Docket #2172 Date Filed: 4/3/2024

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re:	:	
	:	Chapter 11
ALDRICH PUMP LLC,	:	
MURRAY BOILER LLC,	:	Case No. 20-30608 (JCW)
	:	
Debtors.	:	

ROBERT SEMIAN AND ALL MRHFM'S CLAIMANTS' MOTION TO REQUIRE THE DEBTORS AND TRANE TO MAKE IRREVOCABLE, UNEQUIVOCAL, AND UNCONDITIONAL ADMISSIONS ABOUT THE ENFORCIBILITY OF THE FUNDING AGREEMENTS

Robert Semian and forty-six (46) other claimants represented by MRHFM[1] move the Court to require irrevocable, unequivocal, and unconditional admissions from the Debtors and their Corporate Parents[2] that their Funding Agreements[3] are valid and

[1] Movants are Plaintiff Robert Semian (who was not required to file a proof of claim because of when he was diagnosed) and forty-six claimants represented by Maune Raichle Hartley French & Mudd, LLC ("MRHFM"), who filed proofs of claim in this case. MRHFM client Joseph Hamlin (deceased, now represented by his surviving spouse) is a member of the Official Committee. This Motion is not made on behalf of Mr. Hamlin or on behalf of the Committee. For ease of reference, "the Semians" or "Movants" shall refer to Robert Semian and to all claimants represented by MRHFM.

[2] MRHFM refers to the parties as this Court does in its Dismissal Order: Trane Technologies Company LLC ("New TTC"), Trane U.S. Inc. ("New Trane"), Aldrich Pump LLC ("Aldrich"), and Murray Boiler LLC ("Murray"). Aldrich and Murray are collectively "the Debtors." *See Order Denying Motions To Dismiss*, December 28, 2023 (Dkt. 2047) (the "Dismissal Order") at 1-3. The former Trane U.S., Inc., Murray's predecessor, is referred to as "Old Trane." Aldrich's predecessor, the former Ingersoll-Rand Company, is referred to as "Old IRNJ." The Debtors are indirect subsidiaries of publicly traded Trane Technologies plc ("Trane plc"). "Trane" or "Corporate Parents" refers collectively to New Trane, New TTC, and Trane plc. *See also* Findings of Fact included in the Order on Preliminary Injunction, Case No. 20-03041, Adv. Pro. Dkt. 308 ("Findings") at ¶ 19.

[3] "Funding Agreements" refers to the various agreements between the Debtors and Trane, including between Aldrich and New TTC and Murray and New Trane whereby the non-debtor entities agree to

enforceable both inside and ***outside*** of bankruptcy, irrespective of whether the Debtors' petitions are involuntarily dismissed for bad faith or any other reason.

Aldrich and Murray have repeatedly asserted they have the same ability to pay their asbestos liabilities as Old IRNJ and Old Trane. *See* Pittard Decl. ¶17 (Dkt. 27). These assertions are the centerpiece of the Debtors' claim that the pre-petition divisive merger under the Texas Business Organization Code was ***not*** a fraudulent conveyance, and that their petitions were filed in good faith. This Court has expressed concern that the Funding Agreements are less ironclad than the Debtors say they are. Dismissal Order at 15.

This Motion is made in response to the Court's comments and justified concerns. By securing irrevocable, unequivocal, and unconditional admissions from both the Debtors and their Corporate Parents, this Motion seeks to: (1) eliminate any doubt regarding the Debtors' representations; (2) protect the Funding Agreements, which are the estates' largest assets in the Debtors' bankruptcy; and (3) ensure that this Court's exercise of its equitable powers—in granting a preliminary injunction protecting Trane and its non-debtor affiliates—is not being abused.

Certainty regarding this issue is directly related to the requirement of 11 U.S.C. 1123(a)(5) that the Court assure itself that the Debtors have sufficient means to implement

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provide funding to the debtor entities. "In simplified terms, under certain conditions, the Debtors' affiliates promise to provide Aldrich and Murry with sufficient monies to pay allowed asbestos claims under Plan and the costs of these bankruptcy cases." Dismissal Order at 12-13.

a plan of reorganization. For example, it is entirely possible that the Court could find that the only appropriate plan of reorganization in this case would be a one that provided for pass-through of all tort claims against the Debtors to the tort system, to be funded by the Funding Agreements, and liquidation of the Debtors' other limited assets. If the Debtors cannot irrevocably and unequivocally affirm that they will enforce the Funding Agreements—no matter what happens on appeal or in this case—then no plan can possibly be confirmed.

I. JURISDICTION AND VENUE

The Court has jurisdiction to consider this request pursuant to 28 U.S.C. §§ 158(d)(2)(A) and 1334. This is a core proceeding pursuant to 28 U.S.C. §157(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The Court's statutory authority for granting this Motion arises from 11 U.S.C. §§ 105(a) and 1123(a)(5).

II. FACTUAL AND PROCEDURAL HISTORY

Soon after entering the Dismissal Order, the Court certified its decision for direct appeal to the United States Circuit Court of Appeals for the Fourth Circuit. *See* Dkt. 2111. The Court found that the Funding Agreements "are the basis of the [Debtors] bold proclamation that '[they] have the same ability to pay asbestos claims as [] their predecessors.'" Dismissal Order at 13 (citing Findings at ¶ 151). "Undisputedly, New TTC and New Trane can fund their obligations under the two Funding Agreements," as New TTC is worth $7.8 billion and New Trane is worth $3 billion. *Id*.

The Debtors, however, ***must*** rely on Trane—which has "$16 billion in annual revenues, annual excess cash flow eclipsing $1.8 billion, and a market cap of $54 billion" (Dismissal Order at 14)—and its affiliates to satisfy their asbestos liabilities. Despite the Debtors' reliance on New TTC and New Trane, "the claimants' ability to collect from [New Trane and/or New TTC] is uncertain." Dismissal Order at 15. The Funding Agreements "require 'that a confirmed chapter 11 plan provide New TTC or New Trane, as applicable, 'with all the protections of section 524(g) of the Bankruptcy Code.'" *Id*.

The Funding Agreements "are conditional, potentially unenforceable, and they will be honored only if [Trane] affiliates wish them to be honored." Dismissal Order at 15. There is also an "Automatic Termination provision where New TTC's and Trane's respective funding obligations automatically cease 'on the effective date of a Section 524(g) plan." Dismissal Order at 27. Further, only the Debtors can enforce the Funding Agreements, and since the Debtors have no employees of their own and use the staff of New TTC to carry out its business operations, the people who would enforce the Funding Agreements against New TTC and/or New Trane are New TTC employees. Findings at ¶ 73.

These conditions, and the blatant self-dealing between the Debtors and New TTC and New Trane, appear to raise concerns for the Court and certainly raise concerns for the Movants about the propriety of the Funding Agreements and the Movants ability to collect on their claims.

What happened in Johnson & Johnson's Texas Two Step validates those concerns. There, LTL Management—also represented by Jones Day— made repeated assertions that its funding agreement with J&J and Johnson & Johnson Consumer Inc. (collectively "J&J") was enforceable inside or outside of bankruptcy, including if LTL's petition was dismissed. *See* Ex. 1, John Kim Decl., 4/4/2023, *LTL1*, at ¶ 27; Ex. 2, *LTL1*, Tr. 2/18/22 at 61:5-20 (Jones Day counsel representations); Ex. 3, *LTL1*, Tr. 9/19/22 at 65:13-17, 83:21-25 (LTL appellate counsel to Third Circuit); Ex. 4, *LTL2*, Tr. 4/18/23 at 61:7-14 (LTL Chief Legal Officer testimony). The Third Circuit took LTL Management—and its lawyers—"at their word" and dismissed LTL's first petition. *In re LTL Mgmt., LLC*, 64 F.4th 84, 109 (3d Cir. 2023). Dismissal of that case and the ruling in the claimants' favor prompted LTL to tear up its funding agreement with J&J and file a second bankruptcy. *See In re LTL Mgmt., LLC,* 652 B.R. 433 (Bankr. D.N.J. 2023).

LTL and J&J's willingness to suddenly disavow their funding agreement—and all prior assurances regarding its enforceability once the Third Circuit's ruling made the agreement inconvenient for J&J's plan—warrants skepticism of the Funding Agreements here. There is every reason to believe the Debtors and their Corporate Parents—advised by the same lawyers as LTL and J&J—will attempt to recant, disavow, or otherwise deprive the Movants and similarly situated asbestos claimants of the benefit of the Debtors "ability to pay," once it no longer fits in the Debtors' scheme.

III. ARGUMENT

This Court has the power and authority under Sections 105 and 1123(a)(5) to ensure that the Debtors' bankruptcy estates and their creditors are protected, and that the Court's authority and equitable powers are not being manipulated.

A. Given the Debtors' Representations Regarding the Funding Agreements, What Fellow Two Step Debtor LTL Did, and This Court's Concerns, Irrevocable and Unequivocal Admissions Are Needed.

Throughout these bankruptcy cases, and publicly, the Debtors and their counsel have made multiple proclamations about the Funding Agreements. Speaking at the American Bankruptcy Institute conference in April 2022, Jones Day partner and Debtors' counsel, Greg Gordon, said:

> We've seen these fraudulent conveyance allegations be made…the way they get there is they just ignore the funding agreement…from our perspective, **the funding agreement's key** and it's so important. ABI at 26 (emphasis).
>
> [Opponents allege] you have the funding agreement but the claimants are now a step removed. The debtor isn't going to enforce it. And my reaction to that is that's kind of an insult to the bankruptcy judge. So, we're there in the bankruptcy court. We're a debtor in possession. We're a fiduciary. We elect not—the other side breaches, we elect not to enforce, **is the bankruptcy judge going to let us get away with that?**

ABI at 28-29 (emphasis added).

Debtor's counsel made these statements ***before*** the Third Circuit dismissed LTL Management's bankruptcy. *See In re LTL Mgmt.*, 64 F.4th 84 (3rd Cir. 2023). After the Third Circuit held that LTL was not in financial distress and ruled in the Claimants' favor, it

turned out J&J's funding agreements with LTL were not worth the paper they were printed on.

In this case, Allan Tananbaum, the Debtors' Chief Legal Officer responsible for Trane's asbestos litigation from 2005 through 2011, agreed that if New Trane and New TTC honor the Funding Agreements, the Debtors can pay future claimants in the tort system for at least the next ten years. Ex. 5, Tananbaum Dep., 7/6/23 at 167:6-25 (Dkt. 1909-3).[5] This is only possible, however, ***if*** the Debtors are able to enforce the Funding Agreements over Trane's objection. *Id.* at 134:10-14.[6] In the aftermath of LTL's re-filing, Mr. Tananbaum was asked whether Aldrich and Murray would enforce the Funding Agreements if this case was dismissed. He answered: "**I don't know what we would do** at the moment. I haven't given that a lot of thought." *Id.* at 159:3-5 (emphasis added). The claimants, on the other hand, must think about that situation, which is the impetus of this Motion and the relief requested herein.

Mr. Tananbaum's transparent hedging tells the Movants and the Court everything that they need to know. The Debtors and their Corporate Parents make inconsistent self-serving statements apparently in an effort to maintain all the benefits of this Court's equitable relief, while refusing to commit to the foundational fact upon which they based

[5] *See* Tananbaum Depo. at 30:5-7.

[6] In the five to ten years prior to this proceeding, the Debtors were spending approximately $100 million annually on asbestos liabilities. *See* Tananbaum Depo. at 75:18-22.

their initial request for that relief—that the Funding Agreements are an unlimited backstop to the Debtors. That's not good enough.

The Funding Agreements are the only mechanism that will allow the claimants to recover anything on their claims in this bankruptcy proceeding. "[They] are the basis of Aldrich/Murray's bold proclamation that the 'Debtors have the same ability to pay asbestos claims as did their predecessors." Dismissal Order at pg. 13 (citing Findings at ¶ 151); *see also* Allan Tananbaum Decl., (Dkt. 29 at ¶ 36 (swearing that the Debtors "have access to additional uncapped funds through the Funding Agreements … ")).

Yet, without the Funding Agreements the "Debtors have no ability pay the asbestos claims assigned to them by the Divisional Merger. Thus, [the Court's] conclusion in the preliminary injunction hearing was that these agreements are conditional, potentially unenforceable, and will only be honored if the Affiliates wish to honor them." Dismissal Order at 15. In other words, as the Court aptly points out, the claimants have no way of knowing whether Trane will fully fund the Debtors' asbestos liabilities. The Court has the authority to bring certainty to this process by requiring the Debtors and Trane to put their money where their mouth is and say without equivocation that they will honor and enforce the Funding Agreements—both inside and outside of the bankruptcy case.

B. <u>This Court Has Broad Equitable Powers Under 11 U.S.C. § 105 to Protect the Estate's Assets And its Creditors.</u>

Pursuant to 11 U.S.C. § 105(a), a bankruptcy court "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title…" *A.H. Robins Co., Inc. v. Piccinin*, 788 F.2d 994, 1002 (4th Cir. 1986) (citing *In re Otero Mills, Inc.*, 25 B.R. 1018, 1020 (D.N.M.1982)). The Court relied upon Section 105(a), in part, in enjoining claims against the Corporate Parents during the pendency of this case. Findings at ¶¶ 195-99.

The Movants recognize that the expanse of Section 105 is not unlimited; however, the significance of the Debtor honoring the Funding Agreements is paramount to this case. This Court has recognized that while bankruptcy courts have "fashioned relief under section 105(a) in a wide variety of situations . . . the powers granted by this section must be exercised in a manner consistent with the provisions of the Code and other applicable law." *In re Rose,* 512 B.R. 790, 795 (Bankr. W.D.N.C. 2014). *See also In re Shiler*, 426 B.R. 167, 175 (Bankr. W.D.N.C. 2010) ("[I]t is clear that a bankruptcy court may not use its equitable powers in derogation of other bankruptcy statutes…").

While Section 105(a) is a "catchall provision" authorizing bankruptcy courts to carry out any order, process, or judgment "necessary or appropriate to carry out the provisions of this title," it may not be employed to override other Bankruptcy Code provisions. *In re Dyer*, 381 B.R. 200, 203 (Bankr. W.D.N.C. 2007). Despite the recognized

limits of Section 105, its use in this context is appropriate and does not circumvent or undermine any other section of the Bankruptcy Code or any other applicable law.

Section 1123(a)(5) requires the Court to ensure the Debtors have adequate means to implement any plan of reorganization. There is no dispute that the Funding Agreements are necessary to support such a plan and that Trane's sworn financial statements show that available insurance, while substantial, is ***not*** sufficient to fund 100% of the Debtors' asbestos liabilities.[7] Thus, the affirmations requested herein are necessary and appropriate for claimants, like the Movants, to protect and advocate for their claims and interests.

If, for example, a plan provides that all current and future claimants can immediately opt-out to the tort system to pursue uncapped state law remedies—including punitive damages—before juries against Aldrich and Murray, the claimants and this Court should be satisfied that the Debtors will enforce the Funding Agreements, which would be essential for such a plan to be implemented under Section 1123. This is not a hypothetical, as Mr. Semian will not vote for a plan that lacks this essential—and required—element. The Court discussed *Ortiz* at length, leaving a determination on this matter "for another day." Dismissal Order at 37-40 (citing *Ortiz v. Fibreboard Corp.*, 527 U.S. 185 (1999)).

[7] *See* Findings at ¶ 70-71.

C. This Court's Broad Equitable Powers Are Needed in This Case Involving Matters of Public Importance.

The Court has recognized the Debtors' cases "raise some very fundamental questions about what bankruptcy is about and who is it for and who can use the tools of bankruptcy." Ex. 7, Tr. 2/9/24 at 77:13-20. "These are issues, again, that strike at the core of who is entitled to bankruptcy" (Tr. 2/9/24 at 84:23-25) and the "ramifications of these decisions" on the "two-step methodology" affect "hundreds of thousands of people and hundreds of thousands of state court lawsuits," particularly since those "who have mesothelioma don't have long to live… " Tr. 2/9/24 at 85:13-21.

This is a case of great public importance which involves billions of dollars and hundreds of thousands of people. The stakes—whether the Debtors will enforce their Funding Agreements, ***regardless*** of what happens on appeal—merit this Court exercising its equitable powers to protect the Debtors' bankruptcy estate and their creditors. The Debtors and Trane must be required to irrevocably and unequivocally affirm that the Funding Agreements are valid and enforceable, regardless of whether the Debtors' bankruptcy cases are dismissed or what happens in this case.

IV. CONCLUSION

Section 105 of the Bankruptcy Code is intended to provide the Court with a tool to carry out its duties. In this case, the Court was asked to and did extend the extraordinary protection of the automatic stay to third-parties not operating under the jurisdiction of the Court, extending injunctive relief to New Trane and New TTC. Findings at ¶5.

Now, the Movants ask the Court to use those same equitable powers to require the Debtors to affirmatively state its position on whether the Funding Agreements are enforceable if the Debtors' case is dismissed and whether there are caveats to the enforceability of the Funding Agreements. The Debtors should do so ***now*** so the creditors, specifically the claimants injured by the tortious conduct, can be assured there will be funding to pay their claims regardless of how this case moves forward.

This the 3rd day of April, 2024.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing ROBERT SEMIAN AND ALL MRHFM'S CLAIMANTS' MOTION TO REQUIRE THE DEBTORS AND TRANE TO MAKE IRREVOCABLE, UNEQUIVOCAL, AND UNCONDITIONAL ADMISSIONS ABOUT THE ENFORCIBILITY OF THE FUNDING AGREEMENTS was filed in accordance with the local rules and served upon all parties registered for electronic service and entitled to receive notice thereof through the CM/ECF system.

Respectfully submitted this the 3rd day of April, 2024.

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