

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

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In re	:
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ALDRICH PUMP LLC, <i>et al.</i> , <sup>1</sup>	:
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Debtors,	:
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	:
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.	:
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Chapter 11  
No. 20-30608 (JCW)  
(Jointly Administered)  
  
Adversary Proceeding  
No. 21-03029 (JCW)

**REPLY IN SUPPORT OF MOTION OF DEBTORS AND NON-DEBTOR AFFILIATES FOR AN ORDER (A) AUTHORIZING THE DEBTORS TO ENTER INTO TOLLING AGREEMENT AND (B) STAYING LITIGATION**

Aldrich Pump LLC and Murray Boiler LLC, debtors and debtors-in-possession in the above-captioned cases (the “Debtors”), and Trane Technologies Company LLC and Trane U.S. Inc. (collectively, the “Non-Debtor Affiliates,” and with the Debtors, the “Movants”), submit this Reply in support of the Motion of Debtors and Non-Debtor Affiliates for an Order (A) Authorizing the Debtors to Enter into Tolling Agreement and (B) Staying Litigation [Dkt. 1044] (the “Motion”)<sup>2</sup> and in response to the Official Committee of Asbestos Personal Injury

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.  
2 Capitalized terms herein will have the definition attributed to them by the Motion unless otherwise defined in the Reply.



Claimants' Objection to (I) the Motion to Stay Litigation and Enter into Tolling Agreement, and (II) the *Ex Parte* Motion for Order Shortening Notice [Dkt. 1071, AP<sup>3</sup> Dkt. 55] (the "Objection").

### **Preliminary Statement**

1. These cases stand at an inflection point. Since the Petition Date, Movants have remained clear about the purpose of these Chapter 11 cases and singularly focused on their goal of seeking a permanent, consensual resolution of the Debtors' asbestos liabilities through confirmation of a plan that establishes and funds a trust under Section 524(g) of the Bankruptcy Code.

2. Since the Petition Date, the Debtors have taken consistent, concrete steps to accomplish their goal—they reached agreement with the FCR documented by the Joint Plan of Reorganization of Aldrich Pump LLC and Murray Boiler LLC [Dkt. 831] (the "Plan") and the Notice of Filing of Plan Support Agreement [Dkt. 832]; they created and received funding for a \$270 million qualified settlement fund ("QSF") which, along with insurance and other assets, fully funds the trust proposed in the Plan. The Estimation Proceeding constitutes the next logical step in that process, whereby the Court will evaluate the Debtors' asbestos liabilities and test the sufficiency of the proposed plan funding.

3. On March 31, 2022, this Court will determine the course of these Chapter 11 cases at this crucial inflection point. The Movants reject the idea that the Court must allow each side to pursue separate "litigation paths." This Court, instead, retains full authority to choose between, on the one hand, the logical, necessary<sup>4</sup> next step to advance these cases to plan confirmation and payment of asbestos claims, and, on the other hand, an unnecessary detour that

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<sup>3</sup> References to "AP Dkt. No." shall refer to documents filed in Adversary Proceeding Number 21-03029 (JCW).

<sup>4</sup> Regardless of which party to these cases sought estimation, in the absence of an agreement among the parties on the appropriate amount of funding for a Section 524(g) trust, estimation of the Debtors' asbestos liabilities would be necessary to bring these cases to a conclusion.

provides no benefit to the current and future claimants (since all of the assets of Old Trane and Old IRC are already available to fund payments to asbestos claimants), that likely will harm claimants through unnecessary delay and the expenditure of estate funds, and that will burden the Court with meaningless motion practice and discovery disputes.

4. The ACC does not, because it cannot, articulate why and how its fraudulent conveyance and substantive consolidation litigation (the “ACC Litigation”) will resolve these Chapter 11 cases with a plan that will fairly, equitably and promptly pay the asbestos creditors. Movants, in contrast, demonstrate that the Estimation Proceeding will provide a prompt resolution to these Chapter 11 cases because the Debtors will fund the trust based on the Court’s findings in such Proceeding based on the evidence presented by the Debtors, the ACC and the FCR. There simply exists no basis for the ACC to pursue now its substantive consolidation or fraudulent transfer claims.

5. These Chapter 11 cases, in short, should proceed now to the Estimation Proceeding, and all parties’ rights related to the ACC Litigation should be preserved and protected through the Litigation Stay and Tolling Agreement. Accordingly, the Movants respectfully request the Court grant the Motion.

**I. The Litigation Stay is the logical, necessary next step to resolve these cases**

6. Although the Estimation Proceeding certainly will involve some litigation, it (unlike the ACC Litigation) does not constitute litigation for litigation’s sake. It, instead, constitutes a necessary prerequisite to moving these cases forward to the ultimate goal of plan confirmation and payment to asbestos claimants. The ACC’s protestations that it must “stand aside”<sup>5</sup> and be “disarmed”<sup>6</sup> during the Estimation Proceeding ignores the fact that it can and will

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<sup>5</sup> See Objection, para. 11.

<sup>6</sup> See Objection, para. 16.

make its own case in the Estimation Proceeding (a case the ACC must make to have any prospect for success in the ACC Litigation).

7. The ACC also mischaracterizes the purpose of the Litigation Stay as moving forward with the Estimation Proceeding only to confirm the current proposed Plan. In fact, the Motion contemplates pursuit of plan confirmation generally, not exclusively with respect to the current Plan. See Motion, para. 9. As the Court noted in granting estimation, “[a]bsent agreement on a plan, it would seem to me that estimation will be a logical next step[.]” January 27, 2022 Hr’g Tr. at 13:2-3.<sup>7</sup>

8. Conversely, pursuing now the ACC Litigation constitutes neither a logical nor necessary step, and may prove entirely unnecessary depending on the Court’s estimation rulings. Such rulings will inform the parties on whether the Debtors’ liabilities exceed the value of the Debtors’ assets and financial resources, a determination crucial to the merits of the ACC Litigation. Even if those liabilities exceed the Debtors’ assets, the ACC Litigation may still prove unnecessary unless the Non-Debtor Affiliates switch gears completely and fail to provide the Debtors with the necessary additional assets and resources pursuant to the Funding Agreements.

9. The Objection supports Movants’ position that the ACC Litigation need not move forward now, and ultimately may prove unnecessary. See Objection, para. 15 n.10. The Objection lists several cases standing for the propositions that (a) fraudulent transfer actions prevent debtors from placing assets outside the reach of creditors and making transfers that diminish the bankruptcy estate; and (b) avoidance powers prevent debtors from favoring one

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<sup>7</sup> While the Debtors reached agreement with the FCR on a plan, the ACC has refused to engage in plan discussions, making the Estimation Proceeding not only the logical next step, but the necessary next step.

creditor or third party over others. These circumstances simply do not exist here.<sup>8</sup> First, the Debtors' assets, the QSF, the Funding Agreements, and the insurance assets all remain well within the current and future claimants' reach (a fact recognized by the FCR). Second, the ACC sets forth no facts that show—and the ACC does not explain how—the Debtors favor one creditor or third party over another.

10. The Non-Debtor Affiliates have fulfilled all of their obligations under the Funding Agreements throughout these Chapter 11 Cases, including full funding of the QSF with \$270 million for the sole benefit of current and future asbestos claimants.

11. Despite the above undisputed facts, the ACC continues speculating that the Corporate Restructuring somehow places assets out of reach, and the Non-Debtor Affiliates will switch gears completely and stop satisfying their contractual funding obligations.<sup>9</sup> Courts that have reviewed similar funding agreements, however, consider such speculation unfounded. See In re LTL Mgmt., LLC, 2022 Bankr. LEXIS 510, at \*45-46 (Bankr. D.N.J. Feb. 25, 2022) (“Also, it is nonsensical to accept the notion that J&J and Old JJCI would bear the brunt of public and judicial scrutiny, as well as the time and costs to implement this integrated transaction, simply to stall claimants or walk away from its financial commitments under the Funding Agreement. Moreover, the remedial creditor actions addressing the Corporate Restructuring remain available for creditors to pursue, if necessary.”) (emphasis added); Future

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<sup>8</sup> The Debtors acknowledge the Court's preliminary observations regarding the Corporate Restructuring set out in the Findings of Fact and Conclusions of Law Regarding Order: (I) Declaring that the Automatic Stay Applies to Certain Actions against Non-Debtors, (II) Preliminarily Enjoining Such Actions, and (III) Granting in Part Denying in Part the Motion to Compel. [Adv. Dkt. 308]. However, while tangible assets were allocated between parties pursuant to the Corporate Restructuring, the Debtors and Non-Debtor Affiliates preserved exactly what current and future claimants would receive on account of their claims—access to cash for payment on their claims. As the Court observed—“You think the claimants care at the end of the day? . . . Not the lawyers, the claimants . . . if they're paid?” December 2, 2021, Hr'g Tr. 86:21-25, 87:1. Litigation on principle alone harms, rather than helps, claimants.

<sup>9</sup> Indeed, this Court has also recognized that the Debtors and Non-Debtor Affiliates have been true to their word and are attempting to move these cases forward. See January 27, 2022, Hr'g Tr. at 36:14-20 (“We were arguing in the preliminary injunction hearing about whether the funding agreement was illusory, whether it was unsecured,

Claimants Representatives v. George-Pacific LLC (In re Bestwall LLC), 2022 U.S. Dist. LEXIS 2996, at \*25-26 (W.D.N.C. Jan. 6, 2022) (“The Funding Agreement is not so unreliable or ‘illusory’ that the Court can conclude the Bankruptcy Court, which is intimately familiar with the Debtor’s Bankruptcy Case and reorganization efforts, abused its discretion in determining the Debtor has a reasonable likelihood of successful reorganization.”); Bestwall LLC v. Those Parties Listed on Appendix A (In re Bestwall LLC), 606 B.R. 243, 255 (Bankr. W.D.N.C. 2019) (“In light of the Funding Agreement, . . . there is no reason for the Court to conclude at this point that the Debtor does not have the ability to fully fund a section 524(g) trust[.]”).

12. The circumstances of, and developments in, the Chapter 11 Cases clearly delineate the Litigation Stay as the appropriate path here. This Court’s prior concern that some court must weigh in on the propriety of the Corporate Restructuring has now been addressed by Judge Kaplan in the LTL Management case.<sup>10</sup> The purpose of chapter 11 bankruptcy generally, and the Debtors’ stated and demonstrated purpose in these cases, remains confirmation of a plan that will pay asbestos claimants fairly, equitably and promptly.<sup>11</sup> The Estimation Proceeding is necessary to the plan confirmation process. The ACC Litigation, in stark contrast, is neither necessary nor even helpful to that process, and likely will delay payments to claimants. The Movants, therefore, respectfully request this Court implement the Litigation Stay.

**II. The Litigation Stay addresses the interests of judicial economy, prevents hardship, and responds to the changing circumstances and Court’s comments after the**

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whether it was conditional, and whether it was unrealistic. Well, this seems, to me, to be simply putting some money on the table that assures you that if you reach a deal, that it’s there to pay the claims.”)

<sup>10</sup> See, e.g., LTL Mgmt., 2022 Bankr. LEXIS 510, at \*74 (“With respect to the use of the now infamous ‘Texas Two-Step,’ the Court finds nothing inherently unlawful or improper with application of the Texas divisional merger scheme in a manner which would facilitate a chapter 11 filing for one of the resulting new entities.”).

<sup>11</sup> Despite the ACC’s steadfastly stated desire that these cases not go forward and that claimants return to the tort system, the ACC has now made it clear they will not seek dismissal of these cases. See March 3, 2022, Hr’g Tr. at 63:22-25 through 64:1-2. Given that it is clear these cases will proceed, the proper focus is on the Estimation Proceeding, which is the next step toward plan confirmation.

**January Hearing. It is not re-argument<sup>12</sup>**

13. Contrary to the ACC's assertion (Objection, para. 12), the Movants clearly demonstrate "clear hardship or inequity" with proceeding now with the ACC Litigation, and "a pressing need" for the Litigation Stay." See, e.g., Motion, paras. 1-2, 5-9. In the Future Asbestos Claimants' Representative's Response to the Motion of Debtors and Non-Debtor Affiliates for an Order (A) Authorizing the Debtors to Enter into Tolling Agreement and (B) Staying Litigation [Dkt. 1070] (the "FCR Response"), the FCR also highlights such hardships, inequities, and the pressing need for the Litigation Stay, as well as its benefits to asbestos claimants (80% of whom the FCR represents). See FCR Response, at pp.1-2; see also id. at 6 ("[T]he sooner the Court can estimate the Debtors' prepetition claims, the sooner all litigation other than that concerning plan confirmation will be resolved—and the sooner asbestos victims can be compensated.").

14. The Objection reads out of the two cited Middle District of North Carolina cases the first factor weighed by the courts—judicial economy. Wilmington Tr., Nat'l Ass'n v. Nat'l Gen. Ins. Co., 2021 U.S. Dist. LEXIS 114879, at \*28 (M.D.N.C. June 17, 2021) (noting first factor, judicial economy, weighed in favor of staying litigation); Kadel v. Folwell, 446 F. Supp. 3d 1, 19 (M.D.N.C. 2020) (analyzing judicial economy). The Motion and above discussion demonstrate clearly that judicial economy weighs in favor of the Litigation Stay.

15. Movants filed this Motion in response to the Court's comments during the March 3, 2022, hearing and not to reargue any prior motions. Movants seek here only to stay the ACC Litigation because proceeding first with the Estimation Proceeding will enable the Court and the

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12 The Objection includes a footnote describing the law of the case doctrine. Objection, para. 19 n.13. Law of the case "merely expresses the practice of courts generally to refuse to reopen what has been decided, not a limit on their power" and allows courts to revisit prior positions taken. Christianson v. Colt Indus. Operating Corp., 486 U.S. 800, 817 (1988). The Motion seeks alternative relief in response to new and changing circumstances that occurred after the Court's rulings at the January 27, 2022, hearing in these cases. In any event, Movants believe that the case cited in the Objection is not a decision upon a rule of law, making this doctrine inapplicable.

parties to move these cases forward to a fully funded plan and will “let . . . others be the test case and work out the number and get everyone paid in this one. That way, the, the policy concerns can be addressed and maybe some of these people and their families could get paid in, in short order.” See March 3, 2022, Hr’g Tr. at 192:1-5.

16. Movants did not file this Motion to shield the Corporate Restructuring from scrutiny or to disarm the ACC. The Tolling Agreement expressly preserves the ACC Litigation, as well as the parties’ claims and defenses relating thereto. The Motion, instead, seeks to shield the Court and parties from the expense and delay arising from litigation that may prove completely meaningless.

17. The Court, in short, should grant the Motion for judicial economy’s sake.

**III. The Tolling Agreement ensures that justice will not be denied to the current or future claimants**

18. If the Court grants the Litigation Stay, then the proposed Tolling Agreement will protect fully the ACC’s rights to initiate and prosecute the ACC Litigation if it ever becomes necessary. Tolling, therefore, is hardly “utterly irrelevant.” Objection, para. 19, and such agreements are well established and endorsed by legislative history. See Motion, para. 13.

19. The Tolling Agreement satisfies both the business judgment and the entire fairness standards. The Tolling Agreement benefits the current claimants by preserving estate causes of action should they later become necessary. The Tolling Agreement also benefits the claimants and the Debtors’ estates by making possible a case-wide resolution through the Estimation Proceeding while avoiding the delay, expense and attendant harm to creditors from pursuing simultaneously the ACC Litigation. The FCR shares that view. See FCR Response, p. 5-6.

20. The Objection’s “justice delayed will be justice denied” assertion makes no sense.



Objection, para. 22. Justice will not be denied to current and future claimants because they can pursue the ACC Litigation when and if the Court determines that the Debtors' asbestos liabilities exceed the value of their assets—including the QSF, insurance assets, and Debtors' other financial resources—and the Non-Debtor Affiliates refuse to provide the required additional funds under the Funding Agreements. The Tolling Agreement, moreover, will ensure that any delay does not prejudice the asbestos claimants.<sup>13</sup>

#### **IV. The Court should allow the parties to argue the Motion on March 31, 2022**

21. It makes no sense to delay argument on the Motion and proceed with rulings on the Motions to Dismiss and Clarification Motion, when this Motion seeks a suspension of the rulings on those Motions. This Motion represents, in large part, a formalization of the relief discussed with the Court at prior hearings, and, provides the Court with a full menu of options at the inflection point of these cases thus far. The Motion is fully briefed, and the Movants respectfully request the Court consider and rule on it at the beginning of the March 31, 2022 hearing.<sup>14</sup>

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<sup>13</sup> Movants are prepared to meet and confer with the ACC to discuss and resolve its concerns over any provision in the Tolling Agreement.

<sup>14</sup> The Movants informed the ACC of the relief it planned to seek in the Motion (as well as the anticipated timing for hearing the Motion) by e-mail on March 9, 2022, five days before the Motion was filed, and offered to discuss the relief the Movants would be seeking prior to filing. The ACC did not respond to this invitation

Dated: March 29, 2022  
Charlotte, North Carolina

Respectfully submitted,

/s/ John R. Miller, Jr.

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