Docket #0055 Date Filed: 3/25/2022

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re: ALDRICH PUMP LLC, *et al.*,[1] Debtors.	Chapter 11 Case No. 20-30608 (JCW)
OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS Plaintiff, v. ALDRICH PUMP LLC, MURRAY BOILER LLC, TRANE TECHNOLOGIES COMPANY LLC, AND TRANE U.S. INC. Defendants.	Adv. Pro. No. 21-03029 (JCW)

OBJECTION TO (I) THE MOTION TO STAY LITIGATION AND ENTER INTO TOLLING AGREEMENT, AND (II) THE *EX PARTE* MOTION FOR ORDER SHORTENING NOTICE

The Official Committee of Asbestos Personal Injury Claimants (the "Committee") submits this objection (the "Objection") to the (I) *Motion of the Debtors and Non-Debtor Affiliates for an Order (A) Authorizing the Debtors to Enter into Tolling Agreement and (B) Staying Litigation* (ECF No. 1044) (the "Stay Motion"),[2] which seeks approval of a (i) stay of litigation that is already pending, (ii) stay of the commencement of litigation that was previously approved by the Court, and (iii) approval of a form of tolling agreement, which is attached to the Stay Motion as Exhibit

[1] The Debtors are the following entities (the last four digits of the Debtors' 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.

[2] Capitalized terms not otherwise defined herein have the same meaning as in the Stay Motion.

A (the "Tolling Agreement"), and (II) the *ex parte* motion to shorten notice on the Stay Motion (ECF No. 1045) (the "Motion to Shorten"). In support of this Objection, the Committee respectfully states as follows:

PRELIMINARY STATEMENT

1. The Stay Motion is the ***third*** attempt to derail the Committee's litigation path while the Debtors and Non-Debtor Affiliates proceed full throttle with their chosen litigation path: the Estimation Proceeding. There is nothing new in this rehash of arguments previously made in the prior attempts to stay Committee litigation made in connection with objections to the Committee's request for standing (the "Standing Motion"), the Debtors' motion to reconsider the grant of standing (the "Reconsideration Motion"), and the motions to dismiss (the "Motions to Dismiss") the substantive consolidation complaint and motion (the "SubCon Proceeding"). The repetition has not made the request for a stay any more appropriate. And the Stay Motion should be denied just as the Court rejected a previous request to stay the Committee's litigation in these cases. The extraordinary relief it seeks is without legitimate justification, would severely prejudice the Committee and its constituents, and would stymie progress in these cases. The fairest and most efficient path forward in these cases is forward progress on the Committee's litigation. Not one-sided stays or unnecessary delays.

2. In addition, no emergency exists that would justify the Motion to Shorten. The Defendants also failed to confer with the Committee concerning the relief requested in the Stay Motion. Both the Motion to Shorten and the Stay Motion should therefore be denied.

BACKGROUND

A. The SubCon Proceeding

3. On October 18, 2021, the Committee commenced the SubCon Proceeding with the filing of a motion and complaint (ECF Nos. 850 and 851, Adv. Proc. 21-03029 ECF No. 1). On December 20, 2021, the Debtors and Non-Debtor Affiliates filed the Motions to Dismiss the SubCon Proceeding (Adv. Proc. 21-03029 ECF Nos. 17 and 18), which, on January 31, 2022, the FCR joined (Adv. Proc. 21-03029 ECF No. 29). Also on January 31, 2022, the Committee opposed the Motions to Dismiss (Adv. Proc. 21-03029 ECF Nos. 30 and 31), and, on February 16, 2022, the Debtors and Non-Debtor Affiliates filed replies in support of the Motions to Dismiss (Adv. Proc. 21-03029 ECF Nos. 35 and 36).

4. On March 3, 2022, the Court held a hearing on the Motions to Dismiss. The Court indicated it would rule on the Motions to Dismiss on March 31, 2022.

B. The Standing and Reconsideration Motions

5. On October 18, 2021, the Committee filed the Standing Motion (ECF No. 848). On November 12, 2021, the Debtors, the Non-Debtor Affiliates, and the FCR objected to the Standing Motion. ECF Nos. 893, 894, and 895. On November 24, 2021, the Committee filed a reply in support of the Standing Motion. ECF No. 905.

6. On December 3, 2021, the Court heard argument on the Standing Motion and related pleadings on December 3, 2021, and, on January 27, 2022, the Court granted the Standing Motion.

7. On February 15, 2022, prior to entry of an order on the Standing Motion, the Debtors filed the Reconsideration Motion. ECF No. 995.

8. On March 3, 2022, a hearing was held on the Reconsideration Motion. The Court indicated it would rule on the Reconsideration Motion on March 31, 2022.

C. The Stay Motion

9. Without even waiting for the Court to rule on the Motions to Dismiss filed by the Debtors and Non-Debtor Affiliates and the Reconsideration Motion filed by the Debtors, on March 14, 2022, the Debtors and Non-Debtor Affiliates filed the Stay Motion (ECF No. 1044), which, *inter alia,* seeks to stay the Court from ruling on the Motions to Dismiss and the Reconsideration Motion.

ARGUMENT

I. THE STAY MOTION HAS NO MERIT AND SHOULD BE DENIED.

10. The Stay Motion seeks to ***indefinitely*** enjoin the Committee's investigation and pursuit of estate claims and substantive consolidation, and the Court's rulings on the Debtors' and Non-Debtor Affiliates' own Motions to Dismiss and Reconsideration Motion, all in favor of pursuit of their chosen litigation path: the Estimation Proceeding. *See* Stay Motion, ECF No. 1044, at ¶¶ 7-9. The Court has previously rejected a prior request for such relief in these cases, holding that each side should be free to pursue its own litigation path:

> As to the FCR's suggestion that we file the action and then stay it while we pursue estimation, well, if y'all were all in agreement, that'd be fine with me, but as long as the parties disagree and want to go different courses to try to seek resolution of this case, ***as I said before, I'm not inclined to allow one without allowing the other. So I'd say no to that. If we're going to litigate, we'll litigate the matters that the parties bring before us and not just one side's preferred dispute***.

Hr'g Tr. 21:22-22:5, Jan. 27, 2022 (emphasis added). The Stay Motion provides no reason whatsoever for the Court to reach a different result now. Indeed, ***none*** of the scant cases cited by the Debtors and Non-Debtor Affiliates[3] support the relief requested in the Stay Motion, *i.e.*, a non-

[3] *See* Stay Motion, ECF No. 1044, ¶ 3.

consensual stay of certain claims in favor of others pending before the same court. *See Landis v. North Am. Co.*, 299 U.S. 248, 255 (1936) (staying action in District of Columbia in favor of action pending in the Southern District of New York); *see also Am. Life Ins. Co. v. Stewart*, 300 U.S. 203, 216 (1937) (staying action at law in favor of action at equity where parties "stipulated that the issues in equity should be tried in advance of those at law" and parties were bound by that stipulation); *In re Latimer*, 489 B.R. 844, 854-855 (Bankr. N.D. Ala. 2013) (staying non-discharge action pending completion of ongoing arbitration proceeding); *In re Rosenblum*, 545 B.R. 846, 874-875 (Bankr. E.D. Pa. 2016) (staying the bankruptcy proceeding until "the State Litigation [was] resolved because, if the transfers in question ultimately are found to be fraudulent, then the Debtors' bankruptcy cases must be dismissed, the automatic stay lifted, and the trademark infringement judgment ruled nondischargeable.").

11. While issuance of a stay is within the court's inherent power and committed to its sound discretion, *Landis*, 299 U.S. at 255, "[o]nly in rare circumstances will a litigant in one cause be compelled to stand aside while a litigant in another settles the rule of law that will define the rights of both." *Id.* at 256. As proponents of the stay, the Debtors "bear[] the burden of establishing its need." *Clinton v. Jones*, 520 U.S. 681, 708 (1997). That is, they must "justify [the stay] by clear and convincing circumstances outweighing potential harm to the party against whom it is operative." *Williford v. Armstrong World Indus., Inc.*, 715 F.2d 124, 127 (4th Cir. 1983); *see also See also Landis*, 299 U.S. at 255 ("[T]he suppliant for a stay must make out a clear case of hardship or inequity in being required to go forward, if there is even a fair possibility that the stay . . . will work damage to someone else."); *accord Kluhsman Mach. Inc. v. Dino Paoli SRL*, No. 519CV00020KDBDSC, 2020 WL 534167, at *2 (W.D.N.C. Jan. 10, 2020), *report and recommendation adopted*, No. 519CV00020KDBDSC, 2020 WL 534496 (W.D.N.C. Feb. 3,

2020). And, here, where the requested stay is of indefinite duration, it would be an abuse of discretion to grant it "in the absence of a pressing need." *Landis*, 299 U.S. at 255.

12. The Stay Motion, however, wholly fails to express any clear hardship or inequity, much less a pressing need, in support staying the Committee's litigation efforts. The Debtors and Non-Debtor Affiliates complain that they will have to expend resources litigating claims that they believe might not ultimately succeed.[4] However, as the same could be said of all bankruptcy litigation, this alleged "harm" cannot support the "rare circumstances" necessary for a stay of litigation. *See Wilmington Trust, Nat'l Ass'n v. Nat'l Gen. Ins. Co*., No. 21-cv-207, 2021 WL 2531063, at *12 (M.D.N.C. June 21, 2021) (risks inherent to litigation were not hardship supporting stay); *Kadel v. Folwell*, 446 F. Supp.3d 1, 19 (M.D.N.C. 2020) (stay denied where "harm" to proponents was nothing more than the "inconvenience" of having to move forward with the litigation).

13. Moreover, the Debtors and Non-Debtors Affiliates have already had multiple opportunities to confront the Committee's claims on the merits. Indeed, much of the Stay Motion's substance is a rehashing of the arguments made in the Motions to Dismiss and Reconsideration Motion.[5] Their failure to defeat these claims in litigation thus far is reason to move forward with the Committee's litigation, not to stay it.

14. The Stay Motion also (again) repeats the argument that the Committee's litigation should be stayed while the Debtor's estimation litigation proceeds because the Estimation Proceeding "will have a very substantial, and the movants would assert fully determinative, impact

[4] *Id.* at ¶ 8 ("Litigating the ACC's alleged claims now will likely cost the Debtors' estates tens of millions of dollars and take several years to complete, with the possibility, and perhaps likelihood, that the prosecution of such claims, even if successful, would not benefit the Debtors' estates in any way.").

[5] *Id.* at ¶¶ 5-6.

on any claims by the ACC of actual fraudulent transfer."[6] The Committee has already responded to this argument multiple times,[7] and, as noted herein, this Court has already rejected it.[8] It should do so again.

15. At bottom, the Stay Motion is nothing more than, as the Court has put it before, "one of those 'let's do the things I'd like to do in the case and not do the things that the opponent wants to.'" Hr'g Tr. at 18:20-22, Jan. 27, 2022. As such, the Stay Motion is patently unfair to creditors. It seeks to indefinitely deny creditors access to this Court[9] and shield from scrutiny the prepetition actions of the Debtors and Non-Debtor Affiliates in contravention of the Bankruptcy Code and principles of equity. *See* 11 U.S.C. § 1103.[10]

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[6] *Id.* at ¶ 5.

[7] *See, e.g.*, Reply in Further Support of Motion of the Official Committee of Asbestos Personal Injury Claimants for Entry of an Order Granting Leave, Standing, and Authority to Investigate, Commence, Prosecute, and to Settle Certain Causes of Action ¶¶ 5-6 (ECF No. 905); Plaintiff's Opposition to Affiliates' Motion to Dismiss, ¶¶ 13-14 (Adv. Proc. 21-03029 ECF No. 31).

[8] *See, supra,* ¶ 10; *see*, *infra*, ¶ 17.

[9] *See U.S. ex rel. Lindsey v. Trend Cmty. Mental Health Services*, 88 F. Supp. 2d 475, 477 (W.D.N.C. 1999) (denying motion for stay where doing so would "impair . . . access to the courts").

[10] *See Eisenberg v. Pa. State Univ. (In re Lewis)*, 574 B.R. 536, 539 (Bankr. E.D. Pa. 2017) (noting that "[t]he purpose of the fraudulent transfer provisions in the Bankruptcy Code and [the Pennsylvania Uniform Fraudulent Transfer Act] is to protect creditors by preventing a debtor from placing assets otherwise available to pay creditors out of reach of those creditors."); *Novak v. Univ. of Miami (In re Demitrus)*, 586 B.R. 88, 94 (Bankr. D. Conn. 2018) (quoting *Lewis* and noting the "spirit and purpose of fraudulent transfer provisions in the Bankruptcy Code and CUFTA" are "to protect creditors by preventing a debtor from placing assets otherwise available to pay creditors out of reach of those creditors"); *Sher v. JPMorgan Chase Funding Inc. (In re TMST, Inc.)*, No. JKB-15-75, 2015 U.S. Dist. LEXIS 87167, at *13 (D. Md. July 6, 2015) (noting "[t]he purpose of the Bankruptcy Code's avoidance provisions is to prevent a debtor from making transfers that diminish the bankruptcy estate to the detriment of creditors"); *Janvey v. Alguire*, Civ. Action No. 3:09-CV-0724-N, 2014 U.S. Dist. LEXIS 193394, at *137-38 (N.D. Tex. July 30, 2014) (noting that "fraudulent transfer claims play an important role in the fulfillment of the primary purposes and objectives of both the Bankruptcy Code and federal equity receiverships," citing *In re S.W. Bach & Co.*, 425 B.R. 78, 103 (Bankr. S.D.N.Y. 2010) for the proposition that "the purpose of the trustee's avoidance powers is to protect creditors, and arguably to encourage an equitable distribution of the debtor's property to creditors, and, in turn, ***prevent a debtor from favoring one creditor or third party over other creditors***, all of which go to the heart of federal bankruptcy proceedings of restructuring debtor-creditor relations") (emphasis added); *see also De La Pena Strettner v. Smith (In re IFS Fun. Corp.)*, 669 F.3d 255, 263 (5th Cir. 2012) (noting, in the context of avoidance actions under section 547 of the Bankruptcy Code, that "the primary consideration in determining if funds are property of the debtor's estate is whether the payment of those funds diminished the resources from which the debtor's creditors could have sought payment"). In addition, the purpose of substantive consolidation is to provide for the equitable treatment of all creditors. *See, e.g.*, *FDIC v. Colonial Realty Co.*, 966 F.2d 57, 61 (2d Cir. 1992); *Stone v. Eacho*, 127 F.2d 284, 288 (4th Cir. 1942).

16. What is more, granting the Stay Motion would not only disarm the Committee, but would do so while maximizing the Debtors' power and leverage in these cases. The Stay Motion says as much out loud: "[d]irecting the parties, and Court's time and resources, towards completing the Estimation Proceeding [by staying the Committee's litigation efforts] will allow the parties to then turn to confirmation of the Debtors' plan of reorganization,"[11] which the Committee does not support. That is, the Debtors want to dictate process because they believe it will allow them to dictate the resolution of these cases to the Committee and its constituents.

17. As it has already done in these cases, this Court also confronted a similar request for relief when considering Committee standing in *DBMP*, noting that "self-interest being what it is, everyone wants to do the things that might afford it leverage while its opponent doesn't get to do whatever." Hr'g Tr. at 82:23-25, *In re DBMP LLC*, No. 20-30080, Oct. 14, 2021. The Court denied the request, holding that staying the Committee's litigation efforts until after the debtor's estimation proceeding would "effectively [] adopt[] one side's way . . . of valuing asbestos claims for the purposes of the first hearing and then doesn't allow . . . the other party to advance its claim." *Id.* at 87:5-7. The Debtors and Non-Debtor Affiliates fail to present any reason for the Court to reach a different result here. The Stay Motion has no merit, is prejudicial to the Committee and its constituents, and should be denied.

II. THE TOLLING AGREEMENT SHOULD BE DENIED.

18. The Debtors and Non-Debtor Affiliates seek approval, in the event that Court stays the Committee's litigation efforts, to enter into a tolling agreement between themselves and their employees instead of entering tolling agreements with the Committee, which has been granted standing in these cases. The Tolling Agreement is nothing more than an insider agreement between

[11] *See* Stay Motion, ECF No. 1044, ¶ 9.

the Debtors and Non-Debtor Affiliates who will be subject to a complaint for actual fraudulent transfer, among other claims.[12] Accordingly, the Stay Motion is subject to "rigorous" or "strict scrutiny." *Stancill v. Harford Sands Inc. (In re Harford Sands Inc.)*, 372 F.3d 637, 640-41 (4th Cir. 2004) (proof of claim by insider subject to strict scrutiny, and insider claimant bears heightened burden of proving "the inherent fairness and good faith of the challenged transaction"); *see also In re Red F Mktg., LLC*, 547 B.R. 168, 175 (Bankr. W.D.N.C. 2016) (Whitley, J.) (citing *Harford Sands* and other cases and noting that, "[b]ecause of the influence and control an insider may wield, an insider's transactions with a debtor are subject to 'rigorous' or 'strict scrutiny.'"). The Debtors must demonstrate that the transaction meets the entire-fairness standard. *In re Red F Mktg., LLC*, 547 B.R. at 175 (citing *Harford Sands*). With no employees of its own, a conflicted board, and with controlling parent(s) and affiliates that are potential defendants, the parties cannot meet the entire fairness standard.

19. Of course, a tolling agreement is utterly irrelevant to standing and whether the Committee's litigation should be stayed in favor of the chosen litigation path of the Debtors and Non-Debtor Affiliates. The Tolling Agreement is utilized by the Debtors and Non-Debtor Affiliates solely as a tool to somehow justify the reargument of staying causes of action against the Non-Debtor Affiliates and their responsible directors and officers who would otherwise be named as defendants in the Committee's estate causes of action or have been named in the SubCon Proceeding. *See, e.g.,* Stay Motion, ECF No. 1044, ¶¶ 5-9, 12-16. Reargument with respect to a

[12] *See* 11 U.S.C. §101(31)(B) (defining "insider"); *see also In re Oakwood Country Club, Inc.*, 2010 WL 4916436, at *5 (Bankr. W.D. Va. Apr. 6, 2010) (definition of insider is suggestive and not exclusive, and requires only "sufficient closeness to the debtor to preclude the notion of an arms' length transaction" (citations omitted)).

motion that has already been decided should be disregarded.[13] In addition, reargument with respect to motions that are *sub judice* should similarly be disregarded.

20. Indeed, as the proposed order approving the Stay Motion makes clear, the Debtors' and Non-Debtor Affiliates' true intention in the Stay Motion is to derail the relief granted in the Standing Motion, the SubCon Proceeding, and even the relief sought by the Debtors and Non-Debtor Affiliates themselves in the Motions to Dismiss and the Reconsideration Motion.

21. For example, the proposed order attached to the Stay Motion states that:

> Further prosecution by the [Committee] of the Standing Motion and the [Committee's] complaint and motion for substantive consolidation (as well as the [Committee's] motion to obtain a creditor list from the Non-Debtor Affiliates) is hereby stayed.

Stay Motion, ECF No. 1044, Ex. B ¶ 3.

22. The Debtors and Non-Debtor Affiliates have no qualms in noting their intention to proceed with Estimation Proceeding and vitiate Committee actions with respect to the Corporate Restructuring and the filing of the bankruptcy petitions. *See* Stay Motion, ECF No. 1044, at ¶ 5, n.4 (noting that "confirmation of a plan in these proceedings would likewise moot any such litigation"). In addition, the Tolling Agreement states as follows:

> WHEREAS, the Parties believe the results of the proposed estimation proceeding to determine the Debtors' aggregate liability for asbestos claims (the "Estimation

[13] *See Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 815-16, 108 S. Ct. 2166, 2177 (1988) (citing *Arizona v. California*, 460 U.S. 605, 618, 75 L. Ed. 2d 318, 103 S. Ct. 1382 (1983)) ("As most commonly defined, the doctrine of the law of the case posits that when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case. This rule of practice promotes the finality and efficiency of the judicial process by protecting against the agitation of settled issues."); *see also United States v. Quality Built Const.*, 358 F. Supp. 2d 487, 490 (E.D.N.C. 2005) (granting plaintiff's motion in limine as to evidence related to the issue governed by the doctrine of the law of cases, which were already ruled upon by the same court); *Ehmann v. Duke Energy Carolinas LLC*, No. 3:19-CV-311-RJC-DSC, 2021 WL 4258798, at *1 (W.D.N.C. Jan. 26, 2021), *report and recommendation adopted sub nom. Ehmann v. Duke Energy Carolinas, LLC et al.*, No. 319CV00311RJCDSC, 2021 WL 3811480, at *3 (W.D.N.C. Aug. 26, 2021) (granting defendants' motion to dismiss plaintiff's amended complaint for breach of contract under the doctrine of the law of the cases because the court previously determined that the letter at issue was not a contract).

Proceeding") may render unnecessary investigation into and/or prosecution of the Estate Claims and the Substantive Consolidation Complaint;

Stay Motion, ECF No. 1044, Ex. A, p. 17. Indeed, the Tolling Agreement, as proposed, would toll the claims for years, "from March 31, 2022 through the date that an Order resolving the Estimation Proceeding becomes a final, non-appealable Order," *see* Stay Motion, ECF No. 1044, Ex. A ¶ 2, if not indefinitely. *See* Stay Motion, ECF No. 1044, ¶ 5, n.4 & Ex. A, p. 17. Since the Debtors' and Non-Debtor Affiliates' express goal in seeking a stay is to attempt to moot the Committee's claims, it may very well be true in this case that justice delayed will be justice denied.

23. For these and other reasons,[14] the Tolling Agreement should be denied.

III. THE MOTION TO SHORTEN SHOULD BE DENIED.

24. The Debtors assert that the relief they and the Non-Debtor Affiliates seek in the Stay Motion must be decided at the hearing on March 31, 2022. The Stay Motion seeks not only to stay the Committee's litigation claims, but also the Court's rulings on the Motions to Dismiss and the Reconsideration Motion, which the Court indicated it would rule on at the hearing on March 31, 2002. *See* Motion to Shorten, ECF No. 1045, ¶ 10. That is merely strategy, not an emergency, and therefore the Stay Motion should be denied.

25. In addition, the Debtors and Non-Debtor Affiliates did not seek to meet and confer with the Committee on the Stay Motion or the form of tolling agreement. Accordingly, to the extent the Court wishes to consider the merits of the Motion to Shorten, both the Motion to Shorten and the Stay Motion should be denied.

[14] The Committee takes issue with a number of provisions within the Tolling Agreement which are primarily aimed at providing roadblocks to the Committee's ability to adequately investigate and pursue estate claims. However, the primary concern regarding the Tolling Agreement is the permanent injunction the Debtors and Non-Debtor Affiliates seek. Thus, in the interest of time, the Committee hereby reserves all rights to raise further objection to the specific terms of the Tolling Agreement when and if such discussion is warranted.

CONCLUSION

WHEREFORE, for the foregoing reasons, the Committee respectfully requests that this Court (i) deny the Stay Motion, (ii) deny the Motion to Shorten, and (iii) grant the Committee such other and further relief as the Court deems just and proper.

Respectfully submitted,

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Dated: March 25, 2022