69, 89 (1987); see also Cort v. Ash, 422 U.S. 66, 84 (1975) (explaining that because "[c]orporations are creatures of state law," in general "state law will govern the internal affairs of the corporation").

[73] See Continental Cas. Co. v. Carr (In re W.R. Grace & Co.), 900 F.3d 126, 139 (3d Cir. 2018) (remanding to consider whether claims based on insurer's failure to inspect debtor's operations and report hazardous conditions were non-derivative); Continental Cas. Co. v. Carr (In re W.R. Grace & Co.), 607 B.R. 419, 448-49 (Bankr. D. Del. 2019) (on remand, holding the claims against the insurers were nonderivative); see also In re Quigley Co., Inc., 676 F.3d at 49, 59-62 (subset of claims against non-debtor Pfizer alleging liability for "Pfizer's own conduct in permitting its label to be affixed to Quigley's products" were not barred by section 524(g) channeling injunction).

claims—by definition—are derived entirely from the alleged actions of *Old IRNJ* and *Old Trane* in their manufacture and sale of asbestos-containing products, liability for which the Debtors are the exclusive successor. They are the opposite of claims in which, as in W.R. Grace, "the third-party's liability is based on exposure *to a non-debtor's asbestos*," because, by operation of state corporate law (and unlike the facts of W.R. Grace), Old IRNJ's and Old Trane's asbestos liabilities are now the Debtors' asbestos liabilities. See W.R. Grace, 900 F.3d at 133, 136-137 (emphasis added). Where claims involving exposure to a non-debtor's product are claims against the debtor, as its successor, the liability may be channeled and resolved under section 524(g).[74]

CONCLUSION

The ACC's Objection should be overruled, and the PI Motion should be granted.

[74] See, e.g., In re Garlock Sealing Techs. LLC, No. 17-00275, 2017 WL 2539412, at *31 (W.D.N.C. June 12, 2017); In re Mid Valley, Inc., No. 03-35592 [Dkt. 1716] at 13-19 (Bankr. W.D. Pa. July 21, 2004) (channeling suits against debtor's parent, where debtors were formed during pre-petition restructuring and only had successor liabilities) (Erens Decl., Ex. 36); In re G-I Holdings, No. 01-30135, Adv. No. 01-03013 [Adv. Pro. Dkt. 65] at 2-3 (Bankr. D.N.J. Feb. 22, 2002) (enjoining asbestos-related actions against debtor and non-debtor where debtor's own asbestos liabilities were based on legacy liabilities from merger) (Erens Decl., Ex. 37).

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Respectfully submitted,

/s/ John R. Miller, Jr.

C. Richard Rayburn, Jr. (NC 6357)
John R. Miller, Jr. (NC 28689)
RAYBURN COOPER & DURHAM, P.A.
227 West Trade Street, Suite 1200
Charlotte, North Carolina 28202
Telephone: (704) 334-0891
Facsimile: (704) 377-1897
E-mail: rrayburn@rcdlaw.net
jmiller@rcdlaw.net

-and-

Brad B. Erens (IL Bar No. 6206864)
David S. Torborg (DC Bar No. 475598)
Morgan R. Hirst (IL Bar No. 6275128)
Caitlin K. Cahow (IL Bar No. 6317676)
JONES DAY
77 West Wacker
Chicago, Illinois 60601
Telephone: (312) 782-3939
Facsimile: (312) 782-8585
E-mail: bberens@jonesday.com
dstorborg@jonesday.com
mhirst@jonesday.com
ccahow@jonesday.com
(Admitted *pro hac vice*)

-and-

Gregory M. Gordon (TX Bar No. 08435300)
JONES DAY
2727 N. Harwood Street
Dallas, Texas 75201
Telephone: (214) 220-3939
Facsimile: (214) 969-5100
E-mail: gmgordon@jonesday.com
(Admitted *pro hac vice*)

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