Docket #0272 Date Filed: 5/26/2021

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

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

NOTICE OF FILING OF PROPOSED
FINDINGS OF FACT AND CONCLUSIONS OF LAW DENYING THE DEBTORS' MOTION FOR PRELIMINARY INJUNCTION OR DECLARATORY JUDGMENT

PLEASE TAKE NOTICE that the Official Committee of Asbestos Personal Injury Claimants hereby submits its *Proposed Findings of Fact and Conclusions of Law Denying Debtors' Motion for Preliminary Injunction or Declaratory Judgment*, which is annexed hereto as **Exhibit A**.

[1] The Debtors are the following entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): Aldrich Pump LLC (2290) and Murray Boiler LLC (0679). The Debtors' address is 800-E Beaty Street, Davidson, North Carolina 28036.

Dated: May 26, 2021

Respectfully submitted,

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EXHIBIT A

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re	:	Chapter 11
ALDRICH PUMP LLC, *et al.*,[2]	:	Case No. 20-30608
Debtors.	:	
ALDRICH PUMP LLC, *et al.*,	:	
Plaintiffs,	:	
v.	:	Adv. Pro. No. 20-03041
THOSE PARTIES LISTED ON APPENDIX A TO COMPLAINT and JOHN AND JANE DOES 1-1000,	:	
Defendants.	:	

[PROPOSED] FINDINGS OF FACT AND CONCLUSIONS OF LAW DENYING THE DEBTORS' MOTION FOR PRELIMINARY INJUNCTION OR DECLARATORY JUDGMENT

[2] The Debtors are the following entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): Aldrich Pump LLC (2290) and Murray Boiler LLC (0679). The Debtors' address is 800-E Beaty Street, Davidson, North Carolina 28036.

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PROCEDURAL BACKGROUND

1. On June 18, 2020 ("**Petition Date**"), Aldrich Pump LLC ("**Aldrich**") and Murray Boiler LLC ("**Murray**," and collectively with Aldrich, the "**Debtors**") commenced the above-captioned bankruptcy cases, Case Nos. 20-30608 and 20-30609, in this Court by filing petitions for relief under chapter 11 of the Bankruptcy Code. That same day, the Debtors commenced the above-captioned adversary proceeding ("**Adversary Proceeding**") in this Court by filing the *Debtors' Complaint for Injunctive and Declaratory Relief (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* (ECF No. 1) ("**Complaint**").

2. The Debtors also filed on the Petition Date 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* (ECF No. 2) ("**PI Motion**"). The PI Motion, in principal part, seeks an indefinite, nationwide preliminary injunction that would protect the parties defined by the Debtors as "Protected Parties" from litigation involving any claim attributable to the Debtors' asbestos liabilities. These nondebtor "Protected Parties" are 204 affiliates of the Debtors ("**Non-Debtor Affiliates**"), including Trane Technologies Company LLC ("**TTC**") and Trane U.S. Inc. ("**Trane**"), 15 unaffiliated entities that allegedly hold asbestos-related indemnification rights against the Debtors under prepetition sale and divestiture agreements ("**Indemnified Parties**"), and 182 insurance companies ("**Insurers**").

3. On June 25, 2020, the Court granted the Debtors' request for a temporary restraining order to preserve the then-existing status quo pending discovery and an evidentiary hearing on the PI Motion. *See* Temporary Restraining Order, ECF No. 26 ("**TRO**"). On July 14,

2021, the Court extended the duration of the TRO through July 23, 2020. *See* Order Extending Temporary Restraining Order, ECF No. 51. The Official Committee of Asbestos Personal Injury Claimants ("**Committee**") and the Debtors then entered into an agreed order that temporarily enjoined asbestos lawsuits against the Protected Parties through the conclusion of the evidentiary hearing on the PI Motion. The Court signed that agreed order on July 23, 2020. *See* Agreed Order Regarding Debtors' Request for Extension or Application of the Automatic Stay to Certain Actions Against Non-Debtors, ECF No. 58 ("**Agreed Order**").

4. After entry of the Agreed Order, the Debtors, the Committee, the FCR, TTC, and Trane (collectively, "**Parties**") engaged in discovery in this Adversary Proceeding. That discovery included, among other things, the Committee serving requests for production of documents on the Debtors, TTC, and Trane; the gathering, review, and production of documents (including searches for and production of electronically stored information) by the Debtors, TTC, and Trane; the depositions of 17 officers, board members, or other executives of the Debtors and/or TTC and Trane; the depositions of one corporate representative of the Debtors and two corporate representatives of TTC and Trane; and the depositions of three expert witnesses (two for the Debtors, one for the Committee), who issued reports in connection with this Adversary Proceeding.

5. On December 31, 2020, TTC and Trane jointly filed the *Non-Debtor Affiliates' Response in 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* (ECF No. 84) ("**Non-Debtor Affiliates' PI Submission**").

6. On January 25, 2021, the Debtors filed 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 (ECF No. 90) ("**Motion for Partial Summary Judgment**"). On February 8, 2021, Joseph W. Grier, III, in his capacity as the legal representative for future asbestos claimants ("**FCR**"), filed *The Future Asbestos Claimants' Representative's Joinder in Support of Debtors' Motion for Partial Summary Judgment That All Actions Against the Protected Parties to Recover Aldrich/Murray Claims Are Automatically Stayed by Section 362 of the Bankruptcy Code* (ECF No. 105) ("**FCR MSJ Submission**").

7. On March 19, 2021, the FCR filed *The Future Claimants' Representative's Initial Submission on the Debtors' Preliminary Injunction Motion* (ECF No. 129) ("**FCR PI Submission**").

8. On April 2, 2021, the Committee filed the *Opposition of the Official Committee of Asbestos Personal Injury Claimants to the Debtors' Motion for Preliminary Injunction or Declaratory Relief* (ECF No. 151) ("**PI Opposition**") and the *Opposition of the Official Committee of Asbestos Personal Injury Claimants to 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* (ECF No. 152) ("**MSJ Opposition**").

9. On April 19, 2021, after the completion of fact depositions in this Adversary Proceeding, the Committee filed the *Supplemental Memorandum of the Official Committee of Asbestos Personal Injury Claimants in Opposition to the Debtors' Motion for Preliminary Injunction or Declaratory Relief* (ECF No. 179) ("**Supplemental PI Opposition**") and the *Supplement to Opposition of the Official Committee of Asbestos Personal Injury Claimants to the Debtors' Motion for Partial Summary Judgment* (ECF No. 180) ("**Supplemental MSJ Opposition**").

10. On April 23, 2021, the Debtors filed the *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* (ECF No. 188) ("**PI Reply**") and the *Debtors' Reply in Support of 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* (ECF No. 196) ("**MSJ Reply**," and together with the Motion for Partial Summary Judgment, the FCR MSJ Submission, the MSJ Opposition, the Supplemental MSJ Opposition, and the MSJ Reply, the "**Summary Judgment Briefs**").

11. On April 23, 2021, TTC and Trane jointly filed the *Non-Debtor Affiliates' Reply Memorandum in Further Support of the Debtors' Motion for Preliminary Injunction or Declaratory Relief* (ECF No. 193) ("**Non-Debtor Affiliates' PI Reply**"), and the FCR filed the *Future Asbestos Claimants' Representative's Omnibus Reply in Support of the Debtors' (I) Preliminary Injunction Motion and (II) Motion for Partial Summary Judgment* (ECF No. 187) ("**FCR Omnibus Reply**").

12. On May 5 through May 7, 2021, the Court held hearings on the PI Motion and the Motion for Partial Summary Judgment. As to the hearing on the PI Motion ("**PI Hearing**"), the Court (a) heard opening statements from the Debtors, the Committee, and the FCR; (b) heard live testimony from the following fact witnesses: Allan Tananbaum, Amy Roeder, and Chris Kuehn; (c) heard live testimony from two expert witnesses on certain financial and restructuring matters: Laureen Ryan of Alvarez & Marsal Disputes & Investigations, LLC, for the Debtors, TTC, and Trane, and Matthew Diaz of FTI Consulting, Inc., for the Committee; (d) heard live testimony from one expert witness for the Debtors regarding certain asbestos claims matters: Charles Mullin of Bates White LLC; (e) subject to certain reservations of evidentiary objections, received the

proffers of the Debtors' and Committee's evidence, namely exhibits and deposition designations; and (f) heard closing arguments from the Debtors, the Committee, and the FCR.

13. In addition to the Summary Judgment Briefs, the Court has reviewed and considered the PI Motion, the Non-Debtor Affiliates' PI Submission, the FCR PI Submission, the PI Opposition, the Supplemental PI Opposition, the PI Reply, the Non-Debtor Affiliates' PI Reply, the FCR Omnibus Reply, and all related briefing papers filed in connection with the PI Motion. The Court has also (a) reviewed and considered the live testimony, the deposition designations in evidence, and the exhibits admitted into evidence in connection with the PI Hearing; (b) taken judicial notice of the papers and pleadings on file in this Adversary Proceeding; and (c) heard and considered the arguments of counsel presented at the PI Hearing.

14. After due deliberation, the Court has determined that the injunctive relief and declaratory relief requested in the PI Motion should be denied and therefore **denies** the PI Motion. In accordance with Federal Rule of Civil Procedure 52, made applicable in this Adversary Proceeding by Federal Rule of Bankruptcy Procedure 7052, the Court enters the following Findings of Fact and Conclusions of Law in connection with that determination: [3]

FINDINGS OF FACT

INTRODUCTION

15. On May 1, 2020, the Debtors' predecessors, Ingersoll-Rand Company, a former New Jersey corporation ("**Ingersoll-Rand**"), and Trane utilized a provision under Texas law to undergo a divisional merger. In connection therewith, Ingersoll-Rand effectively divided itself into two companies: TTC and Aldrich. Trane similarly divided itself into two companies: "new"

[3] Any finding of fact contained herein will constitute a finding of fact even if it is referred to herein as a conclusion of law, and any conclusion of law contained herein shall constitute a conclusion of law even if it is referred to herein as a finding of fact.

Trane and Murray. TTC received 99% of Ingersoll-Rand's operating assets.[4] New Trane received 98% of old Trane's operating assets.[5] Aldrich received about $26 million in cash, a 100% equity interest in a relatively small manufacturing company called 200 Park, Inc. ("**200 Park**"), rights under "coverage-in-place" agreements and related insurance rights, and rights under an unsecured funding agreement with TTC.[6] In similar fashion, Murray received about $16 million in cash, a 100% equity interest in a relatively small laboratory services business called ClimateLabs LLC ("**ClimateLabs**"), rights under certain "coverage-in-place" agreements and related insurance rights, and rights under an unsecured funding agreement with "new" Trane.[7] Significantly, all the legacy asbestos liabilities of Ingersoll-Rand and "old" Trane were allocated to Aldrich and Murray, respectively.[8] In addition, Aldrich and Murray became obligated to indemnify TTC, "new" Trane, and all of their other Non-Debtor Affiliates for liabilities arising from asbestos torts.[9] Aldrich and Murray were converted to North Carolina limited liability companies that same day. Seven weeks later, on June 18, 2020, Aldrich and Murray filed petitions for relief under chapter 11 of the Bankruptcy Code in this Court.

16. As a result of these divisional mergers and certain transactions that preceded them, assets that once existed at the same corporate entity holding the liabilities were moved beyond the reach of one specific set of the enterprise's creditors: asbestos claimants. The Debtors have failed to articulate any business reason for engaging in the restructuring that is unrelated to putting their asbestos liabilities into chapter 11. Indeed, despite the Debtors' formal position that bankruptcy

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[4] Hr'g Tr. 396:11-18, May 6, 2021 (Diaz Direct).

[5] *Id.* at 394:1-3.

[6] ACC Ex. 147 (Pittard Decl.), ¶ 16. According to Mr. Tananbaum, no other entities have any rights to Aldrich's insurance assets. Hr'g Tr. 178:13-16, May 5, 2021 (Tananbaum Cross-Exam).

[7] ACC Ex. 147, ¶ 16. According to Mr. Tananbaum, no other entities have any rights to Murray's insurance assets. Hr'g Tr. 178:13-16, May 5, 2021 (Tananbaum Cross-Exam).

[8] Decl. of Allan Tananbaum Supp. Debtors' Compl. ¶ 20, ECF No. 3 ("**Tananbaum Decl.**").

[9] PI Motion at 27.

was merely one of several options under consideration to address their asbestos liabilities, the evidence shows that bankruptcy was the long-planned objective.

17. Now, the Debtors seek a preliminary injunction and declaratory judgment that would halt asbestos-related lawsuits in the tort system against TTC, Trane, and 399 other "Protected Parties,"[10] all of whom are outside of bankruptcy. Through injunctive and declaratory relief, the Debtors seek the benefits of bankruptcy for the Protected Parties without subjecting the assets of the Protected Parties to the jurisdiction of this Court. Granting the PI Motion would give the Protected Parties the equivalent of the automatic stay without the corresponding bankruptcy protections for creditors, such as debtor transparency, court supervision, and the absolute priority rule.

18. It is axiomatic that a person seeking equitable relief must do equity. The Debtors' conduct, in separating the principal operating assets from their asbestos liabilities and seeking to confer the benefits of bankruptcy without the attendant burdens on hundreds of nondebtors, is unfair and inequitable to the asbestos creditors of the Debtors' predecessors. For all the reasons stated herein, this Court denies the PI Motion.

I. CORPORATE HISTORY, ASBESTOS LIABILITIES, AND RMT TRANSACTION

A. Corporate History

19. Ingersoll Rock Drill Company opened its doors in 1871 and eventually took the name Ingersoll-Sargent Drill Company. Merging with Rand Drill Company in 1905, the resulting entity—Ingersoll-Rand—became a global provider of industrial equipment and technology. As

[10] ACC Ex. 47.

part of its business, Ingersoll-Rand historically produced pumps and compressors that used asbestos-containing products such as gaskets and packing bought from suppliers.[11]

20. In 2002, Ingersoll-Rand engaged in a transaction in which the company's ultimate parent, Ingersoll-Rand plc ("**IR plc**"), incorporated in Bermuda. In June 2008, IR plc acquired HVAC supplier Trane U.S. Inc. (formerly known as American Standard Companies, Inc.)—*i.e.*, the former Trane—as well as the additional asbestos liabilities stemming from former Trane's asbestos-containing boilers and HVAC components.[12] In 2009, IR plc reincorporated in Ireland. Ingersoll-Rand remained incorporated in New Jersey as a subsidiary of IR plc. By the close of 2019, IR plc held more than $20.5 billion in assets[13] and had revenue totaling over $13 billion.[14] As of May 2020, Trane Technologies plc ("**Trane plc**"), formerly known as IR plc, had a market capitalization of approximately $20 billion.[15]

B. Long-Tail Asbestos Liabilities

21. According to the Debtors, Ingersoll-Rand and former Trane were the subject of roughly 100,000 lawsuits filed throughout the United States, seeking compensation for asbestos-induced personal injury or wrongful death.[16] The Debtors' predecessors historically paid approximately $95 million per year for asbestos-related settlements and defense costs.[17] As of December 31, 2019, IR plc projected the current and future asbestos liabilities of Ingersoll-Rand and Trane to be at least $547 million.[18]

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[11] *See* Informational Brief of Aldrich Pump LLC and Murray Boiler LLC, at 9, 3:20-bk-30608, ECF No. 5 ("**Informational Brief**").

[12] *Id.* at 11.

[13] ACC Ex. 271, at 21.

[14] *Id.* at 26.

[15] Hr'g Tr. 456:24-457:2, May 6, 2021 (Diaz Cross-Exam). The market capitalization has since increased to $43 billion as of May 2021. *Id.* at 406:19-21 (Diaz Direct).

[16] PI Motion at 18.

[17] Informational Brief at 31.

[18] ACC Ex. 271, at F-46.

22. While defending against asbestos suits in the tort system, Ingersoll-Rand and Trane used insurance receivables, including those received under settlements or certain "coverage-in-place" agreements, to fund or offset the defense and indemnity costs of their asbestos liabilities.[19] IR plc tracked the net annual "earnings" and "losses" related to asbestos liabilities by totaling the asbestos insurance receivables in a given year and subtracting the amounts it paid in asbestos defense and indemnity costs.[20] According to this metric, IR plc suffered net losses related to resolving asbestos claims of $11.9 million in 2017 and $56.5 million in 2018.[21] However, in 2019, settlements were reached with several insurance carriers related to asbestos claims. As a result, in 2019, IR plc saw net earnings of over $68 million related to asbestos liabilities.[22]

23. Despite the insurance recoveries, IR plc still projected that asbestos liabilities would substantially exceed probable future insurance recoveries. In fact, at the end of 2019, IR plc projected that the current and future asbestos liabilities of Ingersoll-Rand and Trane would surpass their total projected insurance recoveries by almost $240 million.[23]

C. "Reverse Morris Trust" Transaction

24. Just prior to the Texas divisional mergers at issue in this litigation, IR plc completed a spin-off of its industrial division to Gardner Denver Inc. ("**Gardner Denver**") through a tax-free transfer of assets known as a "Reverse Morris Trust" transaction ("**RMT Transaction**"). The RMT Transaction closed on February 29, 2020, with Gardner Denver providing $1.9 billion in cash and $6.9 billion in Gardner Denver stock to Ingersoll-Rand in exchange for the industrial

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[19] *Id*. at F-46.

[20] *Id.*

[21] *Id*. at F-47.

[22] *Id.*

[23] ACC Ex. 271, at F-46 (showing "total asbestos related liabilities" of $547 million and "total asset[s] for probable asbestos-related insurance recoveries" of $304 million).

division.[24] [25]

25. Upon the closing of the RMT Transaction, Ingersoll-Rand distributed the Gardner Denver stock to IR plc.[26] IR plc and its shareholders ended up owning 50.1% of Gardner Denver while the former shareholders of Gardner Denver kept the remaining 49.9% of shares in Gardner Denver.[27] As a result of the RMT Transaction, Gardner Denver changed its name to Ingersoll Rand Inc. on March 1, 2020, and IR plc changed its name to Trane plc.

II. PROJECT OMEGA

26. The next phase of the corporate reorganization employed a series of transactions, known as a Texas divisional merger, whereby substantially all the operating assets were separated from the asbestos liabilities, and the special purpose entities holding the liabilities filed for bankruptcy. The Texas divisional mergers of Ingersoll-Rand and old Trane will be collectively referred to herein as the "**Corporate Restructuring**." The planning and implementation of the Corporate Restructuring was kept confidential and, within Ingersoll-Rand and Trane, bore the codename "Project Omega."

27. The genesis of Project Omega has been attributed to the general counsel of IR plc, Evan Turtz,[28] who is currently general counsel of Trane plc, the Debtors' ultimate parent holding company.[29] After he became Ingersoll-Rand's general counsel on April 4, 2019,[30] Mr. Turtz

24 ACC Ex. 209, at 19.

25 Tananbaum Dep. 358:11-359:16, Mar. 22, 2021; .

26 ACC Ex. 209, at 19.

27 *Id.*

28 Regnery Dep. 118:21-119:9, Mar. 12, 2021; Tananbaum Dep. 140:9-17.

29 Turtz Dep. 21:15-22:4, Apr. 5, 2021.

30 *Id.* at 23:16-22.

received and read a brief in the *Bestwall* case and thought that a bankruptcy resolution for the asbestos claims against Ingersoll-Rand and Trane "would potentially be interesting."[31] Shortly thereafter, in the spring of 2019, Mr. Turtz was in contact with the Jones Day bankruptcy team,[32] and Project Omega was launched.[33]

28. Work on Project Omega began around June of 2019,[34] and the Jones Day bankruptcy team was brought in at the early stages to assist with the project.[35] Before employees could work on Project Omega, they were required to sign nondisclosure agreements to keep the project confidential, even within the Trane organization.[36] The number of employees privy to Project Omega was initially limited and relatively small—initially as few as seven people, four of whom were in-house counsel[37]—but grew as Project Omega took shape and required the involvement of additional personnel.[38] Although knowledge of the project was kept to a relatively small number of employees, Project Omega had the attention and involvement of executives at the "highest levels of the organization," including the chief executive officer of IR plc (now Trane plc), Michael Lamach.[39] As time progressed, meetings among Project Omega team members took place with increasing frequency and included weekly "all hands" team meetings chaired by Ingersoll-Rand's general counsel.[40] At all of these meetings—or at least the significant ones—both in-house lawyers and outside counsel were present.[41]

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[31] *Id.* at 57:6-14.

[32] *Id.* at 54:22-55:7; 57:24-58:2; 66:11-16.

[33] *See* Tananbaum Dep. 139:2-8.

[34] *Id.*; Hr'g Tr. 105:1-4, May 5, 2021 (Tananbaum Direct).

[35] Tananbaum Dep. 140:18-141:11; Pittard Dep. 39:21-40:12, Mar. 17, 2021.

[36] Tananbaum Dep. 161:13-162:8; Majocha Dep. 39:16-21, Mar. 18, 2021; Daudelin Dep. 138:4-7, Mar. 9, 2021; Roeder Dep. 63:20-23, Mar. 16, 2021.

[37] ACC Ex. 134, at TRANE_00014443; ACC Ex. 190.

[38] Tananbaum Dep. 149:7-151:6.

[39] Brown Dep. 61:15-21; 132:14-133:20, Apr. 1, 2021; Turtz Dep. 145:24-146:15; 198:18-199:4.

[40] Tananbaum Dep. 149:7-151:6; Hr'g Tr. 153:2-13, May 5, 2021 (Tananbaum Cross-Exam).

[41] Tananbaum Dep. 149:7-151:6; Hr'g Tr. 153:2-155:9, May 5, 2021 (Tananbaum Cross-Exam).

29. Project Omega was launched to address the asbestos liabilities of Ingersoll-Rand and old Trane.[42] [redacted] [43] The minutes of these board meetings were initially drafted by Jones Day attorneys and then reviewed and edited, when necessary, by Mr. Allan Tananbaum, the Debtors' chief legal officer.[44] Mr. Tananbaum testified that the minutes of the Aldrich and Murray board meetings were used as a means of "creating" a "record" that the four options had been duly considered.[45]

30. Nevertheless, the evidence reflects that bankruptcy was the sole objective of Project Omega. For example, Mr. Turtz said he was not aware of any Project Omega "workflow stream document" pertaining to any nonbankruptcy "options."[46] Project Omega team members expected and planned for a long-term bankruptcy prior to the Corporate Restructuring, which they estimated would last for five or more years.[47] Project Omega team members emailed each other and "hit the data information jackpot" regarding the *Bestwall* chapter 11 case,[48] another asbestos mass-tort bankruptcy pending in this district. They also circulated standard bankruptcy forms to one another that would have to be completed and filed after the chapter 11 filings.[49] And, long before the

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42 Roeder Dep. 38:12-19; Kuehn Dep. 121:19-122:12, Mar. 19, 2021; Bowen Dep. 154:18-22, Mar. 5, 2021.

43 Turtz Dep. 265:7-14; Debtors 30(b)(6) Dep. 255:12-25; 256:9-257:5; 263:16-19; 264:2-265:3; 265:22-266:8; 268:3-268:18 (Tananbaum); Hr'g Tr. 116:10-118:14, May 5, 2021 (Tananbaum Direct).

44 Tananbaum Dep. 272:25-273:5; Hr'g Tr. 163:14-164:3, May 5, 2021 (Tananbaum Cross-Exam).

45 Debtors 30(b)(6) Dep. 252:3-12; 253:15-254:7 (Tananbaum).

46 Turtz Dep. 127:25-129:2.

47 ACC Ex. 18, at TRANE_00006711 (stating on December 4, 2019 that bankruptcy was estimated to last 2 to 5 years); ACC Ex. 192, at TRANE_00014949 (stating on March 5, 2020 that the Debtors expected to stay in bankruptcy for 5 to 8 years). Moreover, a number of the intercompany agreements have initial terms of five years, which supports the idea that the Debtors had planned for a multi-year bankruptcy. ACC Ex. 89, at DEBTORS_00001650 (five-year initial term); ACC Ex. 90, at DEBTORS_00003330 (same).

48 ACC Ex. 52; Hr'g Tr. 211:18-20, May 5, 2021 (Roeder Cross-Exam).

49 ACC Ex. 7; Hr'g Tr. 210:17-211:1, May 5, 2021 (Roeder Cross-Exam).

Petition Date, Project Omega team members explicitly discussed plans to merge the Debtors' operating subsidiaries, 200 Park and ClimateLabs, back into TTC and new Trane after the Debtors' bankruptcies concluded.[50]

III. IMPLEMENTING THE CORPORATE RESTRUCTURING

A. The Ingersoll-Rand/TTC Divisional Merger

31. On March 26, 2020, Ingersoll-Rand reserved the name Aldrich Pump LLC in North Carolina.[51] On April 30, 2020, the direct parent company of Ingersoll-Rand incorporated Trane Technologies HoldCo Inc. ("**TT HoldCo**") in Delaware and contributed its stock in Ingersoll-Rand to TT HoldCo.[52] TT HoldCo, in turn, formed TTC as a Texas limited liability company.[53] The next day, May 1, 2020, Ingersoll-Rand, the holder of substantial asbestos liabilities, was merged into TTC, leaving TTC as the surviving company.[54] TTC thus became the successor by merger to Ingersoll-Rand.[55] That same day, TTC effected a divisional merger under Texas law, resulting in the dissolution of "old" TTC and the formation of "new" TTC and Aldrich as Texas limited liability companies wholly owned by TT HoldCo.[56]

32. Under the TTC Plan of Divisional Merger, "new" TTC received 99% of old TTC's assets, while the remaining 1% of the assets were allocated to Aldrich.[57] Specifically, Aldrich received $26.2 million in cash, all equity interests in 200 Park, and rights to Ingersoll-Rand's

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[50] ACC Ex. 18, at TRANE_00006711; ACC Ex. 192, at TRANE_00014949; Kuehn Dep. 239:15-241:16.

[51] N.C. Application to Reserve a Business Entity Name for Aldrich Pump LLC, *available at* https://www.sosnc.gov/online_services/search/Business_Registration_Results (Mar. 28, 2021).

[52] ACC Ex. 245, at DEBTORS_00002488; ACC Ex. 279; Suppl. Decl. of Allan Tananbaum Supp. Debtors' Compl. ¶ 8, ECF No. 91 ("**Tananbaum Supp. Decl.**").

[53] Tananbaum Supp. Decl. ¶ 8.

[54] *Id.*; ACC Ex. 280, at DEBTORS_00001708.

[55] Tananbaum Supp. Decl. ¶ 8.

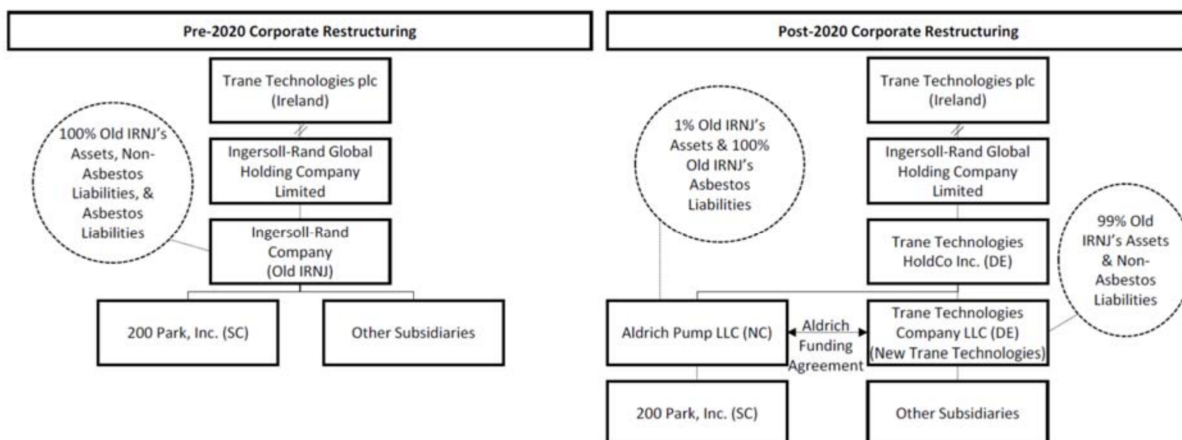
[56] ACC Ex. 25 ("**Aldrich Plan of Divisional Merger**"); Tananbaum Supp. Decl. ¶ 9; ACC Ex. 281, at DEBTORS_00002410.

[57] Hr'g Tr. 396:11-18, May 6, 2021 (Diaz Direct).

asbestos-related insurance coverage.[58] Apart from its equity interest in the 200 Park subsidiary, Aldrich received no operating business.[59] The TTC Plan of Divisional Merger allocated all of Ingersoll-Rand's asbestos liabilities to Aldrich and also required Aldrich to indemnify TTC and all other nondebtor affiliates against, and hold them harmless from, "all Losses" related to those liabilities.[60]

33. Later that same day, May 1, 2020, TTC converted to a Delaware limited liability company,[61] and Aldrich converted to a North Carolina limited liability company.[62] All told, TTC and Aldrich were Texas entities for less than 24 hours.[63] Table 1 below depicts, in condensed form, the organizational structure before and after the Corporate Restructuring:

Table 1[64]



[58] ACC Ex. 147 (Pittard Decl.), ¶ 16.

[59] *Id.*; Roeder Dep. 45:16-19.

[60] Aldrich Plan of Divisional Merger (ACC Ex. 25) ¶¶ 5, 9(b); Tananbaum Supp. Decl. ¶ 15.

[61] ACC Ex. 282, at DEBTORS_00003133; ACC Ex. 283, at DEBTORS_00003137.

[62] ACC Ex. 284, at DEBTORS_00002969; ACC Ex. 285, at DEBTORS_00002973.

[63] ACC Ex. 38, at DEBTORS_00050589-93 (showing the times for incorporating and reincorporating the entities in the Corporate Restructuring); Tananbaum Supp. Decl. ¶ 10.

[64] The corporate organizational charts represent a condensed version of the organizational charts marked as ACC Ex. 276.

34. After the Corporate Restructuring, TTC, as part of the overall Trane enterprise, continued with the business operations once held by Ingersoll-Rand and is paying its creditors in the ordinary course of business.[65]

B. The Trane Divisional Merger

35. On April 30, 2020, old Trane formed ClimateLabs as a North Carolina limited liability company and Murray Boiler Holdings LLC ("**Murray Holdings**") as a Delaware limited liability company.[66] In addition, Trane's direct parent, Trane Inc., formed TUI Holdings Inc. ("**TUI Holdings**") as a Delaware corporation and contributed its stock in Trane to TUI Holdings.[67]

36. The next day, May 1, 2020, Trane converted from a Delaware corporation to a Texas corporation.[68] Trane then effected a divisional merger under Texas law, resulting in the dissolution of old Trane and the formation of new Trane as a Texas corporation and Murray as a Texas limited liability company.[69] Murray became a wholly owned subsidiary of Murray Holdings, which in turn is wholly owned by new Trane, which in turn is wholly owned by TUI Holdings.[70]

37. Under the Trane Plan of Divisional Merger, new Trane received 98% of old Trane's assets, while the remaining 2% of the assets were allocated to Murray.[71] Specifically, Murray received $16.1 million in cash, all equity interests in ClimateLabs, and rights to Trane's asbestos-related insurance coverage.[72] Apart from its ClimateLabs subsidiary, Murray received no operating

[65] Hr'g Tr. 394:19-395:15; 402:19-23, May 6, 2021 (Diaz Direct); *see also* Kuehn Dep. 237:9-13.

[66] ACC Ex. 249, at DEBTORS_00003407; ACC Ex. 239, at DEBTORS_00000261.

[67] ACC Ex. 237, at DEBTORS_00000211; ACC Ex. 238, at DEBTORS_00000220; Tananbaum Supp. Decl. ¶ 11.

[68] ACC Ex. 286, at DEBTORS_00000411; ACC Ex. 287, at DEBTORS_00000419.

[69] ACC Ex. 26 ("**Murray Plan of Divisional Merger**"); ACC Ex. 288, at DEBTORS_00000887; Tananbaum Supp. Decl. ¶ 12.

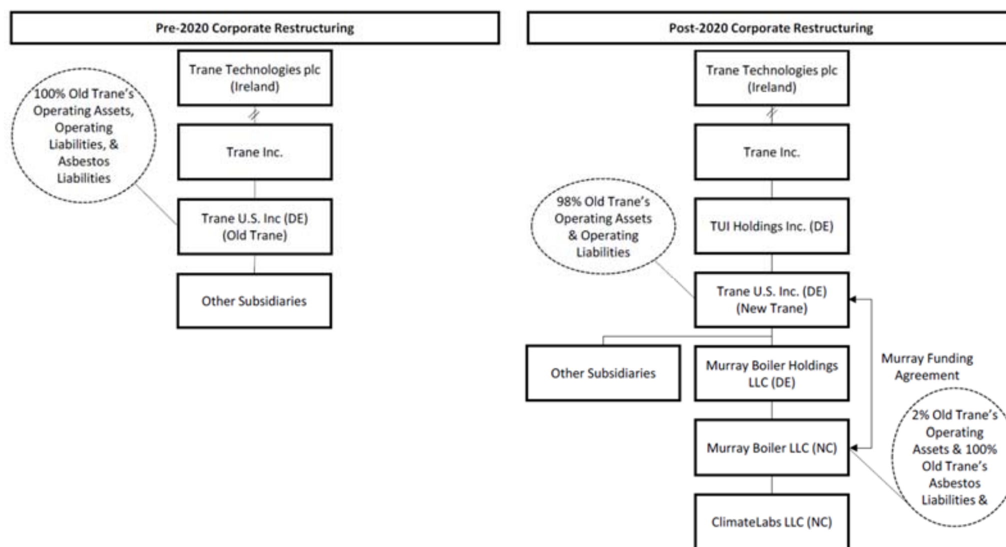
[70] ACC Ex. 59.

[71] Hr'g Tr. 394:1-3, May 6, 2021 (Diaz Direct).

[72] ACC Ex. 147 (Pittard Decl.), ¶ 16.

business.[73] The Trane Plan of Divisional Merger allocated all of Trane's asbestos liabilities to Murray and also required Murray to indemnify new Trane and all other nondebtor affiliates against, and hold them harmless from, "all Losses" related to those liabilities.[74] Later that same day, May 1, 2020, new Trane converted to a Delaware corporation,[75] and Murray converted to a North Carolina limited liability company.[76] All told, new Trane and Murray were Texas entities for less than 24 hours.[77] Table 2 below depicts, in condensed form, the organizational structure before and after the Corporate Restructuring:

Table 2[78]



[73] *Id.*; Tananbaum Dep. 237:23-239:9.

[74] Murray Plan of Divisional Merger (ACC Ex. 26) ¶¶ 5, 9(b); Tananbaum Supp. Decl. ¶ 15.

[75] ACC Ex. 290, at DEBTORS_00001493; ACC Ex. 291, at DEBTORS_00001497.

[76] ACC Ex. 289, at DEBTORS_00001340; ACC Ex. 292, at DEBTORS_00001344.

[77] ACC Ex. 43, at DEBTORS_0050597-50603 (showing the times of incorporation and reincorporation of entities involved in the Corporate Restructuring); Tananbaum Supp. Decl. ¶ 13.

[78] The corporate organizational charts represent a condensed version of the organizational charts marked as ACC Ex. 275.

38. After the Corporate Restructuring, new Trane, as part of the overall Trane enterprise, continued with the business operations once held by old Trane and is paying its creditors in the ordinary course of business.[79]

IV. INTERCOMPANY AGREEMENTS

39. In connection with the Corporate Restructuring, the Debtors, TTC, Trane, and certain nondebtor affiliates entered into several agreements dated "as of" May 1, 2020, the day of the Texas divisional mergers. As these agreements were between affiliated companies, there was no arm's length negotiation over their terms.[80] The most pertinent of these agreements are as follows:

A. Funding Agreements

40. There are two "**Funding Agreements**" at issue: (1) the "**Aldrich Funding Agreement**" between TTC as payor and Aldrich as payee;[81] and (2) the "**Murray Funding Agreement**" between Trane as payor and Murray as payee.[82] The Funding Agreements are essential to the Debtors' assertion that each of them "has the same ability to resolve and pay valid current and future asbestos-related claims and other liabilities as [Ingersoll-Rand] and Old Trane had before the restructurings."[83] The Funding Agreements provide that TTC and Trane will transfer funds to the Debtors to pay any "Permitted Funding Use."[84] The term "Permitted Funding Use" includes (a) the costs of administering the Debtors' chapter 11 cases, (b) amounts necessary

[79] Hr'g Tr. 394:19-395:15; 402:19-23, May 6, 2021 (Diaz Direct); *see also* Kuehn Dep. 237:9-13.

[80] Hr'g Tr. 159:5-21-160:11; 160:22-161:13, May 5, 2021 (Tananbaum Direct); Tananbaum Dep. 209:16-24; *see also* Daudelin Dep. 253:18-21. In fact, those who authorized the execution of and/or signed the key agreements arising from the Corporate Restructuring had no understanding at the time of signing what they were signing or what the purpose was. *See* Daudelin Dep. 190:19-191:7; 234:11-237:3; 238:19-246:15; 248:19-254:2; *see also* Kuehn Dep. 223:4-13 (failing to recall authorizing the execution of a secondment agreement and a services agreement).

[81] ACC Ex. 13 ("**Aldrich Funding Agreement**").

[82] ACC Ex. 86 ("**Murray Funding Agreement**").

[83] ACC Ex. 147 (Pittard Decl.) ¶ 17.

[84] Aldrich Funding Agreement (ACC Ex. 13), at DEBTORS_00003821-22 (definition of "Permitted Funding Use"); Murray Funding Agreement (ACC Ex. 86), at DEBTORS_00004101 (definition of "Permitted Funding Use").

to satisfy each Debtor's "Asbestos Related Liabilities" in connection with funding a § 524(g) trust, and (c) the Debtors' indemnification obligations to TTC, Trane, and the other nondebtor affiliates under any agreement provided in the Plans of Divisional Mergers.[85] Under the Funding Agreements, TTC and Trane are obligated to pay the chapter 11 administrative expenses and the Debtors' indemnification obligations only if the cash distributions from 200 Park (in the case of Aldrich) or ClimateLabs (in the case of Murray) are insufficient to pay those expenses and obligations in full.[86] In addition, 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."[87] According to the Debtors' own metrics, the Debtors' assets (without the Funding Agreements) are already insufficient, as they are less than their asbestos liabilities.[88]

41. The Funding Agreements have two new features not seen in the funding agreements used in *Bestwall* and *DBMP*, both cases pending in this Court that used the same Texas divisional merger.[89] First, the Funding Agreements require, as a precondition to funding a § 524(g) trust, that a confirmed chapter 11 plan provide TTC or Trane, as applicable, "with all the protections of

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[85] Aldrich Funding Agreement (ACC Ex. 13), at DEBTORS_00003821-22; Murray Funding Agreement (ACC Ex. 86), at DEBTORS_00004101-02.

[86] Aldrich Funding Agreement (ACC Ex. 13), at DEBTORS_00003822; Murray Funding Agreement (ACC Ex. 86), at DEBTORS_00004102.

[87] Aldrich Funding Agreement (ACC Ex. 13), at DEBTORS_00003822; Murray Funding Agreement (ACC Ex. 86), at DEBTORS_00004102.

[88] Hr'g Tr. 397:18-23, May 6, 2021 (Diaz Direct) ("[T]he Aldrich liabilities as disclosed -- and as discussed, this is just the debtors' numbers, not my point of view -- is $315 million of asbestos liabilities, plus $3 million of operating liabilities. So that's $318 million of liabilities and their assets are $210 million."); *id.* at 398:20-23 ("Similar to Aldrich, the assets of Murray, $127 million, if you exclude the funding agreement, are less than the total liabilities of . . . $194 million.").

[89] Notably, each of the Funding Agreements were modified just three (3) days before the bankruptcy cases were commenced. *See* ACC Ex. 147 (Pittard Decl.), Annex 2 (indicating Funding Agreements dated as of June 15, 2020, with filing date of June 18, 2020).

section 524(g) of the Bankruptcy Code."[90] Second, the Funding Agreements have "Automatic Termination" provisions whereby TTC's and Trane's respective funding obligations automatically cease "on the effective date of a Section 524(g) Plan."[91] This means that the Funding Agreements could never serve as post-effective-date "evergreen" sources of funding that § 524(g) contemplates.[92] Combined with the Funding Agreements' anti-assignment provisions,[93] these two new provisions call into question whether the Debtors could confirm a chapter 11 plan that relies on the putative funding provided by the Funding Agreements. Once exclusivity has ended, these provisions of the Funding Agreements will also impair, if not disable, the ability and right of other parties-in-interest to propose a competing 524(g) plan.

42. The Funding Agreements have other troubling features. For example, TTC's and Trane's obligations under their respective Funding Agreements are unsecured and not guaranteed by any of the Non-Debtor Affiliates or other Protected Parties.[94] Nothing in the Funding Agreements prevent TTC and Trane from layering on debt that would be senior in priority to their obligations under their respective Funding Agreements.[95] Nothing in the Funding Agreements requires TTC and Trane to provide financial statements to the Debtors that are audited or contain information at a level that provides details on account balances and material transactions (*e.g.*, footnotes to financial statements). TTC and Trane do not have to provide payments that "exceed

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90 Aldrich Funding Agreement (ACC Ex. 13), at DEBTORS_00003822 (definition of "Section 524(g) Plan"); Murray Funding Agreement (ACC Ex. 86), at DEBTORS_00004102 (definition of "Section 524(g) Plan").

91 Aldrich Funding Agreement (ACC Ex. 13) § 2(e); Murray Funding Agreement (ACC Ex. 86) § 2(e).

92 *See In re Plant Insulation Co.*, 734 F.3d 900, 914 (9th Cir. 2013) ("Courts have recognized that § 524(g) embodies the requirement that the reorganized debtor becomes a 'going concern, such that it is able to make future payments into the trust to provide an 'evergreen' funding source for future asbestos claimants.'" (citing *In re Combustion Eng'g, Inc.*, 391 F.3d 190, 248 (3d Cir. 2004), *as amended* Feb. 23, 2005)).

93 Aldrich Funding Agreement (ACC Ex. 13) § 13; Murray Funding Agreement (ACC Ex. 86) § 13.

94 Debtors' 30(b)(6) Dep. 111:15-21; 112:6-15 (Tananbaum).

95 *See id.* at 113:4-8.

the aggregate amount necessary" for the Debtors to fund all "Permitted Funding Uses,"[96] thus giving TTC and Trane unilateral discretion to determine what is "necessary" and the ability to reduce payments if either disagrees with the use of funds. And there is no dispute resolution mechanism if a funding request by a Debtor is denied.[97] The Funding Agreements do not prevent TTC and Trane from engaging in additional divisional mergers, and they explicitly allow TTC and Trane to engage in consolidations and mergers, and to transfer "all or substantially all" of their assets.[98] There are no mechanisms in the Funding Agreements to ensure that TTC and Trane will have sufficient assets to perform under them.[99] And nothing in the Funding Agreements limits or prohibits dividends, or other distributions of value, by TTC or Trane to equity holders, potentially including their full value.[100]

B. Support Agreements

43. Two "**Support Agreements**" are relevant in this proceeding: (1) the Divisional Merger Support Agreement between TTC and Aldrich;[101] and (2) the Divisional Merger Support Agreement between Trane and Murray.[102] Among other things, the Aldrich Support Agreement requires Aldrich to "indemnify and hold harmless TTC and each of its affiliates (each of which is an express third party beneficiary . . .) from and against" any "Losses" and "Proceedings" to which

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[96] Aldrich Funding Agreement (ACC Ex. 13) § 2(a); Murray Funding Agreement (ACC Ex. 86) § 2(a).

[97] Hr'g Tr. 300:15-17, May 6, 2021 (Diaz Direct).

[98] Aldrich Funding Agreement (ACC Ex. 13) § 4(b)(i); Murray Funding Agreement (ACC Ex. 86) § 4(b)(i).

[99] *See* Tananbaum Dep. 224:13-18 ("Q. Are you aware of any mechanisms in the funding agreements to ensure that the payors have sufficient assets to perform under the funding agreements? A. No, I'm not aware of any specific mechanisms.").

[100] *See id*. at 223:2-24 ("Q. Are you aware of any limitations in the funding agreement that prevents New Trane Technologies from sending cash payments to its parent Trane Technologies Holdco Inc.? A. So am I correct that your question refers to this Aldrich funding agreement that we're looking at here? Q. Yes, sir. A. No, I'm not aware of any such limitation . . . . Q. Same answer with the Murray funding agreement, there's no limitations that you're aware of on New Trane US Inc.? A. That's correct, because as I testified, the purpose of the funding agreement was to give these new entities the same ability to fund that the predecessor entities had, but not to give them enhanced ability to fund, just the same ability to fund.").

[101] ACC Ex. 77 ("**Aldrich Support Agreement**").

[102] ACC Ex. 211 ("**Murray Support Agreement**").

TTC and its affiliates "may become subject."[103] The Murray Support Agreement has a nearly identical provision requiring it to indemnify and hold harmless Trane "and each of its affiliates" from and against any "Losses" and "Proceedings."[104] Nevertheless, if the cash distributions from 200 Park are insufficient to allow Aldrich to pay its indemnification obligations to TTC and its affiliates under the Aldrich Support Agreement, the Aldrich Funding Agreement provides that TTC will provide the funds to Aldrich so that Aldrich, in turn, may indemnify TTC or any other affiliate.[105] A substantially similar provision appears in the Murray Funding Agreement that enables Murray, in the event of insufficient cash distributions from ClimateLabs, to receive funding from Trane so that Murray may, in turn, indemnify Trane or any other affiliate.[106]

44. The Support Agreements differ from the previous iterations seen in *Bestwall* and *DBMP* insofar as the indemnification obligations run not only to the sister affiliates of the Debtors—here, TTC and new Trane—but also to their other Non-Debtor Affiliates.

V. POST-RESTRUCTURING RUN-UP TO CHAPTER 11

45. As with the Project Omega meetings, lawyers attended and led discussions during meetings of each Debtor's board of managers after the Debtors' formation. Allan Tananbaum, the Debtors' chief legal officer, chaired all board meetings even though he was not formally a member

[103] Aldrich Support Agreement (ACC Ex. 77) § 3.

[104] Murray Support Agreement (ACC Ex. 211) § 3.

[105] Aldrich Funding Agreement (ACC Ex. 13), at DEBTORS_00003822 (clause (f) in the definition of "Permitted Funding Use").

[106] Murray Funding Agreement (ACC Ex. 86), at DEBTORS_00004102 (clause (f) in the definition of "Permitted Funding Use"); *see also* Kuehn Dep. 308:14-309:5 (acknowledging the "circularity" of the Funding Agreements: ·"Q. [I]f Trane Technologies Company LLC is the entity being sued for an asbestos claim, it will seek indemnification from Aldrich Pump, who, if it does not have sufficient funds, will go right back to Trane Technologies Company LLC for that payment, ·is that correct? . . . A. Yes, that's my understanding."); Tananbaum Dep. 217:20-219:12 (stating that clause (f) includes "a permitted funding use for the debtor seeking funding from its sister affiliate . . . for the debtor to satisfy an indemnification obligation that it owes to said affiliate" in the event that a debtor's funds are insufficient to cover its indemnification obligations).

of either board.[107] Board meetings were also attended by other in-house attorneys as well as outside counsel from Jones Day and Evert Weathersby Houff.[108]

46. The Aldrich and Murray board meetings minutes display serious consideration only of bankruptcy, with all affirmative steps leading to the Debtors' eventual chapter 11 filings. During the May 15, 2020 joint meeting of the Debtors' boards, "Mr. Tananbaum reviewed options available to the [Debtors] with respect to the resolution of current and future asbestos claims," with a special emphasis on "section 524(g) of Bankruptcy Code [*sic*]."[109] By that date, Mr. Tananbaum had already made up his mind that he preferred bankruptcy over the other alleged alternatives.[110] A week later, at the May 22, 2020 joint meeting of the boards, Mr. Tananbaum and other lawyers led a discussion regarding the "mechanics and limitations" of the non-bankruptcy options.[111] Manlio Valdes, a member of both boards, admitted that, after the May 29, 2020 joint meeting of the boards, he thought it was "a probability" that the Trane entities would end up paying less to asbestos claimants in bankruptcy.[112] On June 5, 2020, Mr. Tananbaum informed the boards that, while they were not currently being asked to take any action, "he anticipated management of the [Debtors] would soon ask the Boards to authorize the [Debtors] to file chapter 11 bankruptcy and pursue final resolution of their current and future asbestos claims using 524(g) of the

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[107] Tananbaum Dep. 271:5-22; 49:10-50:2; Roeder Dep. 46:21-25.

[108] *See, e.g.*, Tananbaum Dep. 271:5-12; 271:23-272:2; Roeder Dep. 42:11-22; 48:25-49:4; ACC Ex. 31 (May 15, 2020 Joint Meeting included the following in-house counsel: Allan Tananbaum, Phyllis Morey, Evan M. Turtz, and Sara Walden Brown. It also included the following outside counsel: Mark Cody, Brad Erens, Troy Lewis, and Alex Kerrigan from Jones Day and Michael Evert of Evert Weathersby Houff); ACC Ex. 32 (May 22, 2020 Joint Meeting included the same in-house counsel and outside counsel).

[109] *See* ACC Ex. 31, at DEBTORS_00050790.

[110] Tananbaum Dep. 287:4-12.

[111] ACC Ex. 32, at DEBTORS_00050795.

[112] Valdes Dep. 264:21-265:7, Mar. 1, 2021; ACC Ex. 33.

Bankruptcy Code."[113] On June 17, 2020, the Aldrich and Murray boards unanimously approved resolutions authorizing the Debtors to file chapter 11.[114]

47. The boards' deliberations and resolutions support the evidence that the Debtors' bankruptcy filings were a foregone conclusion from the start of Project Omega. Indeed, on May 27, 2020, Rolf Paeper, a Project Omega member, asked why the bankruptcy filings had been delayed since the Trane entities were "pushing to do that in less than30 [*sic*] days."[115] In response, Eric Hankins, another Omega member, wrote: "[W]e can't push, it has to be an independent [Board] decision."[116] Mr. Paeper replied, expressing his skepticism of each board's independence by putting the word "independant" [*sic*] in quotes.[117]

VI. UPSTREAMING OF CASH BY NON-DEBTOR AFFILIATES

48. [118] [119] [120]

[113] ACC Ex. 34, at DEBTORS_00050805.

[114] *See* ACC Ex. 36, at DEBTORS_00050813-816; ACC Ex. 44, at DEBTORS_00050819-22.

[115] ACC Ex. 193, at TRANE_00007527.

[116] *Id.*

[117] *Id.* Earlier, Mr. Paeper had expressed similar skepticism of board independence, writing in a December 4, 2020 email that "Trane maintains equity ownership *and control* of the board of the bankrupt and operating entities." ACC Ex. 18, at TRANE_00006711. In response to Mr. Paeper's email, Mr. Valdes responded "[t]his is a lot brighter outlook than was originally expected." *Id.*

[118] Non-Debtor Affiliates 30(b)(6) Dep. 74:11-17 (Kuehn).

[119]

[120]

[121] [122]

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49. The distributions made as part of Trane plc's "cash management strategy and other company initiatives" have been substantial. In December 2017, old Trane made a distribution to its then-direct parent, Trane Inc., in the amount of $586.9 million.[125] Similarly, in December 2018 and December 2019, Trane made distributions to Trane Inc. in the amounts of $1.1 billion and $740.7 million, respectively.[126] In April 2020, within a matter of days or weeks before the Corporate Restructuring, old Trane made a distribution to Trane Inc. in the amount of $2.3 billion.[127] Also in April 2020, within a matter of days or weeks before the Corporate Restructuring, Ingersoll-Rand (now TTC) made a distribution to its then-direct parent, Trane Technologies Global Holding Company, in the amount of $4.1 billion.[128] Were TTC and new Trane in bankruptcy, this form of "cash management" between a debtor and a nondebtor parent would be impermissible.

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121 Non-Debtor Affiliates 30(b)(6) Dep. 134:19-25 (Kuehn).

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123 Non-Debtor Affiliates 30(b)(6) Dep. 135:11-14 (Kuehn).

124 *Id.* at 135:15-20.

125 ACC Ex. 224.

126 *Id.*

127 *Id.*

128 *Id.*

50. [redacted]

[redacted][129] TTC, Trane, and their operating subsidiaries are also timely paying their creditors in the ordinary course of business.[130]

VII. KEY PERSONNEL WILL NOT BE DISTRACTED

51. The Debtors identified four individuals who are purportedly key to the reorganization and could be diverted if asbestos lawsuits against the Protected Parties were to proceed.[131] Summaries of these individuals and their roles follow:

A. Business Personnel

52. **Amy Roeder**, *Chief Financial Officer and Treasurer of the Debtors*.[132] Ms. Roeder is also chief financial officer of the Debtors' operating subsidiaries, 200 Park and ClimateLabs,[133] and serves as a member of the boards of the Debtors, 200 Park, and ClimateLabs.[134] Additionally, she maintains her position as finance director for information technologies and legal at TTC.[135] Indeed, Mr. Tananbaum, as the Debtors' corporate representative, referred to Ms. Roeder's work for nondebtor TTC as her "day job."[136] Ms. Roeder spends only a fraction of her time, 20% to 30%, working as treasurer and CFO for the Debtors.[137] Those duties comprise working with a financial consultant and supervising the filing of monthly status reports with the Court and the

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129 [redacted]

130 Non-Debtor Affiliates 30(b)(6) Dep. 59:25-60:16 (Kuehn); ACC Ex. 218; ACC Ex. 220.

131 ACC Ex. 107.

132 *Id.* at 3; Hr'g Tr. 185:10-12, May 5, 2021 (Roeder Direct).

133 Hr'g Tr. 185:12-13, May 5, 2021 (Roeder Direct); Roeder Dep. 49:10-19 (200 Park); 49:24-50:4 (ClimateLabs).

134 Hr'g Tr. 185:14-16, May 5, 2021 (Roeder Direct) (Aldrich and Murray); Roeder Dep. 51:5-7 (200 Park); 52:12-14 (ClimateLabs).

135 Hr'g Tr. 185:9-10, May 5, 2021 (Roeder Direct); Roeder Dep. 29:13-18.

136 Debtors 30(b)(6) Dep. 143:13-18 (Tananbaum) ("I mean both Ms. Roeder and Mr. Valdes are officers and as well as directors of both debtor entities. You know, they're full-time employees of Trane with, you know, day jobs, if you will . . . ."); Hr'g Tr. 166:17-19, May 5, 2021 (Tananbaum Cross-Exam).

137 Hr'g Tr. 166:14-16, May 5, 2021 (Tananbaum Cross-Exam); Roeder Dep. 56:21-57:12.

payment of professionals in the bankruptcy cases.[138] She also ensures that the Debtors are adequately funded and will review consolidated financial statements provided by TTC and Trane on a quarterly basis.[139] Her duties as CFO of 200 Park and ClimateLabs and responsibilities as a board member are "minimal."[140] Ms. Roeder has had no role in negotiating a plan of reorganization[141] and does not expect to have such a role in the future.[142] Prior to the Corporate Restructuring, Ms. Roeder did not participate directly in litigation or discovery in asbestos suits.[143] She "did not work with local counsel" or "any outside counsel,"[144] and she did not respond to document requests or answer interrogatories propounded by asbestos plaintiffs.[145] Ms. Roeder stated that, if a preliminary injunction is not granted, her workload would increase in connection with "managing the claims reporting," including "metrics around claims."[146] But, if the preliminary injunction is denied, none of the claims proceeding in the tort system will be against the Debtors. Thus, any additional claims reporting work would be related to Ms. Roeder's role at TTC. In any event, there is no evidence in the record that work related to claims reporting would divert Ms. Roeder to the point of imperiling the Debtors' reorganization.

53. **Cathleen Bowen**, *Global Legal Controller*, *Trane Technologies*.[147] Ms. Bowen is not an officer or employee of the Debtors, but assists Ms. Roeder in connection with the latter's responsibilities as CFO and treasurer of the Debtors.[148] Mr. Tananbaum, as the Debtors' corporate

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138 Tananbaum Dep. 72:9-19.

139 *Id.* at 72:19-25.

140 Roeder Dep. 47:4-11; 49:5-9; 52:8-11; 53:15-18; 57:14-22.

141 *Id.* at 78:22-25.

142 Hr'g Tr. 207:20-22, May 5, 2021 (Roeder Cross-Exam); Roeder Dep. 79:21-80:3.

143 Hr'g Tr. 207:12-14, May 5, 2021 (Roeder Cross-Exam); Roeder Dep. 32:21-33:10.

144 Roeder Dep. 32:24-33:2; *see also* Hr'g Tr. 207:3-5, May 5, 2021 (Roeder Cross-Exam).

145 Roeder Dep. 33:4-10; Hr'g Tr. 207:6-11, May 5, 2021 (Roeder Cross-Exam).

146 Roeder Dep. 61:23-62:14.

147 ACC Ex. 107, at 3; Hr'g Tr. 132:14-16, May 5, 2021 (Tananbaum Direct).

148 Tananbaum Dep. 75:8-13.

representative, referred to Ms. Bowen's work for nondebtor TTC as her "day job."[149] Ms. Bowen devotes "no greater" than 25% to 30% of her time to the Debtors.[150] Prior to bankruptcy, Ms. Bowen was not involved in asbestos claims defense but only worked on the accounting related to those claims.[151] [REDACTED] [152] She set a budget for defense costs related to asbestos litigation once a year[153] and did quarterly journal entries and accounting reconciliations.[154] [REDACTED] [155] She had a very limited role in Project Omega,[156] and was unaware that the Debtors were filing chapter 11 until the Petition Date.[157] There is no evidence that Ms. Bowen would have any role in formulating or negotiating a plan in these bankruptcy cases.

B. Seconded Legal Personnel[158]

54. **Robert H. Sands**, *Attorney at the Debtors*.[159] In addition to being an in-house attorney seconded to the Debtors, Mr. Sands holds the position of associate general counsel for

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[149] Debtors 30(b)(6) Dep. 234:9-17 (Tananbaum) ("[Ms. Bowen] at a minimum has a day job supporting the entirety of Mr. [Turtz]'s function. Q. So her day job is the controller? A. ·Yes, she manages and looks out for cost heading the legal function, how the legal function is performing against its budget, payment cycles, things like that."); Hr'g Tr. 164:24-165:1, May 5, 2021 (Tananbaum Cross-Exam).

[150] Hr'g Tr. 164:16-23, May 5, 2021 (Tananbaum Cross-Exam); Debtors 30(b)(6) Dep. 233:16-25 (Tananbaum).

[151] Bowen Dep. 49:13-17.

[152] *Id.* at 47:3-23.

[153] *Id.* at 45:4-12.

[154] *Id.* at 43:25-44:3.

[155] *Id.* at 46:3-7.

[156] Bowen Dep. 158:11-15.

[157] *Id.* at 114:12-115:23.

[158] The Debtors' legal personnel are employees of TTC, who are seconded to the Debtors under a secondment agreement between TTC and the Debtors. ACC Ex. 105 ("**Secondment Agreement**").

[159] ACC Ex. 107, at 2.

product litigation at TTC.[160] Mr. Sands' principal role in the reorganization thus far has been to oversee the collection and production of documents by the Debtors, TTC, and Trane in this adversary proceeding.[161] His role in reviewing documents to be filed with this Court has been limited to "the typical level of a client where you would review for accuracy or strategy, or raise questions on arguments or approaches,"[162] and he does not take the laboring oar in "drafting filings or pleadings."[163] Mr. Sands' background and in-house role prior to the Debtors' chapter 11 filings involved asbestos defense in the tort system.[164] He is not a bankruptcy practitioner, has no experience drafting or negotiating chapter 11 plans, and has no other meaningful bankruptcy experience.[165]

55. **Allan Tananbaum**, *Chief Legal Officer of the Debtors*.[166] In addition to his role as the Debtors' CLO, Mr. Tananbaum holds the position of deputy general counsel for product litigation at TTC.[167] His background and in-house experience involved compliance work and litigation, including asbestos litigation.[168] He is not a bankruptcy attorney.[169] He has no prior experience negotiating a chapter 11 plan.[170] He does not expect to be drafting a chapter 11 plan since the large team at Jones Day would do that.[171] As the Debtors' principal "client contact"

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160 Sands Dep. 52:7-11, Mar. 11, 2021.
161 Tananbaum Dep. 50:24-51:12.
162 Sands Dep. 97:13-21.
163 *Id.* at 96:14-97:9.
164 *Id.* at 46:17-47:20.
165 *Id.* at 34:14-19; 38:20-39:5.
166 ACC Ex. 107; Hr'g Tr. 89:2-5, May 5, 2021 (Tananbaum Direct).
167 Tananbaum Dep. 43:3-13.
168 *Id.* at 16:17-37:18; 38:4-10.
169 *Id.* at 48:2-4.
170 *Id.* at 80:15-16.
171 *Id.* at 79:9-16.

person for the Jones Day team,[172] Mr. Tananbaum's role in plan negotiations would be supervisory, not all-encompassing.[173]

56. Messrs. Tananbaum and Sands are not bankruptcy attorneys and have no specialized experience with this or any other chapter 11 reorganization.[174] Mr. Tananbaum has said contradictory things about his role in the Debtors' reorganization. On the one hand, he has stated that it takes him more time to review and understand the documents that the Debtors intend to file with the Court because he is not a bankruptcy attorney.[175] On the other hand, Mr. Tananbaum displayed a lack of familiarity with routine documents that the Debtors had previously filed,[176] none of which he drafted.[177] And he provided only "minimal input" on those bankruptcy filings.[178]

57. Mr. Tananbaum testified that, if the PI Motion is denied and the full array of activity in asbestos litigation resumed, he and Mr. Sands would have to do all the in-house defense work themselves, which would be an overwhelming task for the two of them.[179] Prior to bankruptcy, the Trane organization had a larger in-house legal team dedicated to asbestos defense in the tort system.[180] In addition to Mr. Sands and himself, there were at least two other fulltime attorneys working on asbestos defense, a fulltime paralegal, a vendor that assisted with invoice review, a "para-technologist," and a paralegal "specialized in lien process."[181] But, in July of last year, on the "expectation" that "we'd be the beneficiaries of the automatic stay," those positions were

[172] Tananbaum Dep. 86:12-19.

[173] *Id.* at 79:14-16; 80:3-10.

[174] *Id.* at 39:21-23; 47:25-48:2; 227:24-228:9; Sands Dep. 34:14-19; 38:20-39:5.

[175] Debtors 30(b)(6) Dep. 228:11-13 (Tananbaum).

[176] Agreed Order, ECF No. 58; Debtors 30(b)(6) Dep. 226:25-227:6 (Tananbaum) ("Q. Do you understand what this motion does? A. I have just the very most general knowledge. It's not something I'm terribly steeped in.").

[177] Debtors 30(b)(6) Dep. 224:14-15; 226:19-21 (Tananbaum).

[178] *Id.* at 226:16-18 ("I probably saw this, but I don't know that I had much, if any, input.").

[179] Hr'g Tr. 129:20-130:6; 130:18-21, May 5, 2021 (Tananbaum Direct).

[180] Tananbaum Dep. 67:22-68:3.

[181] *Id.* at 68:3-12.

eliminated.[182] The in-house defense team was intentionally downsized.[183] Despite the downsizing of the legal department, Mr. Tananbaum testified that 40 to 60 in-house lawyers still work for the Trane Technologies legal team.[184]

58. Further, Mr. Tananbaum did not rule out the possibility of restoring the previously eliminated jobs and "staff[ing] up" to meet any increased workload if the PI Motion was denied.[185] He also acknowledged that, if asbestos litigation were to proceed against the Protected Parties, the Debtors' "network of 30-plus local law firms . . . would have to be reactivated . . . ."[186] And, prior to bankruptcy, this "network of local outside counsel handled nearly if not all court appearances, depositions, responsive pleadings, briefs and the like" in the tort system.[187]

59. No evidence suggests that no other lawyers could step in and assist with the reorganization if Messrs. Tananbaum and Sands were somehow called away to supervise the defense of Protected Parties in the tort system. Moreover, this potential diversion is also wholly avoidable by the terms of the Secondment Agreement itself, which provides that TTC shall not remove any seconded employees from their duties to the Debtors unless mutually agreed by both the Debtors and TTC.[188] Accordingly, Mr. Sands and Mr. Tananbaum cannot be diverted from their duties to the Debtors, in favor of duties for Protected Parties, without the Debtors' consent.

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[182] *Id.* at 71:6-11.

[183] *Id.* at 69:8-12.

[184] *Id.* at 245:7-246:4.

[185] *Id.* at 85:3-15.

[186] Tananbaum Dep. 82:7-19.

[187] *Id.* at 85:22-86:11.

[188] Secondment Agreement (ACC Ex. 105) ¶ 1.d.

CONCLUSIONS OF LAW

I. THE DEBTORS ARE NOT ENTITLED TO INJUNCTIVE RELIEF

60. The Debtors request that this Court enter a preliminary injunction under § 105(a), barring asbestos creditors from pursuing claims for bodily injury or wrongful death arising from exposure to Trane and Ingersoll Rand asbestos-containing products against the "Protected Parties" as defined in the Complaint. For the reasons explained below, the Debtors have failed to meet their burden of showing that they are entitled to the injunction. Accordingly, the Debtors' request for injunctive relief is denied.

A. The Debtors Are Required to Meet the Supreme Court's Standard for a Preliminary Injunction Set Forth in *Winter*

61. Preliminary injunctions are "extraordinary remedies involving the exercise of very far-reaching power to be granted only sparingly and in limited circumstances." *Winter v. Nat'l Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). They "should not be granted as a matter of course." *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165 (2010). Accordingly, to obtain the requested preliminary injunction, the Debtors are required to make "a clear showing" "[1] that [they are] *likely* to succeed on the merits, [2] that [they are] *likely* to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in [the Debtors'] favor, and [4] that an injunction is in the public interest." *Winter*, 555 U.S. at 20 (emphasis added); *see also Maaco Franchising, LLC v. Ghirimoldi*, No. 3:15-cv-99, 2015 WL 4557382, at *2 (W.D.N.C. July 28, 2015) ("When considering whether to grant a preliminary injunction, the Fourth Circuit applies the standard articulated by the Supreme Court in *Winter*."). The Debtors must establish, by a clear showing, all four of these elements to be successful. *See Real Truth About Obama, Inc. v. Fed. Election Comm'n*, 575 F.3d 342, 345 (4th Cir. 2009), *vacated*, 599 U.S. 1089 (2010), *and adhered*

to in relevant part sub nom. Real Truth About Obama, Inc. v. F.E.C., 607 F.3d 355 (4th Cir. 2010) (per curiam). The Debtors have failed to do so here.

62. The Debtors' contention that this traditional, four-part standard is inapplicable, or becomes less stringent, when a debtor in bankruptcy requests a preliminary injunction to enjoin third-party litigation is unavailing.[189] Section 105(a) provides: "The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Nothing in the text of the statute permits this Court to abridge the Supreme Court's standard for granting preliminary injunctive relief. Indeed, "the relevant House and Senate reports indicate[ ] Congress intended [the traditional] standard to apply to § 105(a) preliminary injunctions" so that "*that stays would not be granted lightly.*" *In re Excel Innovations, Inc.*, 502 F.3d 1086, 1094-95 (9th Cir. 2007) (emphasis added) (citing S. REP. NO. 95-989, at 51 (1978), *as reprinted in* 1978 U.S.C.C.A.N. 5787, 5836-37 and H.R. REP. NO. 95-595, at 342, *as reprinted in* 1978 U.S.C.C.A.N. 5963, 6298 (1978)).

63. Moreover, the majority of circuits that have reviewed injunctions staying actions against nondebtors have applied the traditional preliminary injunction standard. *See Excel Innovations, Inc.*, 502 F.3d at 1094. This includes the Fourth Circuit, which applied the traditional standard when it reviewed a preliminary injunction issued by the district court in *A.H. Robins Co. v. Piccinin*, 788 F.2d 994, 1003-09 (4th Cir. 1986), a mass-tort bankruptcy involving the Dalkon Shield.

64. The Debtors' reliance on the non-binding decisions in *In re Brier Creek Corp. Center Associates Ltd.*, 486 B.R. 681 (Bankr. E.D.N.C. 2013), and *In re Chicora Life Center, LC*, 553 B.R. 61 (Bankr. D.S.C. 2016), for the proposition that they need only show that the nondebtor

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[189] PI Motion at 24.

litigation would interfere with their reorganization efforts, is misplaced. The courts in those cases ultimately granted preliminary injunctions only after finding that the debtors had met the traditional four-part test set forth in *Winter*. *See Brier Creek*, 486 B.R. at 694; *Chicora Life*, 553 B.R. at 65-67. Neither opinion abrogates the traditional standard laid out in *Winter*. The Court is not inclined to apply the less stringent standard for which the Debtors advocate.

65. The Debtors also assert that courts routinely enjoin claims against nondebtors in asbestos mass-tort bankruptcies, citing a litany of asbestos bankruptcies where injunctions were granted.[190] However, in most of those bankruptcies, including the *Kaiser Gypsum* and *Garlock* cases before this Court, the injunctions sought were unopposed or granted on terms negotiated with and agreed to by the asbestos claimants' committee.[191] These injunctions, therefore, carry no precedential weight. *See, e.g.*, *Brecht v. Abrahamson*, 507 U.S. 619, 630-31 (1993) (stating that prior decisions applying a particular standard of review for *habeas* cases were not binding as the court had not "squarely addressed" what standard of review should apply and had "at most assumed the applicability" of the prior standard); *United States v. L. A. Tucker Truck Lines, Inc.*, 344 U.S. 33, 38 (1952) (where an issue was not "raised in briefs or argument nor discussed in the opinion of the Court," the Court's decision cannot be taken as "a binding precedent on this point"); *United States v. Horton*, 693 F.3d 463, 479 n.16 (4th Cir. 2012) (stating that, where a prior case has not "directly addressed" the issue currently before the court, the prior case is not controlling); *Fernandez v. Keisler*, 502 F.3d 337, 343 n.2 (4th Cir. 2007) ("We are bound by holdings, not unwritten assumptions."). Consequently, this Court is not free to grant a preliminary injunction

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[190] PI Motion at 22-23 & n.12.

[191] The Court has taken judicial notice of the following Committee exhibits: ACC Ex. 343, ACC Ex. 345, ACC Ex. 348.

without holding the Debtors to their burden under *Winter*. And, for the reasons stated below, under the *Winter* standard, the PI Motion must be denied.

B. The Debtors Have Failed to Show a Likelihood of Success on the Merits That Would Include Permanent Injunctive Relief Under § 524(g)

66. The Debtors have failed to satisfy their burden to show they are likely to succeed in reorganizing under § 524(g). The Debtors have not yet filed a chapter 11 plan in this case. There is no plan support agreement with the asbestos claimants' representatives.[192] Apart from TTC's and Trane's obligations under their respective Funding Agreements, none of the Protected Parties that stand to benefit from a preliminary injunction has promised to contribute funds to a § 524(g) trust.[193]

67. The likelihood of a successful reorganization under § 524(g) is also dependent upon gaining the requisite asbestos creditor consent. *See In re Thorpe Insulation Co.*, 671 F.3d 1011, 1027 (9th Cir. 2012) (noting that a successful reorganization would not have been possible if the debtor had not negotiated with asbestos claimants); *see also* 11 U.S.C. § 524(g)(2)(B)(ii)(IV)(bb). The Debtors acknowledge that confirming a § 524(g) plan requires a supermajority vote of current asbestos claimants.[194] Here, the Debtors have not shown that they are likely to gain this support, particularly with a preliminary injunction.

68. While the Debtors have the burden to show they are likely to succeed in reorganizing under § 524(g), they have offered only conclusory statements. The Debtors argue they are entitled to a "rebuttable presumption" that they are likely to succeed in reorganizing based

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[192] Hr'g Tr. 175:2-5, May 5, 2021 (Tananbaum Cross-Exam).

[193] Tananbaum Dep. 254:4-25; *see also* Hr'g Tr. 162:20-23, May 5, 2021 (Tananbaum Cross-Exam) ("Q. Okay. And it's fair to say that none of TTC's or Trane's obligations under the funding agreements are guaranteed by any other protected parties, correct? A. That's accurate.").

[194] Hr'g Tr. 174:23-175:1, May 5, 2021 (Tananbaum Cross-Exam); Tananbaum Dep. 263:3-11.

on their alleged good-faith filing and good-faith effort to reorganize.[195] But the Debtors fail to cite any binding legal support for such a presumption. Indeed, finding such a presumption here would be contrary to the Supreme Court's holding that the movant carries the burden of proof for each element of the preliminary injunction standard. *Winter*, 555 U.S. at 20.

69. Even if the Court were inclined to adopt the presumption urged by the Debtors, the Debtors have failed to convince this Court that they have proceeded in good faith to reorganize. When asked in deposition to explain "the basis for the statement that the debtors filed the bankruptcy in good faith," Mr. Tananbaum, the Debtors' corporate representative, asserted that the Debtors had "transparently explained what we did around the restructuring" and "that the debtors have the same ability to fund cases that the predecessor companies did."[196] The process, however, has been anything but transparent. Project Omega was conducted in secret. Asbestos claimants and their attorneys were never told about Project Omega prior to the Corporate Restructuring.[197] Both in-house lawyers and outside counsel routinely attended Project Omega meetings and meetings of the Debtors' respective boards to attempt to cloak the Corporate Restructuring and decision to file bankruptcy under a veil of privilege.[198]

70. The Debtors argue that they have established a likelihood of reorganizing successfully because the Funding Agreements demonstrate they have the financial capital needed to carry out their reorganization.[199] But the cases cited by the Debtors in support of their argument are not asbestos mass-tort bankruptcies and therefore do not suggest that the Debtors need only

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[195] PI Motion at 25.

[196] Debtors 30(b)(6) Dep. 213:14-21 (Tananbaum).

[197] *Id.* at 217:18-22.

[198] Pittard Dep. 196:16-19 ("This particular project, because of the privilege and sensitive nature of some of the attorney-client privilege that was involved, it was a little bit different."); Tananbaum Dep. 149:7-151:6 (stating that the general counsel chaired all weekly Project Omega meetings and that counsel were at all important meetings of Project Omega); Turtz Dep. 222:11-24; 234:22-235:14; 235:24-236:5.

[199] PI Reply at 9 & n.8.

show that that they have the financial ability to reorganize. *See, e.g.*, *In re Litchfield Co. of South Carolina L.P.*, 135 B.R. 797 (W.D.N.C. 1992); *Chicora Life*, 553 B.R. at 65-67. Furthermore, the Funding Agreements may not provide a secure and stable source of capital for the Debtors.[200] The terms of the Funding Agreements themselves, including their "Automatic Termination" provisions,[201] indicate that they cannot serve as post-effective-date "evergreen" sources of funding that § 524(g) contemplates. *See In re Plant Insulation Co.*, 734 F.3d 900, 914 (9th Cir. 2013) ("Courts have recognized that § 524(g) embodies the requirement that the reorganized debtor becomes a 'going concern, such that it is able to make future payments into the trust to provide an 'evergreen' funding source for future asbestos claimants.'" (citing *In re Combustion Eng'g, Inc.*, 391 F.3d 190, 248 (3d Cir. 2004), *as amended* Feb. 23, 2005)). Combined with the Funding Agreements' anti-assignment clauses, the "Automatic Termination" provisions impair, if not effectively disable, a party-in-interest's ability and right, once exclusivity has ended, to propose a competing 524(g) plan. *See* 11 U.S.C. § 1121(c). A party-in-interest's ability to propose a competing plan would not have been an issue, had Ingersoll-Rand and old Trane not engaged in the Corporate Restructuring. These aspects of the Funding Agreements do not evince good faith or show that the Debtors and their cohorts are operating in the best interests of asbestos creditors.

C. The Debtors Fail to Demonstrate a Likelihood of Irreparable Harm

71. The Debtors have the burden to make a clear showing "that irreparable injury is *likely* in the absence of an injunction." *Winter*, 555 U.S. at 22 (emphasis added). As a threshold matter, the Debtors seek to protect nearly every entity within the Trane enterprise, though only a

[200] Hr'g Tr. 400:8-404:4, May 6, 2021 (Diaz Direct).

[201] According to these "Automatic Termination" provisions, TTC's and Trane's respective funding obligations automatically cease "on the effective date of a Section 524(g) Plan." Aldrich Funding Agreement (ACC Ex. 13) § 2(e); Murray Funding Agreement (ACC Ex. 86) § 2(e).

handful have ever been named as an asbestos defendant.[202] This mere *potential* for harm is insufficient to meet the standard for irreparable harm in *Winter*. *Winter*, 555 U.S. at 22 ("Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with our characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief."); *see also Di Biase v. SPX Corp.*, 872 F.3d 224, 235 (4th Cir. 2017) (stating that "the possibility of irreparable harm does not constitute a 'clear showing' that the plaintiff is entitled to [injunctive] relief"). The Debtors insist that past is not prologue. But the Debtors are carrying the burden of proof and persuasion. The absence of asbestos lawsuits against the vast majority of Protected Parties is an absence of evidence and fails to prove a *likelihood* of irreparable harm.

72. The Court must also take into account the testimony of their chief restructuring officer, Mr. Ray Pittard, who said that denial of a preliminary injunction might make matters more "costly" for the Debtors and "likely to consume time and resource and energy"; but it still would be "not impossible" for the Debtors to reorganize.[203]

73. Nonetheless, the Debtors assert that if the preliminary injunction is denied and asbestos litigation concerning Ingersoll Rand and old Trane's asbestos liabilities is allowed to commence or continue against the Protected Parties—the Debtors will be irreparably harmed in the following ways: (i) asbestos lawsuits could trigger the Debtors' contractual indemnification obligations to certain Protected Parties, including new Trane and TTC; (ii) adverse decisions against any Protected Party could result in claims of res judicata or collateral estoppel or evidentiary prejudice against the Debtors in future asbestos litigation; and (iii) the Debtors' "key

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[202] Tananbaum Dep. 313:3-16; 314:2-315:6; Debtors 30(b)(6) Dep. 381:4-382:17 (Tananbaum).

[203] Pittard Dep. 136:22-137:7.

personnel" would be distracted from the reorganization by the continuing litigation. For the reasons explained below, none of these presents a likelihood of irreparable injury.

1. The Debtors are protected from the effects of the alleged harms by the Funding Agreements

74. Each of the Debtors' claimed harms is predicated on the notion that the Debtors require protection from incurring additional asbestos-related liabilities. But, if the Funding Agreements are as ironclad as the Debtors argue,[204] the incurrence of additional asbestos-related liabilities will have no material effect on the Debtors.

75. The Funding Agreements require new Trane and TTC to pay the Debtors' liabilities—including indemnification payments, defense costs, and administrative expenses—to whatever extent the Debtors' assets are insufficient to meet them.[205] As the Debtors' assets (minus the Funding Agreements) are not sufficient to pay their liabilities, any asbestos-related liabilities confronting the Debtors in the future will not be paid from the Debtors' assets, but from new Trane's or TTC's assets on account of their Funding Agreement obligations.

76. Consequently, the Debtors should have no interest in whether indemnification obligations to nondebtors are incurred. The Debtors have presented no evidence that TTC and Trane are unable to defend and pay asbestos claims in the tort system *and* fund a § 524(g) trust for the Debtors. Since indemnification obligations will ultimately have no material effect on the Debtors' ability to reorganize, no personnel of the Debtors should be meaningfully diverted or distracted by nondebtor asbestos litigation.

[204] ACC Ex. 147 (Pittard Decl.) ¶ 17.

[205] Aldrich Funding Agreement (ACC Ex. 13), at DEBTORS_00003821-22; Murray Funding Agreement (ACC Ex. 86), at DEBTORS_00004101-02.

2. *The alleged harms are self-inflicted*

77. The putative harms alleged by the Debtors are the direct result of the Corporate Restructuring—the very scheme that Ingersoll-Rand and old Trane engaged in, in part to set up an argument that, without injunctive relief, TTC, Trane, and other Protected Parties will be left vulnerable and exposed in the tort system. For example, the Debtors claim they will be effectively denied the protections of the automatic stay because of all the indemnification obligations they have, particularly to their Non-Debtor Affiliates. As to the indemnification obligations owed to Non-Debtor Affiliates, Mr. Tananbaum described them as "broad" and did not see "any real defenses" against them if the Non-Debtor Affiliates asserted indemnification claims.[206] But these indemnification obligations were voluntarily incurred as part of their bankruptcy planning and Corporate Restructuring, as those obligations arise from the Plans of Divisional Merger and the Support Agreements that the Debtors entered into.[207] The Debtors also assert that, if asbestos suits are allowed to proceed against Protected Parties, the Debtors will have no choice but to aid in their defense, which will overwhelm the in-house asbestos defense team seconded to the Debtors. But the Trane organization deliberately downsized its in-house asbestos defense team *after* the Corporate Restructuring.[208] In other words, within a short time span, the Debtors took on new indemnification obligations to protect their Non-Debtor Affiliates and then downsized their asbestos defense team, thereby intentionally setting the stage for the very situation the Debtors claim to fear. Thus, any harm that could be visited upon the Debtors is self-inflicted and does not merit injunctive protection.

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[206] Tananbaum Dep. 334:24-335:5.

[207] *See supra* ¶¶ 43-44.

[208] *See supra* ¶ 57.

78. Had Ingersoll-Rand and old Trane simply filed for chapter 11 relief on June 18, 2020, and not engaged in the Corporate Restructuring, they would have had no need of injunctive relief because they would have been protected by the automatic stay. Without the Corporate Restructuring, there would have been no divisional merger, no purported allocations of asbestos liabilities to the Debtors, and no reason for the Debtors to incur new indemnification obligations to the Non-Debtor Affiliates. Yet, because the asbestos liabilities were separated from virtually all the operating assets, and the entities with the asbestos liabilities (the Debtors) were placed into chapter 11, the Debtors assert that there is a possible risk of res judicata, "evidentiary prejudice," and key personnel becoming distracted from the reorganization. None of these arguments is tenable. If any potential harm exists, it is because the Debtors placed themselves in harm's way and are now seeking the aid of this Court to protect themselves from that very harm.

79. Where a party seeking an injunction has acted to permit the outcome that it now finds unacceptable, such an outcome is not an irreparable injury. "If the harm complained of is self-inflicted, it does not qualify as irreparable." *Caplan v. Fellheimer Eichen Braverman & Kaskey*, 68 F.3d 828, 839 (3d Cir. 1995). In the *Caplan* case, a party contracted to have an insurer defend and settle claims against it, then sought an injunction against the insurer when the insurer did settle the claims. The court found that was not irreparable injury. *Id*. In *Di Biase*, the Fourth Circuit affirmed the district court's denial of a preliminary injunction in part because the moving parties failed to show "that they availed themselves of opportunities to avoid the injuries of which they now complain." 872 F.3d at 235; *see also First African Tr. Bank Ltd., v. Bankers Trust Co.*, No. 92 CIV. 4900 (RPP), 1992 WL 276833, at *5 (S.D.N.Y. Sept. 28, 1992) ("To grant plaintiff's motion based on harm caused in part by its own actions . . . would unduly reward plaintiffs and eviscerate the requirement of irreparable harm."). Far from taking steps to avoid injury, the

Debtors and their Non-Debtor Affiliates have created the potential harm. This is not cognizable irreparable harm and does not create any entitlement to injunctive relief.

3. Potential indemnification claims do not present a likelihood of irreparable harm

80. The Debtors argue that, because they have "contractual obligations to indemnify" numerous parties, including TTC and Trane, continued asbestos litigation against those parties would effectively make the Debtors "the real party defendant" and thereby "eliminate the protections of the automatic stay."[209] On this basis, the Debtors contend that they will suffer irreparable harm as a result of continued litigation against the Protected Parties. This argument fails for the reasons explained below.

a. Any indemnification claims asserted by the Non-Debtor Affiliates would not result in harm, and even if they did, such harm is self-inflicted and does not merit injunctive relief

81. The Debtors' "contractual obligations to indemnify" the Non-Debtor Affiliates are contained in the Plans of Divisional Merger and the Support Agreements, which were key components of the Corporate Restructuring. Any harm flowing from these "contractual obligations to indemnify" that the Debtors incurred is self-inflicted. Courts have repeatedly held that self-inflicted harm is not irreparable harm worthy of preliminary injunctive relief. *See Salt Lake Tribune Publ'g Co. v. AT&T Corp.*, 320 F.3d 1081, 1106 (10th Cir. 2003) (holding that self-inflicted harm stemming from a contract plaintiff negotiated is not irreparable); *Caplan*, 68 F.3d at 839 (determining that outcome injunction proponents deem unacceptable was authorized by contract that proponents entered into and thus "such an outcome is not an irreparable injury"); *FIBA Leasing Co. v. Airdyne Indus., Inc.*, 826 F. Supp. 38, 39 (D. Mass. 1993) ("A preliminary injunction movant does not satisfy the irreparable harm criterion when the alleged harm is self-

[209] PI Motion at 27 (citation omitted).

inflicted.”). This is especially true where the alleged harm is the result of a contract that the injunction proponent entered into: “If Plaintiffs entered a disadvantageous contract, they must suffer the consequences.” *Dotster, Inc. v. Internet Corp. for Assigned Names & Numbers*, 296 F. Supp. 2d 1159, 1163 (C.D. Cal. 2003) (citing *Caplan*, 68 F.3d at 839). Here, the Debtors assumed their “contractual obligations to indemnify” strictly for bankruptcy purposes, to set up an argument that they would be harmed as a result of continuing litigation against any Non-Debtor Affiliates, and thereby confer the benefits of bankruptcy on the Non-Debtor Affiliates—namely, a stay of litigation—without the attendant burdens. The Debtors should not be permitted to manipulate the process and obtain the extraordinary remedy of a nationwide preliminary injunction in this fashion.

82. The Debtors’ reliance on *Piccinin* is misplaced because, there, the Fourth Circuit did not find that a debtor’s contractual duty to indemnify constituted a likelihood of irreparable harm. Rather, the Fourth Circuit addressed the debtor’s contractual or “absolute” duty to indemnify in the context of “the court’s *jurisdiction* to grant a stay or injunction of suits in other courts against co-defendants of the debtor or of third parties.” *Piccinin*, 788 F.2d at 998 (emphasis added). But establishing *jurisdiction* is not the same as proving the likelihood of irreparable harm. Indeed, in *Piccinin*, the nondebtor codefendants that A.H. Robins sought to protect from the Dalkon Shield lawsuits had contractual indemnification rights against the debtor *and* were additional insureds under the debtor’s products liability insurance policy, which was property of the estate. *Id*. at 1007-08, 1007 n.13. The district court in *Piccinin* issued a preliminary injunction in part because, if the lawsuits against the codefendants were successful, there would be an inequitable distribution and depletion of the limited insurance fund—which, again, was estate property—and this would constitute irreparable harm. *See id*. at 1008. The Fourth Circuit in *Piccinin* affirmed the preliminary injunction, noting, on an abuse-of-discretion standard of review, that the district court’s irreparable harm finding “does not appear unreasonable here.” *Id*.

83. The facts of *Piccinin* do not match up with those of this case because the Debtors posit that their asbestos insurance coverage is not shared with any nondebtor and that they have exclusive rights to that coverage.[210] Moreover, far from being "additional insureds," TTC and Trane have disclaimed any and all rights to the insurance allocated to the Debtors as part of the Corporate Restructuring. The insurance stipulation approved by this Court last year recites that TTC and Trane claim "no rights under the Certain Insurance Agreements nor rights to any proceeds due under such agreements."[211] The Insurance Stipulation further provides: "So long, but only so long as, an Insurer party does not challenge the allocation of its Old IRNJ Insurance Agreement to Aldrich or the allocation of its Old Trane Insurance Agreement to Murray, [new] Trane and [TTC] agree not to assert any claim or right against such Insurer party under the applicable Certain Insurance Agreement."[212] Thus, any indemnification claims asserted by TTC and Trane, or any other Protected Party, will not serve as a pathway to reach the Debtors' insurance.[213]

84. Additionally, the contractual rights to indemnification enjoyed by the Debtors were created a mere seven weeks before the Debtors filed chapter 11. There is no indication that the debtor in *Piccinin*, A.H. Robins, engaged in the kind of pre-bankruptcy corporate restructuring that Ingersoll-Rand and old Trane did, to separate their tort liabilities from their more valuable assets and business operations. And, unlike the limited insurance fund in *Piccinin*, the assets of

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[210] Hr'g Tr. 178:13-16, May 5, 2021 (Tananbaum Cross-Exam).

[211] Order Pursuant to Bankruptcy Rule 9019 Approving the Debtors' Stipulation with Certain Insurers ¶ D, 3:20-bk-30608, ECF No. 404 ("**Insurance Stipulation**").

[212] *Id.*

[213] Tananbaum Dep. 344:18-345:25 ("Q. Do any other entities, including nondebtor affiliates, have any rights under Aldrich or Murray's insurance assets? A.· I believe the answer to be no. . . . the most critical need was for the insurance to go with Aldrich and Murray, that meant that all the policies and all the rights and obligations flowing there from had to go to the debtors. Q. So, for example, Aldrich has the sole and exclusive rights of the coverage in place agreements and related insurance rights and policies that were allocated to it specifically? A. That's correct." Q. And the same is true for Murray? A. That's correct.").

the Non-Debtor Affiliates are not property of any estate and, indeed, are beyond this Court's *in rem* jurisdiction.

85. Even the Debtors' reading of *Piccinin* does not support a finding of irreparable harm here. Because of the Funding Agreements, the Debtors, unlike the debtor in *Piccinin*, would not be the ultimate indemnitors; new Trane and TTC would be. And, even if the Debtors had to use their cash to indemnify their Non-Debtor Affiliates for claims paid in the tort system, whatever funding shortfall the Debtors would experience would be erased by TTC and Trane's "uncapped"[214] obligations under the Funding Agreements to pay chapter 11 costs and fund a 524(g) trust. In other words, the net result would be a wash, without harm or injury to the Debtors or their reorganization.

b. Any claims for indemnification would be subject to the automatic stay and the normal claims administration processes in bankruptcy, and thus pose no risk of irreparable harm

86. The Debtors argue that "permitting claimants to seek to indirectly establish claims against the Debtor through actions against third parties with indemnity rights would prevent the Debtors from establishing a section 524(g) trust to consolidate and collectively resolve all asbestos claims against them . . . ."[215] But allowing asbestos lawsuits to proceed against the so-called Protected Parties will not "prevent" the Debtors from reorganizing and obtaining § 524(g) relief on their own. As noted above, the Debtors have shown no evidence that TTC and Trane cannot pay asbestos claims in the tort system *and* adequately fund a § 524(g) trust for the Debtors. And, aside from TTC and Trane, none of the Protected Parties has made a commitment to contribute to

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214 *See* Brown Dep. 140:20-22 ("[T]hat funding agreement is an uncapped resource that they can tap into.").

215 PI Motion at 28.

any § 524(g) trust in these cases,[216] so no recovery from other Non-Debtor Affiliates or Indemnified Parties will diminish any funding already promised for such a trust.

87. Additionally, if asbestos lawsuits against Protected Parties proceed and result in indemnification claims being asserted against the Debtors, those claims will not topple the reorganization because those claims will be treated under the normal processes of claims administration in bankruptcy. Because all of the indemnification obligations noted by the Debtors arise from prepetition agreements,[217] any claim for indemnification asserted by a Protected Party—whether it be a Non-Debtor Affiliate, an Indemnified Party, or an Insurer—is a prepetition claim. "Where an indemnification agreement is entered into prior to a bankruptcy filing, such an execution gives the indemnitee a contingent prepetition claim. This is so even where the conduct giving rise to indemnification occurs postpetition." *In re Highland Grp., Inc.*, 136 B.R. 475, 481 (Bankr. N.D. Ohio 1992) (citations omitted); *see also In re Remington Rand Corp.*, 836 F.2d 825, 830 (3d Cir. 1988) (stating that "an indemnity or surety agreement creates a right to payment, albeit contingent, between the contracting parties immediately upon the signing of the agreement"); *In re Bentley Funding Grp.*, No. 00-13386, 2001 WL 34054525, at *2 (Bankr. E.D. Va. Jan. 2, 2001) (stating that, "while AXA's indemnification claim for the post-petition expenditures did not technically mature until after the debtor's bankruptcy petition was filed, the claim had existed as a *contingent claim* since the date of the [prepetition] indemnification agreement's execution"); *In re Chateaugay Corp.*, 102 B.R. 335, 356 (Bankr. S.D.N.Y. 1989) (holding that indemnity loss claims under an agreement entered into and executed prior to the filing date are clearly prepetition claims). Accordingly, any indemnification claims against the

[216] Tananbaum Dep. 254:4-25.

[217] Aldrich Plan of Divisional Merger (ACC Ex. 25) ¶ 9(b); Murray Plan of Divisional Merger (ACC Ex. 26) ¶ 9(b); Aldrich Support Agreement (ACC Ex. 77) § 3; Murray Support Agreement (ACC Ex. 211) § 3; Tananbaum Supp. Decl. ¶ 15 (stating that Debtors' indemnification obligations arise from same).

Debtors are stayed under 11 U.S.C. § 362(a) and are not poised to inflict "irreparable harm" on the Debtors.

88. Moreover, an indemnification claim will not have accrued or ripened under applicable nonbankruptcy law unless and until the Protected Party has paid the settlement or judgment amount to the asbestos plaintiff. *See* Restatement (Third) of Torts: Apportionment Liab. § 22 cmt. b (2000) (stating that "an indemnitee must extinguish the liability of the indemnitor to collect indemnity").[218] Absent such payment, the party would have nothing more than a contingent prepetition claim subject to disallowance under 11 U.S.C. § 502(e)(1)(B). *See In re Drexel Burnham Lambert Grp., Inc.*, 146 B.R. 92, 96 (S.D.N.Y. 1992) (stating that "it is well-established that contingent claims for indemnity are covered by § 502(e)(1)(B) where the claimant is co-liable with the debtor on the underlying claim"). Indeed, § 502(e) shows that Congress expressly contemplated that corporate debtors would face indemnification claims, and thus the mere prospect of such claims cannot supply the basis for a finding a likelihood of irreparable harm. If Congress believed that indemnification claims against debtors were enough to require an injunction to prevent irreparable harm to the estate, Congress could have enacted a stay to protect nondebtors in chapter 11 cases, just as it enacted a stay shielding nondebtor individuals in chapter 13. *See* 11 U.S.C. § 1301(a). But, of course, Congress has not done so.

89. Even if the party were to pay the settlement or judgment amount in order to have a non-contingent indemnification claim, such a claim still would be subject to allowance or disallowance under 11 U.S.C. § 502(b). And, even if the indemnification claim were ultimately

[218] *See also Schenkel & Shulz, Inc. v. Hermon F. Fox & Assocs., P.C.*, 636 S.E.2d 835, 842 (N.C. Ct. App. 2006) (stating that "a cause of action on an obligation to indemnify normally accrues when the indemnitee suffers actual loss"), *aff'd*, 658 S.E.2d 918 (N.C. 2008); *In re Food Barn Stores, Inc.*, 175 B.R. 723, 727 (Bankr. W.D. Mo. 1994) (stating that, under Missouri law, "[c]laims for indemnification are held to arise when payment has been made under compulsion by the indemnitee" (alteration in original and internal quotation marks omitted) (quoting *Am. Bank of Richmond v. Mo. Farmers Ass'n, Inc.*, 695 S.W.2d 150, 152 (Mo. Ct. App. 1985))).

allowed, it would be treated as any other unsecured claim allowed in its class under a plan of reorganization, an outcome that hardly gives rise to "irreparable harm."

4. Mere risk of res judicata or collateral estoppel does not present a likelihood of irreparable harm

90. Because they are protected by the automatic stay, the Debtors either would not be named as defendants in any asbestos lawsuits against the Protected Parties or would be severed as defendants from those suits so that the suits could continue. Nevertheless, the Debtors contend that, if asbestos suits were allowed to continue against any of the Protected Parties, an adverse finding or judgment against a Protected Party "may" bind the Debtors and thus "potentially establish[ ]" liability against them.[219] Under such a scenario, the Debtors contend that they "could not stand idly by" and would have to actively defend the Protected Parties even though they would not be parties to the litigation.[220]

91. The Debtors' arguments are speculative and unsupported by evidence. The Debtors could not identify any instance where res judicata and collateral estoppel were invoked against a Protected Party, and could not cite any example of an asbestos plaintiff using res judicata against an asbestos defendant.[221]

92. Additionally, the Debtors' arguments do not hold up under sensible logic and scrutiny. To begin with, the Debtors are positing that there is a likelihood of successful reorganization under § 524(g). But in 524(g) reorganizations, a debtor's liability for each asbestos claim is "established" under the terms of the court-approved trust distribution procedures,[222] and

[219] PI Motion at 29. The words "may bind" and "potentially establish[ ]" present mere possibilities. They do not establish a *likelihood* of irreparable harm.

[220] *Id.*

[221] Hr'g Tr. 178:21-179:4; 179:21-180:14; 181:5-18, May 5, 2021 (Tananbaum Cross-Exam); Debtors 30(b)(6) Dep. 197:13-199:3 (Tananbaum); Tananbaum Dep. 328:9-329:4.

[222] *See generally* Sepco Asbestos Personal Injury Trust Distribution Procedures, *In re Sepco Corp.*, No. 16-50058 (Bankr. N.D. Ohio Oct. 4, 2019), ECF No. 645-2.

the Debtors would have reorganized and obtained the protection of a discharge and § 524(g) channeling injunction in any event. The doctrines of res judicata and collateral estoppel thus pose no risk to the Debtors' ability to reorganize and resolve their asbestos liabilities even under their own assertions.

93. Even if res judicata or collateral estoppel were invoked against the Debtors in the future, this Court would retain discretion to reject the application of res judicata and collateral estoppel as inequitable to the Debtors. *See, e.g.*, *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 331 (1979) (courts have "broad discretion to determine" whether offensive collateral estoppel "should be applied"). Indeed, courts have rejected the application of those doctrines when issued against a debtor who was in bankruptcy when the relevant adverse judgment was rendered. *In re Eagleston*, 236 B.R. 183 (Bankr. D. Md. 1999) (refusing to give collateral estoppel effect to a judgment that had been entered against the debtor's professional corporation in a non-bankruptcy action after the debtor had entered bankruptcy); *In re Plan 4 College, Inc.*, No. 09-17952DK, 2009 WL 3208285, at *2 (Bankr. D. Md. Sept. 24, 2009) ("To the extent that courts may have held that collateral estoppel may bind a debtor where an adverse judgment is entered against non-debtor parties in an action which has been stayed by the automatic stay, this court must respectfully disagree."). As this Court will retain such discretion, the Debtors' argument that these doctrines "may affect" a determination of the Debtors' liability in an estimation or the treatment of claims under trust distribution procedures filed in this Court[223] raises only a remote possibility of harm rather than a likelihood thereof.

94. Additionally, courts have rejected the asserted threat of res judicata and collateral estoppel as a basis for protecting a nondebtor through injunctive relief. In *Queenie, Ltd. v. Nygard*

[223] PI Reply at 24 n.28.

International, 321 F.3d 282 (2d Cir. 2003), for example, the Second Circuit refused to "extend" the automatic stay to two nondebtor codefendants in copyright litigation, noting that it had "not located any decision applying the stay to a non-debtor solely because of an apprehended later use against the debtor of offensive collateral estoppel or the precedential effect of an adverse decision." *Id*. at 288. "If such apprehension could support application of the stay," the court said, "there would be vast and unwarranted interference with creditors' enforcement of their rights against non-debtor co-defendants." *Id.*; *see also Cook v. Blazer*, No. 7:15CV456, 2016 WL 3453663, at *1 (W.D. Va. June 20, 2016) (refusing to stay litigation because of "an apprehended later use [of] . . . collateral estoppel or the precedential effect of an adverse decision" because doing so would cause a "vast and unwarranted interference with creditors' enforcement of their rights against non-debtor co-defendants" (quoting *Queenie, Ltd.*, 321 F.3d at 288)); *Forcine Concrete & Constr. Co. v. Manning Equip. Sales & Serv.*, 426 B.R. 520, 526 (E.D. Pa. 2010) ("[T]his court has discovered no post-*Queenie* cases in this district extending a stay on such grounds.").

95. The Debtors' reliance on the *Sudbury*, *Manville*, and *American Film* cases is misplaced.[224] First, in none of these cases was a concern about collateral estoppel the sole justification for finding irreparable harm. Second, each of these cases presented more than the mere speculative risk of collateral estoppel that the Debtors provide here. In these three cases, the litigation enjoined was against the debtors' directors and officers for conduct in their capacities as such. *See Am. Film Techs., Inc.*, 175 B.R. at 848-50; *Sudbury, Inc.*, 140 B.R. at 463; *Johns-Manville Corp.*, 26 B.R. at 429. The courts reasoned that if those directors and officers were found liable, their liability would be imputed to their debtor-principals as a matter of agency law; and the

[224] PI Motion at 29 (citing *In re Am. Film Techs., Inc.*, 175 B.R. 847 (D. Del. 1984), *In re Sudbury, Inc.*, 140 B.R. 461 (Bankr. N.D. Ohio 1992), and *In re Johns-Manville Corp.*, 26 B.R. 420 (Bankr. S.D.N.Y. 1983), *aff'd*, 40 B.R. 219 (S.D.N.Y.), *and vacated in part*, 41 B.R. 926 (S.D.N.Y. 1984)).

debtors could, consequently, be found liable for the acts of the officers and directors via collateral estoppel. *See Am. Film Techs., Inc.*, 175 B.R. at 850 (collateral estoppel would prevent corporate debtor from denying liability for actions of director if director found liable as agent for debtor); *Johns-Manville Corp.*, 26 B.R. at 429 (if corporate debtor is found to be "controlling nonparty" then "could be collaterally estopped in subsequent suits from relitigating issues determined against its officers and directors"); *Sudbury, Inc.*, 140 B.R. at 463 (if debtor's officers and directors found liable for fraud while acting as such, liability would be imputed to corporate debtor and could be determined on collateral estoppel principles). In contrast, here, none of the Protected Parties is an agent of the Debtors. Thus, the likelihood of collateral estoppel that the courts found in *Sudbury*, *Manville*, and *American Film* is not present here.

5. Potential evidentiary prejudice from asbestos litigation does not present a likelihood of irreparable harm

96. The Debtors contend that, if asbestos lawsuits against nondebtors are permitted to proceed, parties could "use statements, testimony, and other evidence" from those proceedings to "establish Aldrich/Murray Asbestos Claims against the Debtors."[225] This argument is unavailing because, again, the Debtors are positing that they will likely obtain a successful reorganization with § 524(g) and, in that event, Aldrich/Murray Asbestos Claims would be established against the Debtors according to the trust distribution procedures approved by this Court.

97. The cases cited by the Debtors in support of their evidentiary prejudice argument are inapposite. In the PI Motion, the Debtors quote a passage in the *Johns-Manville* case referring to the putative danger of a debtor's personnel being made to testify in nondebtor litigation and then being confronted with their prior testimony in subsequent proceedings.[226] But, in that case, the

[225] *Id.* (citation omitted).

[226] *Id.* at 29-30 (quoting *In re Johns-Manville Corp.*, 40 B.R. 219, 225 (S.D.N.Y. 1984)).

court merely stayed discovery of a limited number of Manville employees, a far narrower and tailored remedy to address such a risk than enjoining all litigation nationwide against nondebtors.[227]

98. In the *W.R. Grace* decision cited by the Debtors, the court extended a previously entered preliminary injunction to a railroad company to protect it from asbestos claims arising from the debtors' mining operations in Libby, Montana. Although the court in *W.R. Grace* briefly mentioned the potential for evidentiary prejudice or record taint in its opinion,[228] this was not the principal driving force behind the court's decision to enjoin litigation against the railroad. Indeed, the *Grace* court did not even describe the risk of record taint as a likely irreparable harm, but rather as a concern for the Debtor that the court considered when determining the relative hardship of the parties.[229] In sum, the Debtors have not shown a likelihood of irreparable harm stemming from potential evidentiary prejudice.

6. The Debtors' key personnel will not be diverted so as to constitute irreparable injury

99. The Debtors assert that, if asbestos lawsuits against the Protected Parties are not enjoined, the Debtors' "key personnel"—Allan Tananbaum, Robert Sands, Amy Roeder, and Cathleen Bowen[230]— will be diverted away from negotiating a possible § 524(g) plan because they could be "required to spend substantial time managing and directing the activities involved in the day-to-day defense of these lawsuits."[231] However, the Debtors have failed to provide evidence that these personnel (i) are necessary to the Debtors' negotiation of a global settlement and confirmation of a consensual plan; (ii) would, in their duties to the Debtors, have any role defending asbestos lawsuits against nondebtors; or (iii) could not be replaced or supplemented

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[227] *See Johns-Manville Corp.*, 40 B.R. at 225-26.

[228] *In re W.R. Grace & Co.*, 386 B.R. 17, 34 (Bankr. D. Del. 2008).

[229] *See id.* at 33-34.

[230] ACC Ex. 107, at 3.

[231] PI Motion at 30 (citing Tananbaum Decl. ¶ 40).

with other personnel to the extent they are distracted by asbestos lawsuits against nondebtors. The Debtors have also failed to provide evidence that the experience and expertise of the "key personnel" are so unique and specialized that only the key personnel could perform their respective assigned roles.

100. Regardless, any alleged harm from these personnel being distracted would be a self-inflicted harm that cannot support injunctive relief. *Caplan*, 68 F.3d at 839. If the Debtors have insufficient personnel, it is because the Corporate Restructuring left them without dedicated employees. If the Debtors' in-house asbestos defense team is too understaffed to effectively manage the defense of Protected Parties against asbestos suits, it is because the Trane organization intentionally downsized that in-house defense team. And, if the Debtors' in-house legal team were ultimately called away by the Protected Parties, it will only be because the Debtors permitted them to be called away under the Secondment Agreement.

D. The Balance of Equities Favors Asbestos Victims, Who Would Be Prejudiced by the Requested Injunction

101. In considering the equities, the Court "must balance the competing claims of injury" and "consider the effect on each party of the granting or withholding of the requested relief." *Winter*, 555 U.S. at 24. As explained above, the Debtors fail to clearly show any likelihood of irreparable harm and are thus ineligible to receive injunctive relief. Many of the putative harms noted by the Debtors, such as indemnification obligations and potentially distracted personnel, are attributable to the Corporate Restructuring and are therefore self-inflicted. On the other hand, if the Court were to grant the preliminary injunction, the prejudice imposed on innocent asbestos victims would be substantial and would far outweigh any possible harm to the Debtors.

1. Asbestos victims would experience more than mere delay as a result of an injunction; they would suffer prejudice as to their claims and legal rights

102. In *Williford v. Armstrong World Industries, Inc.*, 715 F.2d 124 (4th Cir. 1983), the Fourth Circuit affirmed the denial of a litigation stay in part because of the harm and manifest injustice that would be visited on an asbestos plaintiff. The asbestos co-defendants in *Williford* sought to stay the trial in the suit against them pending resolution of the chapter 11 cases filed by four of the defendants, including Johns-Manville Sales Corporation. The district court denied the requested stay, and the defendants appealed. In affirming the denial of the stay, the Fourth Circuit gave greater weight to "the needs of a plaintiff in declining health as opposed to the practical problems imposed by the proceedings in bankruptcy, which very well could be pending for a long period of time." *Id.* at 128. Indeed, the Fourth Circuit recognized that a stay of litigation against nondebtors "under such circumstances would work *manifest injustice* to the claimant." *Id.* (emphasis added). The Fourth Circuit observed that, without the stay, "[p]iecemeal litigation no doubt will result from the absence of the defendants now in bankruptcy court." *Id.* But the Fourth Circuit could "discern no clear case of hardship or inequity in requiring the appellants (the remaining defendants below) from proceeding to trial." *Id.* As in *Williford*, the Court puts greater weight on the human needs of asbestos claimants, many of whom are elderly and in declining health, and the manifest injustice that would result if asbestos lawsuits against the so-called "Protected Parties" are enjoined.

103. The Debtors assert that claimants would suffer only mere delay as a result of their claims being enjoined.[232] But, in this case, delay would have consequences. Claimants may not receive funds for needed medical care or to support their families. *See, e.g.*, *Kadel v. Folwell*, 446 F. Supp. 3d 1, 11 (M.D.N.C. 2020) (identifying harm from continued denial of healthcare coverage

[232] PI Motion at 33 (quoting *Bestwall*, 606 B.R. at 257).

for medically necessary procedures). In some instances, claimants will die during the delay,[233] as even the Debtors essentially acknowledge: their own expert, Dr. Charles Mullin, testified that nearly all the mesothelioma claimants alive today, who would be affected by a preliminary injunction, would be dead within three years, if not sooner.[234] The death of a claimant can and will result in lost legal rights and compensation because some states limit the causes of action or damages a decedent's estate or personal representative may assert. *See, e.g.*, CAL. CIV. PROC. CODE § 337.34 (providing that damages for pain and suffering do not survive death of tort victim); FLA. STAT. ANN. § 768.21 (specifying damages available to decedent's estate or personal representative); *see also generally Williams v. Pep Boys Manny Moe & Jack of Cal.*, 238 Cal. Rptr. 3d 809, 820 (2018), *as modified* (Sept. 24, 2018) (holding that "lost years" damages unavailable in survival/wrongful death causes of action); *Mattyasovszky v. W. Towns Bus Co.*, 330 N.E.2d 509, 510 (Ill. 1975) (holding that punitive damages may not be recovered in an action under the Illinois Survival Act). A lengthy delay also presents the risk of critical evidence being lost, as aging witnesses die or their memories fade. *See, e.g.*, *Shearin v. Doe 1 through 10*, No. CIV.A. 03-503-JJF, 2007 WL 4365621, at *2 (D. Del. Dec. 11, 2007) ("The lengthy passage of time involves the risk of loss of evidence or the fading of memory."). Thus, the Court concludes that delay would prejudice asbestos victims, in the form of lost claims, lost remedies, lost evidence, and the loss of immediate financial support that an award of damages could provide. Even the Debtors' chief legal officer admitted that delay would harm asbestos victims.[235]

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[233] Such unfortunate deaths occurred in *Bestwall* and *Garlock*. *See, e.g.*, Second Motion of the Official Committee of Asbestos Claimants of Bestwall LLC to Substitute Committee Member, *In re Bestwall LLC*, No. 3:17-bk-31795 (Bankr. W.D.N.C. Oct. 5, 2018), ECF No. 648; Motion of the Official Committee of Asbestos Personal Injury Claimants to Substitute Committee Member (Burns), *In re Garlock Sealing Techs. LLC*, No. 3:10-bk-31607 (Bankr. W.D.N.C. Dec. 29, 2015), ECF No. 5192.

[234] Hr'g Tr. 363:23-25, May 6, 2021 (Mullin Cross-Exam) ("Q. And within three years virtually all of those mesothelioma claimants will be dead, correct? A. Unfortunately, probably even sooner than that.").

[235] Tananbaum Dep. 259:6-8 ("If you're balancing harms, it's impossible to assert, and I won't, that there's no harm from delay."); Hr'g Tr. 182:4-10, May 5, 2021 (Tananbaum Cross-Exam).

104. The Debtors also seek to shift the balance of equities in their favor by claiming that some victims may be able to obtain compensation from other defendants.[236] On this point, the Debtors rely chiefly on the testimony of their expert, Dr. Mullin. The Court, however, declines to give Dr. Mullin's testimony the weight that the Debtors urge. The Garlock data that Dr. Mullin principally relied on for his conclusions is more than a decade old and is not necessarily statistically representative.[237] Additionally, the Committee member data on which Dr. Mullin relied is not statistically representative.[238] And the asbestos trust data reflected in his figures relate to forward-looking estimates that his firm, Bates White, made almost 10 years ago.[239]

105. Moreover, saying that asbestos claimants can recover from other defendants in the tort system fails to account for victims whose strongest evidence of asbestos exposure pertains to Ingersoll-Rand and Trane asbestos products. The compensation that victims receive from other defendants may also be significantly affected by principles of several liability if TTC, Trane, and other non-insurer Protected Parties are not available to be sued in the tort system. For example, in some jurisdictions, solvent defendants may be able to point to the "empty chairs" left by TTC and Trane in the courtroom and claim that TTC and Trane were principally at fault for the asbestos plaintiff's injuries, in the hopes that this will reduce, if not eliminate, the solvent defendants' several share of the damages. "The practical effect of a defendant proving that the 'empty chair' was responsible for the accident is that the plaintiff will receive no recovery." *Brodsky v. Grinnell Haulers, Inc.*, 853 A.2d 940, 947-48 (N.J. 2004) (holding that "the trier of fact must determine the percentage of fault or negligence of a party dismissed from a negligence action following that party's discharge in bankruptcy"); *see also* Dan B. Dobbs, *et al.*, THE LAW OF TORTS § 495 (2d ed.

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[236] PI Motion at 32.

[237] Hr'g Tr. 364:21-24; 365:4-7, May 6, 2021 (Mullin Cross-Exam).

[238] *Id.* at 366:13-19.

[239] *Id.* at 365:21-366:8.

2019) (stating that a "number of courts have held that the negligence of immune persons must be considered in determining the fault percentages of other tortfeasors" (footnote omitted)).

2. The Corporate Restructuring and bankruptcy filings have harmed and prejudiced the rights of asbestos victims

106. The Committee's expert witness, Mr. Matthew Diaz, testified on how the Corporate Restructuring and the Debtors' subsequent bankruptcy filings have harmed asbestos victims.[240] According to Mr. Diaz's calculations, drawn from the Debtors' own numbers, the Corporate Restructuring separated 99% of Ingersoll-Rand's and 98% of old Trane's assets from their asbestos liabilities.[241] As a result, the claims of asbestos victims have been isolated with two special purpose entities (the Debtors) that have entered chapter 11.

107. The Corporate Restructuring and subsequent bankruptcy filings have structurally subordinated, and undermined the recourse of, asbestos creditors. Before the Corporate Restructuring, asbestos claimants who prevailed in their lawsuits would have been able to fix a judgment lien on all of Ingersoll-Rand's and Trane's assets. After the Corporate Restructuring, the recourse of asbestos claimants became limited to a certain amount of cash, certain insurance rights, equity interests in 200 Park and ClimateLabs, and the unsecured and contingent Funding Agreements. Instead of having direct recourse against all the former assets of Ingersoll-Rand and Trane, asbestos claimants must now depend on the Debtors' willingness to press their rights under the Funding Agreements and their ability to do so successfully, given the highly contingent nature of TTC's and Trane's obligations to pay thereunder.[242] As a result of the bankruptcy filings, asbestos lawsuits are stayed. The non-asbestos creditors of TTC and Trane, in contrast, are not stayed. Free to conduct "business as usual," TTC and Trane are paying those creditors in the

240 Hr'g Tr. 399:11-404:4, May 6, 2021 (Diaz Direct).

241 *Id.* at 394:1-3; 396:11-18.

242 *Id*. at 400:8-404:4.

ordinary course of business.[243] The Corporate Restructuring and bankruptcy filings have therefore created a "status quo" that is inequitable to asbestos creditors and should not be preserved through a preliminary injunction.

108. Underscoring this inequity, the Corporate Restructuring was an abuse of the Texas statute under which it was implemented. The divisional merger statute was never intended as a device to disadvantage creditors the way the Debtors and their affiliates have done here. Indeed, the Texas legislature made a conscious decision to include a provision in the Texas Business Organizations Code—section 10.901—that preserves all "rights of . . . creditor[s] under existing laws," notwithstanding any other provision in that Code, including the divisional merger provisions. TEX. BUS. ORGS. CODE § 10.901 ("This code does not affect, nullify, or repeal the antitrust laws or abridge any right or rights of any creditor under existing laws."). The purpose of section 10.901 is to protect creditors from companies that use the divisional merger statute to impact creditor rights.[244]

109. By allocating all of the asbestos liability to one company and moving the valuable operating assets to another, the Debtors' predecessors used the divisional merger statute in an untenable and egregious manner.[245] The Debtors are asking this Court not only to endorse this course of conduct but to further it through the requested preliminary injunction.

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[243] *Id.* at 399:11-400:7; 401:15-18; ACC Ex. 18 (emails dated December 2019 describing Trane and TTC's operations as "business as usual" post-Corporate Restructuring).

[244] According to one of the primary authors of the Texas divisional merger statute, the preservation of creditor rights was meant for the scenario where "in a merger with multiple survivors, the parties allocate a creditor's claim to an inadequately capitalized or insolvent corporation." Curtis Huff, *The New Texas Business Corporation Act Merger Provisions*, 21 St. Mary's L.J. 109, 133 (1989).

[245] Reorganizations like the Corporate Restructuring have been described as "egregious" usages of the Texas statute by at least one commentator. *See* Cliff Ernst, *Steps to Accomplish a Divisional Merger*, *in* DEVISIVE [SIC] MERGERS: HOW TO DIVIDE AN ENTITY INTO TWO OR MORE ENTITIES UNDER A MERGER AUTHORIZED BY THE TEXAS BUSINESS ORGANIZATION CODE, 2016 WL 10610449 (Tex. 2016) ("[O]ne could certainly imagine an egregious situation where all assets were allocated to one party to the merger and all liabilities were allocated to another party without assets . . . .").

110. The Court declines to reward the Debtors and their affiliates for this conduct with a preliminary injunction. It is "well-established that a litigant who seeks equity must do equity." *In re U.S. Lines, Inc.*, 318 F.3d 432, 437 (2d Cir. 2003); *see also Minnesota Muskies, Inc. v. Hudson*, 294 F. Supp. 979, 990 (M.D.N.C. 1969) ("The doors of a court of equity are closed to one tainted with unfairness or injustice relative to the matter in which he seeks relief . . . ."). The inequitable and discriminatory treatment of asbestos creditors here requires denial of injunctive relief.

3. A preliminary injunction in the wake of the Corporate Restructuring will not facilitate progress toward a consensual § 524(g) plan

111. A preliminary injunction would effectively confer the benefits of bankruptcy on TTC and Trane without subjecting them to the obligations of bankruptcy. The arrangement fashioned by the Debtors and their affiliates, through the Corporate Restructuring, would alleviate the challenges experienced in typical reorganizations—such as the impact on customers, vendors, and employees—that normally incentivize debtors to exit chapter 11 quickly.[246] Had Ingersoll-Rand and Trane simply filed chapter 11 in May 2020, they would have automatically obtained the litigation stay the Debtors now seek but also would have had to comply with the requirements of chapter 11.

112. As a result of the Corporate Restructuring, the Non-Debtor Affiliates, especially new Trane, are presently free to engage in "cash management" practices that upstream substantial earnings to the parent holding companies.[247] From 2017 through April 2020, Ingersoll-Rand (now TTC) and Trane paid their parent companies distributions totaling close to $9 billion.[248] There is no evidence to suggest that such distributions have stopped while the Debtors have been in chapter

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[246] *See* Hr'g Tr. 401:9-402:23, May 6, 2021 (Diaz Direct).

[247] *See supra* ¶¶ 48-50.

[248] *See* ACC Ex. 224.

11. Had the Non-Debtor Affiliates filed chapter 11, they would have been unable to upstream cash to their parent companies because of the absolute priority rule. But the Corporate Restructuring has spared the Non-Debtor Affiliates the "inconvenience" of abiding by the absolute priority rule and paying all creditors first.

113. Moreover, these distributions and cash management strategies have put the ultimate parent holding company, Trane plc, in a position to pay handsome dividends to its own shareholders. Some of these shareholders are top-level executives in the Trane organization, who receive shares as part of their compensation packages.[249] Thus, while asbestos victims are ring-fenced and isolated in these chapter 11 cases, unable to obtain redress for Ingersoll-Rand's and Trane's asbestos torts, top-level executives in the Trane organization are benefiting from Trane plc's payment of dividends on a quarterly basis.[250] And, by keeping Trane plc and the other Non-Debtor Affiliates out of bankruptcy, these executives face no risk of a diminished share price that might result if these nondebtors were to file chapter 11. This not only constitutes inequitable and discriminatory treatment of asbestos creditors but also removes the type of incentives that debtors and their management teams normally have to seek a seasonable exit from chapter 11.

114. With TTC and Trane free to conduct business as usual, and with shareholders benefiting from upstreamed cash, the typical economic incentives for the Debtors to resolve their chapter 11 cases in a timely manner are greatly reduced, if not eliminated, which, absent relief from this Court, would in turn likely keep asbestos victims trapped within the bankruptcy process

[249] Non-Debtor Affiliates 30(b)(6) Dep. 41:13-42:12 (Kuehn).

[250] Daudelin Dep. 91:23-93:10; 93:19-94:19; 95:6-11, Mar. 9, 2021 (Trane plc paid quarterly dividends for each quarter of 2020); *Trane Technologies Increases Dividend 11% and Authorizes New $2 Billion Share Repurchase Program*, TRANE TECHNOLOGIES (Feb. 4, 2021), https://investors.tranetechnologies.com/news-and-events/news-releases/news-release-details/2021/Trane-Technologies-Increases-Dividend-11-and-Authorizes-New-2-Billion-Share-Repurchase-Program/default.aspx (stating that Trane plc's board of directors authorized an 11% increase to its quarterly dividend payable on March 31, 2021, and that "Trane Technologies [plc] has paid consecutive quarterly cash dividends on its common shares since 1919 and annual dividends since 1910").

without payment of their claims for additional years.[251] Further exacerbating this untenable situation are the changes to the Funding Agreements that have the intended effect of impairing the statutory rights of the Committee and asbestos creditors, once exclusivity has ended, to propose a competing chapter 11 plan.[252] The combination of the Corporate Restructuring and the Funding Agreement changes are intended to isolate and contain asbestos victims in these chapter 11 cases for the foreseeable future, thereby giving the Debtors undue leverage in shaping the ultimate outcome of these cases. This is not equitable treatment of creditors that warrants a preliminary injunction.

115. Additionally, if a preliminary injunction were granted, TTC and Trane would gain not only an undue advantage in leverage but also would enjoy a significant financial advantage as they could continue with business as usual while enjoying an indefinite asbestos payment holiday. According to the Debtors' Informational Brief, the Debtors (or their predecessors) were spending approximately $100 million annually on asbestos defense and indemnity.[253] Even with the costs of the bankruptcy, TTC and Trane can expect to enjoy millions of dollars of savings for each year these chapter 11 cases continue. The incentives created by the structure of these cases are opposite to the incentives that would result in a seasonable resolution.

116. For the reasons stated above, the balance of equities favors asbestos claimants and tips decidedly against the award of a preliminary injunction.

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[251] ACC Ex. 18, at TRANE_00006711 (stating on December 4, 2019 that bankruptcy was estimated to last 2 to 5 years); ACC Ex. 192, at TRANE_00014949 (stating on March 5, 2020 that the Debtors expected to stay in bankruptcy for 5 to 8 years). Moreover, a number of the intercompany agreements have initial terms of five years, which supports the idea that the Debtors had planned for a multiyear bankruptcy. ACC Ex. 89, at DEBTORS_00001650 (five-year initial term); ACC Ex. 90, at DEBTORS_00003330 (same).

[252] *See supra* ¶¶ 40-42.

[253] *See* Informational Brief at 7.

E. A Preliminary Injunction Would Not Be in the Public Interest

117. The Debtors assert that the public's interest is in a successful reorganization.[254] That interest, however, would apply in every case. The Trane enterprise did not initiate a typical reorganization in which all the relevant assets and substantial business operations are made subject to this Court's supervision in exchange for preserving going-concern value and saving jobs. Here, the Debtors are mere holding companies—indeed, special bankruptcy vehicles—and reduced, stripped-down versions of Ingersoll-Rand and old Trane. The business operations of TTC and Trane have been left outside this Court's jurisdiction. And asbestos creditors have been left without essential creditor protections with respect to TTC and Trane, such as the absolute priority rule. TTC and Trane are trying to skirt the normal bankruptcy rules and creditor protections to obtain the benefits of a chapter 11 reorganization without the attendant burdens. If an injunction were granted, TTC and Trane would be free of the disclosure and reporting requirements that debtors in bankruptcy must fulfill. They would be outside the Court's supervision and able to engage in non-ordinary course transactions without notice to creditors and leave of the Court. They would be exempt from paying sizeable quarterly fees to the U.S. government. In sum, a preliminary injunction would undermine the carefully structured scheme that Congress designed to balance the competing interests of debtors and creditors. The public has no interest in that kind of reorganization.

118. Even the fact that the Debtors sought chapter 11 relief with the Ingersoll-Rand and Trane asbestos liabilities, but not the Ingersoll-Rand and Trane assets, undermines a basic tenet of bankruptcy:

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[254] PI Motion at 34.

> It has been a cardinal principle of bankruptcy law from the beginning that its effects do not normally benefit those who have not themselves 'come into' the bankruptcy court with their liabilities *and* all their assets . . . . To violate this principle on the appealing facts of a particular case, where no specific necessity for doing so is set forth, is simply to invite a wholesale restructuring of the expectations of those involved in commercial transactions without any indication from Congress that such a profound change was intended.

In re Venture Props., Inc., 37 B.R. 175, 177 (Bankr. D.N.H. 1984), *quoted in Robbins v. Chase Manhattan Bank, N.A.*, No. 93-0063-H, 1994 WL 149597, at *6 (W.D. Va. Apr. 4, 1994). As the Fourth Circuit observed years ago, it "was never contemplated that . . . [bankruptcy] should be used to perpetrate fraud or to shield assets from creditors. It is elementary that a bankrupt is not entitled to a discharge unless and until he has honestly surrendered his assets for the benefit of creditors." *In re Seats*, 537 F.2d 1176, 1178 (4th Cir. 1976) (internal quotation marks omitted) (quoting *Phillips v. Krakower*, 46 F.2d 764, 765 (4th Cir. 1931)). If the failure to surrender assets can lead to denial of a discharge, then the Debtors' request for preliminary injunction must also be denied.

119. Because the Debtors fail to satisfy all elements of the injunction standard set out in *Winter*, the Court denies their request for a preliminary injunction.

F. Alternatively, as to TTC and Trane, This Court Exercises Its Equitable Discretion and Denies the Preliminary Injunction Based on Federal Preemption

120. Through their chapter 11 cases, the Debtors seek to provide, on a temporary and permanent basis, bankruptcy protection via injunctive relief for nondebtors TTC, Trane, and other Protected Parties. But the Bankruptcy Code generally, and § 524(g) in particular, preempts Ingersoll-Rand and old Trane's efforts under the Texas divisional merger law to cabin all of their asbestos liabilities with the Debtors. *See* 11 U.S.C. § 524(g). These chapter 11 cases cannot shed the direct liability of nondebtors TTC and new Trane, even by way of a § 524(g) channeling injunction. This Court will not provide § 105(a) relief where § 524(g) relief is unavailable.

1. Ingersoll-Rand's and Trane's use of the Texas divisional merger law conflicts with the purposes of § 524(g)

121. Conflict preemption exists where state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941). "[A]ny state legislation which frustrates the full effectiveness of federal law is rendered invalid by the Supremacy Clause." *Perez v. Campbell*, 402 U.S. 637, 652 (1971).

122. The Texas divisional merger law provides that, in a divisional merger, a new entity that is not assigned certain liabilities from the old entity does not have those liabilities. TEX. BUS. ORGS. CODE § 10.008(a)(4). An "obstacle to the accomplishment and execution of the full purposes and objectives" of the Bankruptcy Code exists in that the Texas divisional merger law does not provide the protections Congress deemed necessary in § 524(g) for unmanifested asbestos claims. The Texas divisional merger law, "as applied" to asbestos claims, only requires that an entity file a certificate of merger with the Texas secretary of state or county clerk, and the liabilities will vest in the entity identified in the plan of divisional merger, leaving the other entity free of asbestos liabilities. *Id.* §§ 10.007, 10.008(a)(4).

123. Restructuring asbestos liabilities under § 524(g), however, requires the satisfaction of a significant number of procedural and due process protections. Among other requirements, (1) the court must appoint a legal representative to represent the shared interests of future asbestos claimants; (2) the court must determine that an asbestos channeling injunction would be "fair and equitable" to future claimants in light of the benefits provided or to be provided; and (3) at least 75% of the current claimants voting on a 524(g) plan must vote in favor of the plan. 11 U.S.C. § 524(g)(4)(B)(i), (ii); *id.* § 524(g)(2)(B)(ii)(IV)(bb).

124. Legislative history makes clear that § 524(g) was designed to benefit a specific type of company, *i.e.*, "companies who are seeking to fairly address the burden of thousands of current asbestos injury claims and unknown future claims and *who are willing to submit to the jurisdiction of the U.S. Bankruptcy Courts* . . . ."[255] Ingersoll-Rand (now TTC) and Trane created the Debtors for the purpose of benefiting from the protections of § 524(g) without being subject to the provisions of the Bankruptcy Code and oversight from the Court, which would have resulted if TTC and Trane had filed for chapter 11 themselves. The attempted use of the Texas divisional merger law to cabin all asbestos liabilities with the Debtors is inconsistent with the Bankruptcy Code as a whole, as well as with § 524(g), and is thus preempted even if Texas law would otherwise permit it.

2. Field preemption prohibits Ingersoll-Rand's and old Trane's efforts to discharge TTC's and new Trane's asbestos liabilities through the Texas divisional merger law

125. Field preemption exists where "the scheme of federal regulation is sufficiently comprehensive to make reasonable the inference that Congress 'left no room' for supplementary state regulation." *Hillsborough Cnty. v. Automated Med. Labs., Inc*., 471 U.S. 707, 712-13 (1985) (citation omitted). "Pre-emption of a whole field also will be inferred where the field is one in which 'the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject.'" *Id.* "[T]he adjustment of rights and duties within the bankruptcy process itself is uniquely and exclusively federal. It is very unlikely that Congress intended to permit the superimposition of state remedies on the many activities that might be undertaken in the management of the bankruptcy process." *MSR Exploration, Ltd. v. Meridian Oil*, 74 F.3d 910, 914 (9th Cir. 1996).

[255] 140 Cong. Rec. S4523 (1994) (statement of Sen. Graham) (emphasis added); *see also id.* ("To those companies willing to submit to the stringent requirements of this section . . . .").

126. The Debtors' effort to obtain a preliminary injunction in favor of TTC and Trane based on the prepetition use of the Texas divisional merger law must be denied because Congress preempted the field of asbestos-related corporate reorganizations through enactment of § 524(g). Section 524(g) is the exclusive mechanism that enables a debtor to shed all of its current and future asbestos-related liability. *In re Federal-Mogul Global, Inc.*, 684 F.3d 355, 378-79 (3d Cir. 2012). It provides for specific procedural and due process protections for the benefit of current asbestos claims and unknown, future claims.

3. TTC and new Trane are ineligible for protection under § 524(g) because they have direct liability, not derivative liability, for Ingersoll-Rand's and old Trane's asbestos torts

127. Ingersoll-Rand and old Trane do not fall within any of the enumerated sub-clauses of § 524(g) that would shield nondebtor third parties from derivative liability for Ingersoll-Rand's and Trane's asbestos torts. The claims against Ingersoll-Rand and old Trane do not arise "by reason of" their (1) ownership of a Debtor or any predecessor or affiliate of a Debtor; (2) involvement in the management of a Debtor or any predecessor; (3) provision of insurance to a Debtor; or (4) involvement in a transaction changing the corporate structure of a Debtor or a related party. *See* 11 U.S.C. § 524(g)(4)(A)(ii)(I)-(IV). Claims against TTC and new Trane are claims against Ingersoll-Rand and old Trane and do not arise "by reason of" any of the four enumerated relationships with a Debtor. *See In re Quigley Co.*, 676 F.3d 45, 59-60 n.17 (2d Cir. 2012).

128. TTC and Trane's attempted use of the Texas divisional merger law to cabin Aldrich/Murray Asbestos Claims solely with the Debtors is preempted and, as a result, TTC and Trane are directly liable, not derivatively liable, for those claims. Because TTC and Trane, as nondebtors, cannot obtain permanent injunctive protection under § 524(g) for their direct liability, they cannot receive preliminary injunctive protection under § 105(a). *See DeBeers Consol. Mines, Ltd. v. United States*, 325 U.S. 212, 220 (1945).

II. THE REQUEST FOR DECLARATORY RELIEF IS DENIED

129. In addition to a § 105 injunction, the Debtors seek a declaratory judgment that the automatic stay already bars asbestos lawsuits against the Protected Parties.[256] As a threshold matter, the Debtors have no absolute right to a declaratory judgment as the Declaratory Judgment Act is "an enabling Act, which confers a discretion on the courts rather than an absolute right upon the litigant." *Wilton v. Seven Falls Co.*, 515 U.S. 277, 287 (1995) (quoting *Pub. Serv. Comm'n of Utah v. Wycoff Co.*, 344 U.S. 237, 241 (1952)). Thus, federal courts have "unique and substantial discretion in deciding whether to declare the rights of litigants." *Id*. at 286; *see* 28 U.S.C. § 2201(a) (providing that "any court of the United States . . . *may* declare the rights and other legal relations of any interested party seeking such declaration . . . .").

130. Moreover, declaratory relief is equitable in nature, and equitable defenses apply. *In re Storick*, No. 18-15728-MAM, 2020 WL 211471, at *5 (Bankr. S.D. Fla. Jan. 13, 2020) (citing, *inter alia*, *Abbott Labs. v. Gardner*, 387 U.S. 136, 155 (1967) (abrogated on other grounds))), *aff'd sub nom. Storick v. CFG LLC*, No. 9:20-CV-80126, 2021 WL 716695 (S.D. Fla. Jan. 21, 2021). Thus, in weighing the Debtors' request for declaratory judgment, this Court takes into account their inequitable conduct in effectuating the divisional mergers and isolating their asbestos liabilities for purposes of their bankruptcy filings. This inequitable conduct, *inter alia*, informs the Court's decision to deny declaratory relief, just as it informs the denial of injunctive relief.

131. Furthermore, this Court may render a declaratory judgment only in "a case of actual controversy." 28 U.S.C. § 2201(a); *see also, e.g.*, *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 241 (1937) (stating that declaratory relief may be granted only if there is "a real and substantial

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[256] PI Motion at 35.

controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts" (citations omitted)); *In re NIU Holdings LLC*, 624 B.R. 22, 44-45 (Bankr. S.D.N.Y. 2020) (determining that requests for declaratory judgment were not ripe for resolution as there was no actual controversy); *In re Energy Future Holdings Corp.*, 531 B.R. 499, 510-11 (Bankr. D. Del. 2015) (concluding that parties did not yet have adverse interests, as there were multiple contingencies that had to be resolved).

132. Here, there is no actual controversy because the Debtors do not allege a single violation of the automatic stay. Even if an action violating the stay has been commenced, the proper remedy would be to file an adversary proceeding to enjoin that specific action. Instead, the Debtors are seeking an advisory opinion on all possible or potential actions or stay violations when no actual case or controversy exists. Even at this threshold stage of the analysis, the Debtors have not established a proper basis for a declaratory judgment.

A. Section 362(a)(1) Does Not Shield Nondebtors from Asbestos Lawsuits

133. The Debtors seek, *inter alia*, a declaratory judgment that § 362(a)(1), "of its own force," stays the commencement or continuation of asbestos suits against the nondebtor Protected Parties.[257] But this is contrary to longstanding Fourth Circuit precedent holding, under the "plain wording" of § 362(a), that the protection of the automatic stay "belongs exclusively" to debtors. *Williford*, 715 F.2d at 126. The Fourth Circuit has consistently adhered to this principle. In 1983, the Fourth Circuit ruled in *Williford* that the automatic stay did not shield nondebtor codefendants from asbestos lawsuits. *Id*. Similar to here, the codefendants in *Williford* argued that the plaintiff's asbestos claims against them were "inextricably interwoven and present[ed] such closely related

[257] PI Motion at 35, 38.

issues of law and fact that just resolution of the case cannot be accomplished without the presence at the trial of the [debtors in bankruptcy]." *Id*. Yet, the Fourth Circuit was unconvinced, holding that the protection of the automatic stay "belongs exclusively to the 'debtor' in bankruptcy." *Id.*

134. Five years later, in *Credit Alliance Corp. v. Williams*, the Fourth Circuit reiterated that the "plain language of § 362 . . . provides only for the automatic stay of judicial proceedings and enforcement of judgments 'against the debtor or the property of the estate.'" 851 F.2d 119, 121 (4th Cir. 1988) (quoting *Williford*). The Fourth Circuit held as much even where the recovery from the nondebtor would give rise to "claims for reimbursement or contribution" against the debtor. *Id.* In addition, the Fourth Circuit noted that chapter 13 includes a provision staying creditor actions against certain nondebtors: hence, "Congress knew how to extend the automatic stay to non-bankrupt parties when it intended to do so." *Id.* (citing 11 U.S.C. § 1301(a)). No such analog exits in chapter 11.

135. In 1996, the Fourth Circuit in *Winters ex rel. McMahon v. George Mason Bank*, again held that it is "well settled that the automatic stay does not apply to non-bankrupt codebtors, . . . nor does the automatic stay prevent actions against guarantors of loans." 94 F.3d 130 (4th Cir. 1996). More recently, in *Kreisler v. Goldberg*, the Fourth Circuit held that the automatic stay did not prevent creditors from pursuing an ejectment action against the debtors' wholly owned subsidiary in state court. 478 F.3d 209 (4th Cir. 2007). The Fourth Circuit reasoned that § 362(a)(1) did not stay the action because, absent "unusual circumstances," which were not present there, subsection (a)(1) was "available only to the debtor, not third party defendants or co-defendants." *Id.* at 213 (quoting *Piccinin*, 788 F.2d at 999). "Accordingly, had . . . [the subsidiary] wished to receive the protections afforded by § 362(a)(1), it must have filed for bankruptcy." *Id.*

136. Citing *Piccinin*, the Debtors assert "that section 362(a)(1) may extend of its own force to enjoin actions against parties who share such an identity of interests with the debtor that

the debtor is, in effect, the real-party defendant."[258] In particular, the Debtors contend that the automatic stay extends to nondebtors when debtors are obligated to indemnify nondebtors.[259] In that situation, they argue, the claims against nondebtors become claims against debtors, thus making debtors the real parties in interest.

137. The Debtors' argument, however, misreads *Piccinin*. In *Piccinin*, the Fourth Circuit was reviewing a preliminary injunction. *Piccinin* did not involve a declaratory judgment. Moreover, the Fourth Circuit in *Piccinin* did not extend the automatic stay. Rather, the Fourth Circuit affirmed the preliminary injunction, largely because of the likelihood of irreparable harm that would occur if a limited fund of shared insurance was depleted. *Piccinin*, 788 F.2d at 1008. Here, by contrast, the Debtors posit that their asbestos-related insurance coverage is not shared since only they have the rights to access that coverage.[260] TTC and Trane have also disclaimed any and all rights to the insurance allocated to the Debtors as part of the Corporate Restructuring.[261] In sum, *Piccinin* supplies no basis for an injunction, stay, or declaratory judgment.

138. The Debtors highlight the discussion in *Piccinin* about contractual indemnities forming the basis of a supposed unusual circumstances exception to the rule that the automatic stay protects only debtors. But the Fourth Circuit in *Piccinin* was addressing "unusual circumstances" and contractual indemnities in the context of "the court's *jurisdiction* to grant a stay or injunction of suits in other courts against co-defendants of the debtor or of third parties." *Piccinin*, 788 F.2d at 998 (emphasis added). If contractual indemnities alone were sufficient to obtain a broad litigation stay—whether in the form of an injunction or declaratory judgment—

[258] PI Motion at 38 (citing *Piccinin*, 788 F.2d at 999).

[259] MSJ Reply at 13-14. The Debtors incorporate the MSJ Reply by reference as to their declaratory judgment arguments. PI Reply at 1 & n.1.

[260] Tananbaum Dep. 334:18-335:16.

[261] *See* Insurance Stipulation, *supra* note 211 (reciting that TTC and Trane claim "no rights under the Certain Insurance Agreements nor rights to any proceeds due under such agreements").

debtors could circumvent the traditional four-factor injunction test. As the Ninth Circuit noted in *Excel Innovations*, Congress intended that courts apply the traditional injunction test in considering whether to stay third-party litigation. *See* 502 F.3d at 1094-95 (citing S. REP. NO. 95-989, at 51 (1978), *as reprinted in* 1978 U.S.C.C.A.N. 5787, 5836-37 and H.R. REP. NO. 95-595, at 342, *as reprinted in* 1978 U.S.C.C.A.N. 5963, 6298 (1978)).

139. Moreover, the Debtors' argument that contractual indemnities alone are enough to extend the stay to nondebtor-indemnitees is contrary to the Fourth Circuit's ruling in *Credit Alliance Corp. v. Williams*, and, on that basis alone, is unavailing. In *Credit Alliance*, the Fourth Circuit held that the stay's protection is limited to debtors in bankruptcy even where recovery from the nondebtor would give rise to "claims for reimbursement [read, *indemnification*] or contribution" against the debtor. 851 F.2d at 121. At the hearing, the Debtors emphasized that the contractual indemnities at issue are customary in commercial transactions, particularly mergers and acquisitions.[262] If the contractual indemnities here are normal and customary, then they are no more unusual than the guaranty agreement that the Fourth Circuit in *Credit Alliance* declined to apply its *Piccinin* precedent to. *See id.*

140. Furthermore, if contractual indemnities alone were enough to establish unusual circumstances and to stay third-party litigation, it would set up a potential for abuse: debtors could enter into contractual indemnities with nondebtors within days or weeks of their bankruptcy filing and then obtain a stay or injunction shielding the nondebtors. This is not a theoretical concern, because the Debtors did precisely that. As part of the Corporate Restructuring, they entered into their respective Support Agreements and granted indemnification rights not only to TTC and Trane

[262] *See* Hr'g Tr. 586:5-587:18, May 7, 2021.

but also to *all* Non-Debtor Affiliates. The Court declines to reward this type of conduct with an injunction or declaratory ruling.

141. Additionally, even if, in a normal case, indemnification obligations were enough to make a debtor the real party in interest and thus eligible for a declaratory judgment, this is not such a case. Because of the Funding Agreements, the Debtors are not the real parties in interest. None of the cases cited by the Debtors feature agreements comparable to the Funding Agreements here. The Debtors describe the Funding Agreements as "uncapped" and "unlimited."[263] If the Debtors are right in that respect, the Funding Agreements will cover any indemnification claims against the Debtors, if the Debtors' assets are insufficient to pay them. The Debtors can therefore proceed and reorganize regardless of indemnification claims. The Debtors do not require an extension of the stay to reorganize. As the Debtors are not real parties in interest as a result of the Funding Agreements, the automatic stay under § 362(a)(1) does not extend and shield any of the Protected Parties.

B. There Is No Basis for a Declaratory Ruling to Stay Nonexistent Lawsuits Against Insurers

142. The Debtors argue that "section 362(a)(3) bars plaintiffs from bringing actions against the Debtors' Insurers on account of Aldrich/Murray Asbestos Claims because the insurance coverage is property of the estate."[264] But a declaratory ruling that 11 U.S.C. § 362(a)(3) stays all actions to recover from the Debtors' insurance coverage is unwarranted for want of an actual controversy or evidence. As noted above, the Court may render a declaratory judgment only in a case of actual controversy. 28 U.S.C. § 2201(a); *see supra* ¶ 131. The uncontroverted evidence

[263] *See, e.g.*, Brown Dep. 140:11-141:3; 273:15-20.

[264] PI Motion at 35-36.

is that there are no direct actions by asbestos plaintiffs against any Insurers.[265] What the Debtors are seeking is an advisory opinion that all potential actions against the Insurers are stayed, when no case of actual controversy exists. Within this evidentiary vacuum, the Court has no basis or authority to issue an advisory opinion as to the status of the Debtors' insurance or a theoretical action by an asbestos plaintiff against an Insurer. The Debtors' request for declaratory judgment as to the Insurers is denied.

C. Derivative Liability Claims of Asbestos Claimants Are Not Estate Property and Therefore Not Shielded by § 362(a)(3)

143. The Debtors contend that, if their PI Motion is not granted, asbestos plaintiffs will seek to establish the liability of TTC, Trane, and other Protected Parties for Aldrich/Murray Asbestos Claims through alter ego claims, successor liability claims, and similar claims of derivative liability, which, according to the Debtors, are now property of their estates. Thus, the Debtors argue, the assertion of such claims will be an exercise of possession or control of estate property, which will violate the automatic stay under § 362(a)(3).[266] For the reasons explained below, the Debtors' argument lacks merit.

144. It is not necessarily the case that asbestos claimants will be forced to rely on theories of alter ego or successor liability to fix liability on TTC and new Trane for the asbestos torts of Ingersoll-Rand and old Trane. To the contrary, TTC and Trane remain independently and directly liable for the Aldrich/Murray Asbestos Claims.[267] Moreover, the assignment of liabilities to a new entity does not necessarily defeat a claim asserting liabilities against the successor of the assignor. *See Niven v. E.J. Bartells Co.*, 983 P.2d 1193, 1196 (Wash. Ct. App. 1999) ("Glen Alden's earlier

[265] Debtors 30(b)(6) Dep. 319:12-320:3; 337:3-11 (Tananbaum); Hr'g Tr. 178:17-20, May 5, 2021 (Tananbaum Cross-Exam).

[266] PI Motion at 36-37.

[267] *See supra* ¶¶ 120-120.

transfer of old Carey's liabilities to its subsidiary, new Carey, did not end Glen Alden's responsibility for those liabilities. It merely gave Glen Alden and its successor, Rapid–American, a claim for indemnity against Celotex after Celotex assumed new Carey's liabilities."). Whether the Texas divisional merger can operate in the way the Debtors assert—as a liability-cleansing device like a § 363(f) sale—has not been challenged or addressed under Texas law.

1. Alter ego, successor liability, and similar theories are an integral part of the underlying asbestos personal injury claims and therefore cannot be taken by the Debtors

145. Even if asbestos plaintiffs had to pursue alter ego, successor liability, and similar theories, such claims are not independent causes of action but are remedies to hold other parties responsible for a cause of action that might otherwise be brought against the debtor. *See, e.g.*, *In re RCS Engineered Prod. Co.*, 102 F.3d 223, 226 (6th Cir. 1996) ("An alter ego claim is not by itself a cause of action. Rather, it is a doctrine which fastens liability . . . ."); *In re Am. Telecom Corp.*, 304 B.R. 867, 871 (Bankr. N.D. Ill. 2004) ("Although much bankruptcy-law precedent . . . appears to treat alter-ego suits as independent causes of action, such actions under various state laws . . . are actually equitable remedies that can be used to satisfy a debtor corporation's liability on a different underlying cause of action."); *see also Automotive Indus. Pension Tr. Fund v. Ali*, No. C-11-5216, 2012 WL 2911432, at *8 (N.D. Cal. July 16, 2012) (holding that, in the context of ERISA, successor liability is not an independent cause of action but simply a theory for imposing liability based on a predecessor's ERISA violation).

146. Here, the causes of action in question are asbestos-related claims for personal injury or wrongful death. Derivative liability theories available to asbestos plaintiffs remain an integral part of their underlying causes of action. *See Strawbridge v. Sugar Mountain Resort, Inc.*, 243 F. Supp. 2d 472, 479 (W.D.N.C. 2003) (concluding that a claim for alter ego was "analogous to a claim for punitive damages or loss of consortium" and thus was "dependant [*sic*] on proving an

underlying claim"); *see also In re Emoral, Inc.*, 740 F.3d 875, 883 (3d Cir. 2014) (Cowen, J., dissenting) ("The successor liability theory alleged by the . . . [claimants] is inextricably tied to—and cannot be considered separate or apart from—their underlying personal injury and product liability allegations."). The potential derivative liability of a third party does not exist without personal injury to the asbestos claimant. When the Debtors entered chapter 11, theories of alter ego, successor liability, and other types of derivative liability did not detach from the underlying asbestos causes of action and become the Debtors' estate property. Nothing in the Bankruptcy Code supports such a proposition.

147. To hold otherwise would be contrary to the Supreme Court's decision in *Caplin v. Marine Midland Grace Trust Co.*, 406 U.S. 416 (1972), which held that a bankruptcy trustee has no authority to bring claims belonging to creditors. *Id*. at 434; *see also Shearson Lehman Hutton, Inc. v. Wagoner*, 944 F.2d 114, 118 (2d Cir. 1991) (stating that the "trustee has no standing generally to sue third parties on behalf of the estate's creditors, but may only assert claims held by the bankrupt corporation itself"). Thus, claims generally available to creditors do not automatically become the debtor's estate property once a bankruptcy petition is filed.[268] As this Court previously noted, *Caplin* "is still considered good law." *In re Creative Entm't, Inc.*, Nos. 99-30485, 00-3114, 2003 Bankr. LEXIS 2468, at *9 (Bankr. W.D.N.C. May 27, 2003).

148. Bolstering *Caplin* is the plain language of § 541(a)(1), which provides that the estate comprises "all legal or equitable interests *of the debtor* in property as of the commencement of the case." 11 U.S.C. § 541(a)(1) (emphasis added). The Debtors did not hold—and did not purport to hold—derivative-liability claims against TTC, Trane, or any of the other Protected

[268] The decisions in *In re Tronox Inc.*, 855 F.3d 84 (2d Cir. 2017) and *In re Keene Corp.*, 164 B.R. 844 (Bankr. S.D.N.Y. 1994), which indicate otherwise, are not only outside this circuit and need not be followed, but are also contrary to *Caplin*.

Parties just before they filed chapter 11. As a result, they cannot hold such claims now. Nothing in the text of § 541, or elsewhere in the Bankruptcy Code, expressly strips creditors of their derivative-liability claims against nondebtors and vests the estate with them.

149. A "cause of action is considered property of the estate if the claim existed at the commencement of the filing and the debtor could have asserted the claim." *Bd. of Trustees of Teamsters Local 863 Pension Fund v. Foodtown, Inc.*, 296 F.3d 164, 169 n.5 (3d Cir. 2002) (citing *Butner v. United States*, 440 U.S. 48, 54 (1979)). "If the cause of action does not explicitly or implicitly *allege harm to the debtor*, then the cause of action could not have been asserted by the debtor as of the commencement of the case, and thus is not property of the estate." *In re Educators Grp. Health Tr.*, 25 F.3d 1281, 1284 (5th Cir. 1994) (emphasis added); *see also In re Wilton Armetale, Inc.*, 968 F.3d 273 (3d Cir. 2020) ("clarif[ying]" previous decisions about when derivative liability claims are estate property and holding such claims are property of the estate where they rely "on a theory of recovery derivative of harm that [the debtor] suffered directly"). To have standing to pursue a cause of action, the claimholder must have, among other things, suffered *injury-in-fact*. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

2. *The alter ego cases cited by the Debtors are inapposite because they involved prepetition harm to chapter 7 debtors, and Aldrich and Murray posit that they were unharmed by the Corporate Restructuring*

150. The Debtors cite to several cases in the Fourth Circuit for the proposition that alter ego claims are nonetheless estate property.[269] In each cited case, however, the respective debtor suffered harm at the hands of insiders and consequently, under applicable state law, held alter ego claims, which became property of the estate upon the debtor's bankruptcy filing. *See Steyr-Daimler-Puch of America Corp. v. Pappas*, 852 F.2d 132, 133 (4th Cir. 1988) (alleging causes of

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269 PI Motion at 36-37 (citing cases).

action asserted by the chapter 7 trustee against the debtor's insider and affiliate for "breach of duty and corporate mismanagement," suggesting harm to the debtor); *M-Tek Kiosk, Inc. v. Clayton*, No. 1:15CV886, 2016 WL 2997505, at *5 (M.D.N.C. May 23, 2016) (noting allegation that chapter 7 debtor "was grossly undercapitalized"); *In re Midstate Mills, Inc.*, No. 13-50033, 2015 WL 5475295, at *4-5 (Bankr. W.D.N.C. Sept. 15, 2015) (noting alleged misconduct stemming from debtor's "deteriorating financial condition" and "mortal injury suffered by . . . [the debtor] at the hands of its directors and managers"); *Alvarez v. Ward*, Civ. No. 1:11cv03, 2012 WL 113567, at *2 (W.D.N.C. Jan. 13, 2012) (noting allegations that "named defendants divested . . . [the debtor] of all assets by making equity distributions to themselves and Land Resource as well as to the other members of . . . [the debtor] who have not been named as defendants"); *Holcomb v. Pilot Freight Carriers, Inc.*, 120 B.R. 35, 43-44 (M.D.N.C. 1990) (holding that an alter ego claim belongs to the bankruptcy estate when "the . . . [creditor] is harmed because of the injury the alter ego does *to the controlled corporation* itself when the alter ego totally dominates it and there is no distinction in identity").

151. In *Holcomb*, for example, alter ego claims arose from the fact that "the defendants allegedly looted ... [*the debtor's*] assets and otherwise destroyed it as a viable corporation." *Id*. at 42. The district court in *Holcomb* held that an alter ego claim belongs to the bankruptcy estate when "the . . . [creditor] is harmed because of the injury the alter ego does *to the controlled corporation* itself when the alter ego totally dominates it and there is no distinction in identity." *Id*. at 43-44 (emphasis added). On the other hand, the court noted that, when an alter ego claim alleges an injury to a creditor that is *not derivative* of a harm to the debtor, then such a claim is not subject to the automatic stay. *Id*. at 42 (finding "the relevant question is . . . whether plaintiffs have alleged a direct cause of action against the alter ego," *i.e.*, a cause of action alleging that plaintiffs "were injured by actions which can be directly traced to the alter ego's conduct as

opposed to alleging harm from the secondary effects of injury by defendants to [debtor]" (internal citations omitted)). In other words, when the debtor has not been injured, the automatic stay does not apply to creditors' attempts to redress their own injuries through an alter ego claim.

152. In each case cited by the Debtors, the harm to creditors was secondary to or derivative of the injury caused to the debtor. Indeed, each of the cited cases from within the Fourth Circuit involved a chapter 7 liquidation, highlighting the depth of the harm to the prepetition debtor at the hands of the defendant insiders.[270] Here, the Court is presented with a different situation. The Debtors' cases are chapter 11 reorganizations, not chapter 7 liquidations. The Debtors are not alleging that they were injured in any way by TTC, Trane, or any other Protected Party. To the contrary, the Debtors contend that they "have the same ability to fund the costs of defending and resolving present and future asbestos claims," as Ingersoll-Rand and old Trane did before the Corporate Restructuring.[271] Since the Debtors posit no injury or harm to themselves, they have no alter ego claim of their own and therefore cannot coopt the alter ego claims or remedies of asbestos claimants as property of the estate.

3. Similarly, because the Debtors posit no harm or injury to themselves, the automatic stay does not apply to successor liability claims of asbestos claimants

153. Successor liability claims here are likewise not part of the estate. The Debtors point to the *Ontos* case as finding that both alter ego and successor liability claims are estate property. (Motion at 36 (citing *In re Ontos, Inc.*, 478 F.3d 427 (1st Cir. 2007)). As with the alter ego cases discussed above, the claims at issue in *Ontos* alleged that the chapter 7 debtor had been injured

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[270] The Debtor's reliance on *Litchfield Co.*, 135 B.R. 797 is also unavailing. There, no alter ego or successor liability claims were at issue. Instead, the district court determined that a lender's state-court collection action against the partners of the debtor limited partnership was stayed by § 362(a)(3) because the action interfered with the debtor's statutory right under state law to compel contributions from those same partners to pay the debtor's obligations. 135 B.R. at 803. The debtor's statutory right to compel contributions was property of the estate.

[271] PI Motion at 19; ACC Ex. 147 (Pittard Decl.) ¶ 17.

prepetition by insiders who sold off a subsidiary for less than market value, used the proceeds "as they saw fit," and then "exploit[ed] Ontos's intellectual property." *Ontos, Inc.*, 478 F.3d at 430. Indeed, the *Ontos* court specifically stated that "[t]he primary roadblock to finding the alter ego and successor liability claims to be part of the estate is that a corporation may not generally pierce its own veil" where the corporation is not a victim of wrongdoing but a participant. *Id.* at 432-33 (citing *McCarthy v. Azure*, 22 F.3d 351, 363 (1st Cir. 1994)). The court only "circumvented" this "roadblock" after noting that the alter ego and successor liability claims at issue were "derivative claims—claims brought by a plaintiff on behalf of a corporation," *i.e.*, claims to rectify an injury to the debtor. *Id.* at 433 (affirming bankruptcy court's decision that chapter 7 trustee could settle alter ego and successor liability claims that were derivative of "liability that is owed to the debtor" (emphasis added)).

154. The Debtors have not cited any Fourth Circuit decision holding that successor liability claims are property of the estate. Notably, there is an unpublished decision of the Fourth Circuit, holding that successor liability claims are *not* estate property. *See Acme Boot Co. v. Tony Lama Interstate Retail Stores, Inc.*, 929 F.2d 691 (4th Cir. 1991) (per curiam). And, while a case from this Court—*In re Creative Entertainment, Inc.*—found successor liability claims to be property of the estate, this Court did so only in the context of a chapter 7 debtor that, itself, had been injured prepetition. *Creative Entm't, Inc.*, 2003 Bankr. LEXIS 2468, at *3-4. There, the successor liability claim arose as a result of the debtor having been "denuded" by its owner prepetition. *Id.* at *28-29. Because the Debtors assert no prepetition harm or injury at the hands of TTC, Trane, or any other Protected Party, their estates cannot hold a successor liability claim protected under § 362(a)(3).

4. The Debtors' argument that asbestos claimants must allege harm to the Debtors in order to press theories of derivative liability is unavailing

155. The Debtors have argued that they hold every possible claim against any nondebtor for Ingersoll-Rand's and old Trane's asbestos torts based on the assumption that claimants must "allege that the 2020 Corporate Restructuring harmed the asbestos claimants by impairing the Debtors' ability to satisfy the asbestos liabilities allocated to it in the divisional merger." (MSJ Reply at 9). Their assumption, however, is incorrect for at least two reasons.

156. First, the Corporate Restructuring spawned two successors each to Ingersoll-Rand and old Trane: TTC and Aldrich, and new Trane and Murray. A claim against Aldrich or Murray to collect on the asbestos liabilities of Ingersoll-Rand or old Trane is stayed as it would be an action against a Debtor to collect from its estate. 11 U.S.C. § 362(a). But claims against TTC or new Trane to collect on the asbestos liabilities of Ingersoll-Rand or old Trane do not seek to collect from the Debtors' estates, but only from nondebtors for the asbestos torts of nondebtors.

157. The Debtors, however, argue that any such claim would have to be a successor liability claim, which is a "derivative claim" and therefore property of the Debtors' estates. (MSJ Reply at 8). But this argument relies on a misplaced notion of "derivative." Whether a successor liability claim is property of the estate, for purposes of § 362(a)(3), does not depend on the mere assertion of a derivative liability theory, but rather on the creditor alleging a derivative harm, *i.e.*, a harm to the creditor that is derivative of harm done to the Debtors. *See In re Tronox Inc.*, 855 F.3d 84, 100 (2d Cir. 2017) ("'Derivative claims' in the bankruptcy context are those that 'arise[ ] from harm done to the estate' and that 'seek[ ] relief against third parties that pushed the debtor into bankruptcy.'" (quoting *In re Bernard L. Madoff Inv. Secs. LLC*, 740 F.3d 81, 89 (2d Cir. 2014)). An asbestos claim against TTC or new Trane as successor to Ingersoll-Rand or old Trane might assert indirect or derivative liability, but that claim is not derivative of any harm to the

Debtors. Rather, the claim would assert only that TTC and new Trane are liable for the torts of Ingersoll-Rand and old Trane based on the relationship between them. Such a claim does not stem from any injury to the Debtors or implicate the Debtors at all.[272]

158. Second, the Debtors incorrectly assume that any creditor claim alleging harm from the Corporate Restructuring must be derivative of harm to the Debtors. Before the Corporate Restructuring, asbestos creditors of Ingersoll-Rand and old Trane had direct recourse against, and access to, all the assets of those companies to collect on their claims. Asbestos claimants who prevailed in their lawsuits would have been able to fix a judgment lien on all of Ingersoll-Rand's and Trane's assets. After the Corporate Restructuring, the recourse of asbestos claimants became limited to certain bank accounts, certain allocated insurance, equity interests in two relatively small operating subsidiaries (200 Park and Climate Labs), and two unsecured Funding Agreements. As for the remainder of Ingersoll-Rand's and Trane's assets, the Corporate Restructuring walled off asbestos creditors from direct access and recourse to those assets. Asbestos creditors now have to rely on the Debtors to assert whatever rights they have under the Funding Agreements to gain access to those assets.

159. If the Debtors were on the same side of the wall as the asbestos creditors, then the harm to the creditors from the transaction might be derivative of the harm done to the Debtors as a result of depriving the Debtors of their former assets. But, here, the Debtors are not on the same side of the wall as the asbestos creditors. Rather, the Debtors are, in a real sense, the harm insofar as they are instruments of their predecessors' plan to separate asbestos liabilities from their assets.

160. An analogous fact pattern can be found in bankruptcies stemming from Ponzi schemes, where the debtor is a sham corporation that is merely an instrument of equity holders to

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[272] The Debtors argue that such claims are not "cognizable" (MSJ Reply at 8-9), but the merits of the claims are not before this Court and are irrelevant to whether they are property of the estate.

inflict harm on creditors. Cases analyzing those situations found that the debtors there were legally incapable of suffering injury; therefore, creditors' claims against the debtors' affiliates that arose from the offending transactions were not property of the debtors' estates. *See, e.g.*, *In re Palm Beach Fin. Partners, L.P.*, 568 B.R. 874, 890 (Bankr. S.D. Fla. 2017) (concluding that, where a debtor was a sham corporation whose purpose was to impair creditors, the debtor did not "suffer injury and, accordingly, a trustee standing in the shoes of that corporation lacks standing to sue third parties which participated in the fraud because such claim never belonged to the debtor and thus does not belong to the debtor's estate"); *see also O'Halloran v. First Union Nat. Bank of Fla.*, 350 F.3d 1197, 1203 (11th Cir. 2003) (noting that a debtor "whose primary existence was as a perpetrator of the Ponzi scheme, cannot be said to have suffered injury from the scheme it perpetrated").

161. Here, as in these cases, the Debtors are companies designed specifically to harm asbestos creditors for the benefit of TTC, new Trane, and their affiliates. The Debtors have no operations or employees of their own and existed for only 49 days before their bankruptcy filings. The Debtors have no purpose other than to isolate asbestos liabilities and place those liabilities into bankruptcy. In short, the Debtors have not been harmed but rather are the harm. Accordingly, there will be no violation of § 362(a)(3) if asbestos plaintiffs pursue theories of liability against TTC, Trane, or other nondebtors for Ingersoll-Rand's and Trane's asbestos torts.

5. The state-law fraudulent transfer claims of asbestos claimants are not estate property

162. In *Steyr-Daimler-Puch*, the Fourth Circuit held that a claim is estate property when a debtor could have brought the claim prepetition under applicable state law. 852 F.2d at 135-36. Under relevant state law, the right to avoid and recover fraudulent transfers outside of bankruptcy belongs solely to creditors. *E.g.*, N.C. GEN. STAT. §§ 39-23.4-23.5 (transfers voidable as to

creditors); TEX. BUS. & COMM. CODE §§ 24.004-005 (same); *see also In re Cybergenics Corp.*, 226 F.3d 237, 242 (3d Cir. 2000) ("Thus, at least outside of the context of bankruptcy, it is clear that a fraudulent transfer claim arising from Cybergenics' transfers and obligations belongs to Cybergenics' creditors, not to Cybergenics."). Therefore, fraudulent transfer actions are not estate property, as courts within the Fourth Circuit have specifically held. *See In re Fabian*, 458 B.R. 235, 258 (Bankr. D. Md. 2011) (stating that "the right to avoid and recover fraudulent transfers outside of bankruptcy belongs to the creditors, and not to the debtor" (quoting *Cybergenics Corp.*, 226 F.3d at 242)); *In re Railworks Corp.*, 325 B.R. 709, 721 (Bankr. D. Md. 2005) ("Avoidance claims are not within the definition of property of the bankruptcy estate, because they do not represent an interest of the debtor in property. Rather, they are rights that the trustee and debtor in possession are given in a bankruptcy case.").

163. The Debtors' reliance on *Midstate Mills* is therefore unavailing.[273] The court in *Midstate Mills* stated that the fraudulent transfer claims at issue there "belong[ed]" to the estate simply because they challenged "a pre-petition transfer of the [d]ebtor's property." 2015 WL 5475295, at *7. Insofar as this statement was an assertion that the fraudulent transfer actions were estate property, the reasoning is inconsistent with the Fourth Circuit's ruling in *Steyr-Daimler-Puch* that a cause of action is estate property only when the debtor could have brought the claim prepetition. Although the right to recover fraudulent transfers might pass from individual creditors to the bankruptcy trustee (or debtor-in-possession) under 11 U.S.C. § 544(b), "[t]he fact that section 544(b) authorizes a debtor in possession . . . to avoid a transfer using a creditor's fraudulent transfer action does not mean that the fraudulent transfer action is actually an asset of the debtor in possession." *Cybergenics Corp.*, 226 F.3d at 243; *see also Fabian*, 458 B.R. 235 ("A

[273] PI Motion at 37.

bankruptcy trustee's causes of action to recover fraudulent conveyances and preferential transfers, are independent of, and separate from, prepetition causes of action possessed by the debtor outside of bankruptcy. These actions arise after the petition date, and therefore are not themselves property of the estate."). Because the state-law fraudulent transfer claims of asbestos plaintiffs are not estate property shielded under § 362(a)(3), the Court denies the requested declaratory relief.

6. The Debtors' overbroad interpretation of §§ 362(a)(3) and 541(a) conflicts with § 524(g)

164. The Debtors' expansive reading of §§ 362(a)(3) and 541(a) conflicts with § 524(g), and is therefore overridden by the latter section, which is more specific. *See, e.g.*, *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) ("[I]t is a commonplace of statutory construction that the *specific governs the general*. . . . That is particularly true where ... Congress has enacted a comprehensive scheme and has deliberately targeted specific problems with specific solutions." (emphasis added and citation and internal quotation marks omitted)). If Congress believed that it had delivered the derivative-liability claims of creditors into the hands of the estate, there would have been no need for § 524(g) protection of nondebtor third parties. If §§ 362(a)(3) and 541(a) operated as the Debtors' assert, then any asbestos debtor, as the sudden newfound owner of all of the creditors' alter-ego, successor liability, and similar claims, could simply settle those claims on its own under a Rule 9019 procedure rather than seek § 524(g) protection for those who might be derivatively liable. But the fact that Congress conditioned § 524(g) protection of third parties from derivative-liability claims on the various requirements of that section being met shows that Congress never intended for the derivative-liability claims of asbestos creditors to become estate property and subject to a Rule 9019 resolution. Because the alter ego and successor liability claims of asbestos claimants are not property of the estate, § 362(a)(3) is inapplicable.

CONCLUSION

165. For these reasons, the Debtors, the Non-Debtor Affiliates, and the FCR have failed to establish a proper basis for the injunctive and declaratory relief the Debtors seek. Accordingly, the Court will enter an order denying the PI Motion.

These Findings of Fact and Conclusions of Law have been signed electronically. The Judge's signature and the Court's seal appear at the top of the document.

United States Bankruptcy Court