Docket #2212 Date Filed: 4/17/2024

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
Debtors.	:	(Jointly Administrated)

THE NON-DEBTOR AFFILIATES' OBJECTION TO ROBERT SEMIAN AND ALL MRHFM'S CLAIMANTS' MOTION TO REQUIRE THE DEBTORS AND TRANE TO MAKE IRREVOCABLE, UNEQUIVOCAL, AND UNCONDITIONAL ADMISSIONS ABOUT THE ENFORCIBILITY [SIC] OF THE FUNDING AGREEMENTS

Trane Technologies Company LLC ("**TTC**") and Trane U.S. Inc. ("**TUI**," together with TTC, the "**Non-Debtor Affiliates**")[2] submit this joinder and objection to *Robert Semian and All MRHFM's Claimants' Motion to Require the Debtors and Trane to Make Irrevocable, Unequivocal, and Unconditional Admissions About the Enforcibility [sic] of the Funding Agreements* [Dkt. No. 2172] (the "**Motion**" or "**Mot.**") filed by Robert Semian and forty-six other claimants represented by Maune Raichle Hartley French & Mudd, LLP (collectively, the "**Movants**"). The Non-Debtor Affiliates join the Debtors' April 17, 2024 objection to the Motion [Docket No. 2211], and respectfully submit that the Court should deny the Motion for the additional reasons set forth below:

[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] The Motion defines "Trane" as including Trane plc. Trane plc is not a party to the Funding Agreements and is not a proper party to the Motion. To the extent this Court requires a Trane plc response to the Motion, then Trane plc joins the Non-Debtor Affiliates' and the Debtors' objections to the Motions.

2030608240417000000000011

PRELIMINARY STATEMENT

The Movants ask the Court to issue a mandatory injunction "requiring" the Non-Debtor Affiliates and Debtors to make "irrevocable, unequivocal, and unconditional admissions . . . ." Mot. at 1. As an initial matter, the Motion fails procedurally because a party must bring any claim for an injunction or other equitable relief in an adversary proceeding pursuant to Rule 7001 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**").

In addition to this fatal procedural defect, the Movants premise their Motion on either inexcusable ignorance or intentional obfuscation of the underlying facts. The Debtors' assets include a $270 million qualified settlement fund and substantial insurance assets, totaling in excess of $540 million, *before any consideration of the Funding Agreements*.[3] Based on the Debtors' estimate of their asbestos liabilities and their agreement with the Future Claims Representative, the Debtors' currently possess sufficient assets to *fully fund* a plan *absent* the Funding Agreements. Thus, the Movants' hyperbolic statements that "[t]he Debtors . . . ***must*** rely on Trane . . . to satisfy their asbestos liabilities" (Mot. at 4) and that "[t]he Funding Agreements are the only mechanism that will allow the claimants to recover anything on their claims in this bankruptcy proceeding" (Mot. at 8) demonstrably misrepresent the facts of this case to the Court.

The Movants also fail to articulate what specific relief they seek through the Motion. Although the Movants ask the Court to "require" the Non-Debtor Affiliates to make "admissions" concerning the validity and enforceability of the Funding Agreements, the Non-Debtor Affiliates already have acknowledged—and never have disputed—the validity and enforceability of such Agreements. The Non-Debtor Affiliates also have performed all of their obligations under the

[3] The "Funding Agreements" refers to the Second Amended and Restated Funding Agreement between TTC and Aldrich Pump LLC dated as of June 15 2020, and the Second Amended and Restated Funding Agreement between TUI and Murray Boiler LLC dated as of June 15, 2020. [Dkt. No. 27, Annex 2.]

Funding Agreements to date and have testified as to their intent to do so in the future. The Movants fail to explain how their requested "admissions" differ from the Non-Debtor Affiliates' prior representations regarding validity and enforceability of the Funding Agreements or why they need such "admissions" given the Non-Debtor Affiliates' undisputed performance of their obligations under the Funding Agreements and expressed intent to continue to do so.

In addition to lacking any factual basis, the Movants fail to provide any legal authority supporting the requested relief. The Movants do not cite a single case where a court issued a mandatory injunction requiring a party to make such admissions, and Sections 105(a) and 1123(a)(5) do not provide statutory authority for such extraordinary relief. The Movants' request that the Court determine—at this stage of the bankruptcy proceedings—whether the Debtors possess adequate means to implement any proposed plan of reorganization is plainly premature. Section 1123(a)(5) establishes the time for such determination is at plan confirmation, and no plan confirmation proceeding is presently before the Court. The existence of Section 1123(a)(5), moreover, precludes an expanded application of Section 105(a) to obtain an advisory opinion on the adequacy of plan funding prior to confirmation.

Finally, even if the Movants could articulate a viable claim for relief, any such claim would prove non-justiciable at this time. The Movants fail to identify any present injury-in-fact, rendering any potential claim unripe. The Movants have not stated—much less submitted any evidence establishing—the amount of the Debtors' asbestos liability. Given the pending estimation proceeding, the possibility exists the Court may find the Debtors' asbestos liability equal to or less than the $540 million of assets currently held by the Debtors (before considering the Funding Agreements), in which case the Debtors' current assets (without the Funding

Agreements) will prove sufficient to fund a plan. Thus, the Movants' request for relief prior to such determination is premature and unripe.

For these reasons, as set forth more fully below, the Court should deny the Motion.

ARGUMENT

I. THE MOVANTS IMPROPERLY SEEK INJUNCTIVE OR OTHER EQUITABLE RELIEF THEY MAY PURSUE ONLY IN AN ADVERSARY PROCEEDING.

The Movants ask the Court to issue a mandatory injunction requiring the Non-Debtor Affiliates to make purported admissions. Mot. at 1. The Movants, however, cannot secure such injunctive relief by way of motion.

A party must seek injunctive or other equitable relief through an adversary proceeding. Bankruptcy Rule 7001[4]; *In re Roberson*, No. 18-05432-5-JNC, 2020 WL 6265062, at *10 (Bankr. E.D.N.C. Oct. 23, 2020) ("Federal Rule of Bankruptcy Procedure 7001(7) provides that 'a proceeding to obtain a*n injunction or other equitable relief*' (emphasis added) must be brought through an adversary proceeding, except when a plan of reorganization provides for such relief."); *In re Forever 21, Inc.*, 623 B.R. 53, 64 (Bankr. D. Del. 2020) ("An action to obtain equitable relief, including an injunction, generally requires an adversary proceeding."); *In re Brier Creek Corp. Ctr. Assocs. Ltd. P'ship*, No. 12-01855-SWH, 2013 WL 144082, at *2 (Bankr. E.D.N.C. Jan. 14, 2013) ("[R]equesting an injunction pursuant to the court's powers under 11 U.S.C. § 105 must ordinarily be sought through an adversary proceeding."); *In re Snow*, 201 B.R. 968, 977 (Bankr. C.D. Cal. 1996) ("Rule 7001 of the Federal Rules of Bankruptcy Procedure requires an adversary proceeding to obtain an injunction or other equitable relief.").

The Motion, therefore, fails procedurally and should be denied summarily.

[4] Subject to certain exceptions not applicable here, Bankruptcy Rule 7001(a)(7) provides that adversary proceedings include "a proceeding to obtain an injunction or other equitable relief . . . ."

II. THE MOTION RESTS ON FACTUAL MISREPRESENTATIONS.

This Court also should deny the Movants' request for relief because it rests on gross factual misrepresentations concerning the Debtors' assets. The Movants misstate that "[t]he Debtors . . . ***must*** rely on Trane . . . to satisfy their asbestos liabilities" (Mot. at 4) and that "[t]he Funding Agreements are the only mechanism that will allow the claimants to recover anything on their claims in this bankruptcy proceeding" (Mot. at 8). The Movants' misrepresentations ignore the indisputable fact that the Debtors' assets include a $270 million qualified settlement fund and insurance assets, totaling in excess of $540 million, *without* considering the Funding Agreements. The Movants' mischaracterization of the Debtors' assets undermines completely any rationale for their requested relief.

III. NEITHER THE DEBTORS NOR THE NON-DEBTOR AFFILIATES DISPUTE THE VALIDITY OR ENFORCEABILITY OF THE FUNDING AGREEMENTS.

The Movants demand the Non-Debtor Affiliates and Debtors "admit" the Funding Agreements are valid and enforceable. Mot. at 1-2. However, neither the Non-Debtor Affiliates nor the Debtors have ever disputed the validity or enforceability of the Funding Agreements. To the contrary, each Non-Debtor Affiliate expressly represented to the applicable Debtor that the respective Funding Agreement:

> has been duly executed and delivered by the Payor . . . [and] constitutes a ***legal, valid and binding obligation of the Payor, enforceable against the Payor in accordance with its terms***, ...

Funding Agreements, ¶ 3(a)(iv) (emphasis added). The Non-Debtor Affiliates, moreover, indisputably have performed fully all of their obligations under the Funding Agreements to date[5] and have testified as to their intention to do so in the future.[6]

[5] May 7, 2021 Hearing Tr., 486:9-19 (Exhibit A).

[6] May 7, 2021 Hearing Tr., 486:20-487:2 (Exhibit A).

In short, Movants fail to explain why the requested "admissions" are necessary given the Non-Debtor Affiliates' representations regarding the validity and enforceability of the Funding Agreements, their undisputed performance of their obligations thereunder to date, and their expressed intention to continue to do so in the future.

IV. NO AUTHORITY EXISTS FOR THE REQUESTED RELIEF.

The Movants fail to cite a single case where a court issued a mandatory injunction requiring a party to make admissions, and neither Section 105(a) nor Section 1123(a)(5) support the requested relief. The equitable powers conferred by Section 105(a) "are not a license for a court to disregard the clear language and meaning of the bankruptcy statutes and rules." *Off. Comm. of Equity Sec. Holders v. Mabey*, 832 F.2d 299, 302 (4th Cir. 1987). The Supreme Court has made clear that Section 105(a) confers only "authority to 'carry out' the provisions of the Code." *Law v. Siegel*, 571 U.S. 415, 421 (2014). Section 105 "does not allow the bankruptcy court to override explicit mandates of other sections of the Bankruptcy Code." *Id.*; *see also In re Southmark Corp.*, 49 F.3d 1111, 1116 (5th Cir. 1995) (explaining Section 105(a) does not "empower bankruptcy courts to act as roving commission[s] to do equity" (alteration in original) (citation and internal quotation marks omitted)). Thus, "whatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of the Bankruptcy Code." *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 206 (1988); *see also In re Nat'l Energy & Gas Transmission, Inc.*, 492 F.3d 297, 302 (4th Cir. 2007) ("The Bankruptcy Code, of course, provides parameters within which courts must exercise their equitable powers in administering an estate."); *In re Dyer*, 381 B.R. 200, 205 (Bankr. W.D.N.C. 2007) ("It is well established that equitable principles cannot

override the clear dictates of a statute."); *see, e.g.*, *In re Crink*, No. 08-10824, 2008 WL 2944652, at *2 (Bankr. M.D.N.C. July 31, 2008) (refusing request to use alternative methodology to calculate a debtor's current monthly income because it would "overrule 'the clear language and meaning' of section 101(10A)(A)(i) and [] insert in its place a procedure that is not provided for in the bankruptcy statutes and rules").

The Movants contend the Court may use the power vested in it by Section 105(a) to expedite a determination whether the Debtors possess "adequate means to implement any plan of reorganization" under Section 1123(a)(5). Mot. at 10. However, no plan confirmation proceeding is presently before the Court, and Section 1123(a)(5) has no application to a debtor prior to confirmation of a plan. The Court's authority under Section 105 does not empower the Court to expand the applicability of Section 1123(a)(5) beyond the confirmation process. *See Law v. Siegel*, 571 U.S. 415, 421 (2014) ("It is hornbook law that § 105(a) does not allow the bankruptcy court to override explicit mandates of other sections of the Bankruptcy Code." (citation and internal quotation marks omitted)); *In re Reinertson*, 241 B.R. 451, 456 (B.A.P. 9th Cir. 1999) ("[F]inal orders may be set aside only under FRCP 60(b) applicable via Rule 9024; the bankruptcy court may not use its inherent power to circumvent the limitations of those rule."); *In re Rodriguez*, No. 11-07155 EAG, 2014 WL 6632968, at *1 (Bankr. D.P.R. Nov. 21, 2014) ("[S]ection 105(a) cannot be used to circumvent the Federal Rules of Bankruptcy Procedure.").

Because no authority exists for the requested relief, this Court should deny the Motion.

V. THE MOVANTS' REQUEST FOR RELIEF IS NOT RIPE.

Even if the Movants sought equitable relief through an adversary proceeding, and even if the Movants could articulate a viable claim for a court to "require" a party to make an admission, any such claim as to the Funding Agreements would prove unripe. "Ripeness becomes an issue when a case is anchored in future events that may not occur as anticipated, or at all." *Nat'l Rifle*

Ass'n of Am. v. Magaw, 132 F.3d 272, 284 (6th Cir. 1997). Courts find a case ripe for decision only where "the action in controversy is final and not dependent on future uncertainties." *Miller v. Brown*, 462 F.3d 312, 319 (4th Cir. 2006); *see also S.C. Elec. & Gas Co. v. Randall*, 333 F. Supp. 3d 552, 566 n.17 (D.S.C. 2018) ("A case is ripe for judicial decision where the issues are purely legal in nature, relate to an action which is final, and is not dependent on future uncertainties or contingencies."). "A claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all." *Texas v. United States*, 523 U.S. 296, 300 (1998) (citation and internal quotation marks omitted).

This Court, to date, has made no determination as to the amount of the Debtors' estimated asbestos liability. Despite asserting these cases involve "billions of dollars" (Mot. at 11), the Movants offer neither proof nor any cite to the record to support their hyperbole. Until the Court estimates the Debtors' asbestos liability, the possibility exists the Debtors' current assets more than suffice to satisfy fully their asbestos liability without any need for future funding under the Funding Agreements. Even if the Debtors require future funding under the Funding Agreements, the possibility exists the Non-Debtor Affiliates will provide such funding—as they have done in every instance to date and as they have indicated they intend to do in the future. No reason exists to believe the Non-Debtor Affiliates will do otherwise. Unless and until a funding need exists and goes unmet, the Movants will not have suffered any injury-in-fact and any questions concerning the validity and enforceability of the Funding Agreements remain wholly speculative and not ripe for review. *See Doe v. Virginia Dep't of State Police*, 713 F.3d 745, 758 (4th Cir. 2013) ("A claim should be dismissed as unripe if the plaintiff has not yet suffered injury and any future impact remains wholly speculative." (citation and internal quotation marks omitted)); *Stephens v. HSBC*

Mortg. Servs., Inc., 565 F. App'x 238, 241 (4th Cir. 2014) (finding a declaratory claim regarding the validity of a mortgage not ripe until the question of enforcement arises).

Accordingly, the Movants' request for issuance of a mandatory injunction requiring "admissions" related to the Funding Agreements remains unripe and non-justiciable.

CONCLUSION

For these reasons, and those set forth in the Debtors' objection, the Court should deny the Motion.

Dated: April 17, 2024

Respectfully submitted,

/s/ Bradley R. Kutrow

Bradley R. Kutrow (NC Bar No. 13851)
McGUIREWOODS LLP
201 North Tryon Street, Suite 3000
Charlotte, NC 28202
Telephone: (704) 343-2000
Facsimile: (704) 343-2300
bkutrow@mcguirewoods.com

K. Elizabeth Sieg (admitted *pro hac vice*)
McGUIREWOODS LLP
800 East Canal Street
Richmond, VA 23141
Telephone: (804) 775-1137
Facsimile: (804) 698-2257
bsieg@mcguirewoods.com

-and-

Gregory J. Mascitti (admitted *pro hac vice*)
Phillip S. Pavlick (admitted *pro hac vice*)
McCARTER & ENGLISH, LLP
825 Eighth Avenue, 31st Floor
New York, NY 10019
Telephone: (212) 609-6810
Facsimile: (212) 609-6921
gmascitti@mccarter.com
ppavlick@mccarter.com

Counsel to the Non-Debtor Affiliates

Exhibit A

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

IN RE:	:	Case No. 20-30608-JCW (Jointly Administered)
ALDRICH PUMP LLC, ET AL.,	:	
Debtors,	:	Chapter 11
	:	Charlotte, North Carolina
	:	Friday, May 7, 2021
	:	9:30 a.m.
	:	
ALDRICH PUMP LLC and MURRAY BOILER LLC,	:	AP 20-03041-JCW
Plaintiffs,	:	
v.	:	
THOSE PARTIES TO ACTIONS LISTED ON APPENDIX A TO COMPLAINT and JOHN AND JANE DOES 1-1000,	:	
Defendants.	:	

VOLUME 3

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE J. CRAIG WHITLEY,
UNITED STATES BANKRUPTCY JUDGE

Audio Operator: COURT PERSONNEL

Transcript prepared by: JANICE RUSSELL TRANSCRIPTS
1418 Red Fox Circle
Severance, CO 80550
(757) 422-9089
trussell31@tdsmail.com

Proceedings recorded by electronic sound recording; transcript produced by transcription service.

APPEARANCES (via Microsoft Teams):

For the Plaintiffs/Debtors:	Rayburn Cooper & Durham, P.A. BY: JOHN R. MILLER, JR., ESQ. C. RICHARD RAYBURN, JR., ESQ. 227 West Trade St., Suite 1200 Charlotte, NC 28202
	Jones Day BY: BRAD B. ERENS, ESQ. MORGAN R. HIRST, ESQ. 77 West Wacker, Suite 3500 Chicago, IL 60601
	Jones Day BY: JAMES M. JONES, ESQ. 250 Vesey Street New York, NY 10281
For the ACC:	Caplin & Drysdale BY: KEVIN MACLAY, ESQ. TODD PHILLIPS, ESQ. One Thomas Circle, NW, Suite 1100 Washington, DC 20005
	Robinson & Cole LLP BY: NATALIE D. RAMSEY, ESQ. 1201 N. Market Street, Suite 1406 Wilmington, DE 19801
	Winston & Strawn LLP BY: DAVID NEIER, ESQ. CARRIE V. HARDMAN, ESQ. 200 Park Avenue New York, NY 10166-4193
For the FCR:	Orrick Herrington BY: JONATHAN P. GUY, ESQ. DEBRA FELDER, ESQ. 1152 15th Street, NW Washington, D.C. 20005-1706
For Trane Technologies Company LLC and Trane U.S. Inc.:	McCarter & English, LLP BY: GREGORY J. MASCITTI, ESQ. 825 Eighth Avenue, 31st Floor New York, NY 10019

ALSO PRESENT
(via Microsoft Teams): JOSEPH GRIER, FCR
521 E. Morehead St, Suite 440
Charlotte, NC 28202

INDEX

Q And --
A -- to how best to resolve that.
Q Thank you, sir.
And back to the funding agreements just for a moment, are the funding agreements available as a backstop that may be utilized to fund a 524(g) trust as it may be established in this chapter 11 case, or cases?
A Yes. Yes.
Q And have you yourself made an inquiry into whether the two new companies, New Trane Technologies and New Trane, have been called upon to meet their obligations under these funding agreements?
A Yes. I, I made inquiries over the last few weeks just understanding any requests that have been made of those entities and, and there were requests made last year and, and cash transfers were made to those two entities in the June 2020 timeframe for approximately $20 million. I recall roughly $15 million was transferred to the Aldrich entity and $5 million was transferred to the Murray entity.
Q And will Trane Technology, New Trane Technologies and New Trane satisfy those requests and comply with the terms and conditions of the funding agreements going forward?
A Yes.
Q Including requests made to fund trusts that may be formed as a part of a plan of reorganization in these chapter 11

cases?
A Yes.
Q And have you become familiar with the financial resources that are available to New Trane Technologies and New Trane to meet these obligations?
A Yes, I have.
Q And you from time to time review the financial statements as they may be created for these two enterprises, is that right?
A That's correct.
Q And at the year end 2020, at year end 2020 could you share with us the net equity of New Trane Technologies?
A Yeah. At the end of December 2020 New Trane Technologies Company LLC had net equity of about $7.8 billion.
Q And what would be the same figure for New Trane?
A That amount was approximately $3 billion of net equity.

MR. JONES: Your Honor, I have no further questions for this witness.

THE COURT: Mr. Guy, any questions on behalf of the FCR?

MR. GUY: Yes, your Honor. If you give me a second to get my own screen up.

DIRECT EXAMINATION

BY MR. GUY:
Q Mr. Kuehn, can you hear me okay?

CERTIFICATE

I, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

/s/ *Janice Russell* May 18, 2021

Janice Russell, Transcriber Date