Docket #2218 Date Filed: 4/22/2024

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'[1] REPLY IN SUPPORT OF MOTION TO REQUIRE THE DEBTORS AND TRANE TO MAKE IRREVOCABLE, UNEQUIVOCAL, AND UNCONDITIONAL ADMISSIONS ABOUT THE ENFORCEABILITY OF THE FUNDING AGREEMENTS

Trane's and the Debtors'[2] bizarrely indignant objections to a straightforward request—based on the Court's well-founded concerns about the self-dealing Funding Agreements at issue—suggest the words of Queen Gertrude: ***"The lady doth protest too much, methinks***."[3]

[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.

[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] WILLIAM SHAKESPEARE, HAMLET act 3, sc. 2.

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Nearly four years into this case, and after this Court rightly raised these issues in its P.I. Findings[4] and its Dismissal Order, the Debtors and its Corporate Parents hide behind procedural formalities and refuse to address the elephant in the room: when this bankruptcy is dismissed or when a plan is proposed that protects all claimants' jury trial rights and state law remedies, will New TTC and New Trane honor the Funding Agreements and will Aldrich and Murray enforce them?

In response to MRHFM's Motion (Dkt. 2172), Trane and the Debtors ***could*** have provided declarations from competent witnesses with authority to affirm and bind the respective parties. After all, absent the Funding Agreements, Trane and the Debtors committed outright fraud.[5] Instead, the Debtors point to the exact non-committal testimony from their Chief Legal Officer, Mr. Alan Tananbaum, that prompted MRHFM's Motion in the first place. *See* Debtors' Obj. (Dkt. 2211) at Ex. A. Trane cites two pages of prior deposition testimony that relate only to if a 524(g) trust is established. *See* Trane Obj.

[4] Capitalized terms not defined herein shall have the meaning ascribed to them in the Motion.

[5] The Two-Step's architect, Mr. Greg Gordon at Jones Day, speaking about the funding agreements and fraudulent conveyance actions, said: "And the idea was, and these companies all felt the same way, was we don't even want to have an argument. We—we would like to avoid an argument that there was any kind of fraudulent transfer here. So, we're not interested in putting a cap on the funding agreement. We're not interested on just allocating certain assets and putting all the other ones there and not having a funding agreement. We'd like to do it in a way where we can say to the claimants and say to the court, look, the same assets that were available before the Chapter 11 to support the payment of these claims are available post the Chapter 11." ABI at 18-19 (Exhibit 6 to Motion (Dkt. 2207)). *Contrast* with: "Due to the apparent negative effects of the Divisional Merger (and these ensuing bankruptcy filings) on the legal rights of Asbestos Claimants, that Merger and its allocations may constitute avoidable fraudulent transfers and/or be subject to attack under remedial creditor doctrines like alter ego and successor liability." Findings at 6.

(Dkt. 2212) at Ex. 1. In other words, Trane and the Debtors offer ***nothing*** in response to MRHFM's Motion.

The "Non-Debtor Affiliates" (i.e., Trane) are normally content to pull the Debtors' strings from a distance, but when valid questions are asked about where the money will come from, Trane dramatically charges MRHFM with making "hyperbolic statements" and showing an "inexcusable ignorance or intentional obfuscation of the underlying facts." Trane Obj. at 2.

What does Trane say is hyperbolic? That MRFHM contends the Debtors "must rely on Trane" to satisfy their asbestos liabilities. Trane Obj. at 2. MRHFM is not alone in feeling this way. This Court expressed this same concern:

> The Debtors owe $240 million in asbestos liabilities net of insurance—a sum greater than the assets allocated to them in the merger. However, **they were designed to be reliant on the Trane organization, through the Funding Agreement.**

Dismissal Order at 14 (emphasis).

> While the ability of New TTC or New Trane to pay asbestos claims is not in doubt, the claimants' ability to collect from them is uncertain. The Funding Agreements are not secured, they are not enforceable by creditors, and they cannot be assigned without written consent…. Thus, my conclusion in the preliminary injunction hearing was that **these agreements are conditional, potentially unenforceable, and they will be honored only if the Affiliates wish them to be honored**.

Dismissal Order at 15 (emphasis).

What facts does Trane contend MRHFM is so inexcusably ignorant of? That the Debtors agreed to a plan with the Future Claimants' Representative, put $240 million in

a QSF, and have insurance assets more than $540 million. *See* Trane Obj. at 2. But this Court is rightly skeptical of this "capped plan and a 'no-opt-out' trust,'" asking that "if neither Aldrich nor Murray are insolvent nor financially distressed, the question lies: is that plan constitutional?" Dismissal Order at 40.

The Debtors inherited their Corporate Parents' ***un***righteous indignation. They say MRHFM's Motion is "unprecedented, patently improper procedurally, wholly unsupported, [ ] contains several material misstatements" and is a "waste of the Court's time." Debtor Obj. at 1. Having shielded Trane from paying asbestos victims for over 40 months as it gives away well over $2 billion in dividends, the Debtors' bankruptcy is what is unprecedented.

MRHFM's plaintiffs will ***never*** vote for a plan that lacks unlimited opt-outs to the tort system for all claimants to pursue uncapped state law remedies before juries for all time, so the Debtors lack adequate means to implement a plan if they won't enforce the Funding Agreements. *See* 11 U.S.C. § 1123(a)(5).

Rather than assure claimants and this Court, the Debtors claim instead that the Motion is not ripe (Debtor Obj. at 6), and then proceed to lay out a "hypothetical scenario" which identifies all the barriers Trane and the Debtors have themselves erected to bar

someone with mesothelioma from collecting on their claims. It's this kind of creative thinking that saves Trane $100 million a year.[6]

The Debtors contend MRHFM's assertions about *LTL Management* are "completely false" and "materially misleading" (Debtor Obj. at 11) but then admit LTL "did not have the parent guaranty" going into its second case, which is what MRHFM said happened. *See* Motion at 5. LTL's Chief Legal Officer testified that Johnson & Johnson took the position its funding agreement with LTL was "void or voidable" and this posed a "material risk" to the debtor, which prompted it to file a second case. Ex. 1, John Kim Decl., 6/23/23 at ¶ 25. Trane and the Debtors can't deny that the only Texas Two-Step to face appellate scrutiny on the merits was dismissed, and in the aftermath the funding agreements at issue were…*modified*, so the debtor could re-file a petition.

Ultimately, Trane's bankruptcy strategy is based on a ***fiction***: that the value of the Debtors' total asbestos liabilities can be estimated accurately and that all current and future claimants, for all time, are ***bound*** by this estimate. This explains Trane's exasperation: MRHFM's motion "rests on gross factual misrepresentations concerning the Debtors' assets" (Trane Obj. at 5) and "until the Court estimates the Debtors' asbestos

[6] "[F]or the past three years, both the Debtors and the Affiliates have enjoyed a respite from the tort system and a 'payment holiday' from the $100 million-a-year costs they were previously incurring." Dismissal Order at 20.

liability, the possibility exists the Debtors' current assets more than suffice" to satisfy the Debtors' liability without needing the Funding Agreements. Trane Obj. at 8.[7]

The Debtors, too, myopically focus on the wrong thing: "[o]ne of the problems in these cases…is that the Debtors have no idea what amount of funds current claimants want." Debtor Obj. at 1 2n.16. What the "current claimants" demand—and have said from the very beginning—is unfettered and immediate access to the civil jury system where trial courts apply state law, and juries (or the parties at arm's length) decide each case's value. Trane's attempt to homogenize victims and trample on their Constitutional rights in the name of efficiency is contrary to the express codified protections of individual trial rights. *See* 28 U.S.C. § 157(b).

Simply put, there is ***not a number*** that "settles" this case. Massively wealthy corporations cannot manufacture a limited fund to pay asbestos claims. New TTC and New Trane are collectively worth $11 billion (Dismissal Order at 13 (citing Findings at ¶ 151))[8] and contend the Debtors' ***total*** asbestos liabilities are $240M, which, according to them, doesn't exceed their insurance assets. Trane Obj. at 2. State law determines what

[7] "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." Trane Obj. at 4.

[8] "[T]he Trane organization boasts $16 billion in annual revenues, annual excess cash flow eclipsing $1.8 billion ($620.7 million in dividends plus $1.2 billion stock buyback; three-year total over $1.5 billion in dividends and $2.5 billion in stock buybacks), and a market cap of $54 billion. Dismissal Order at 14.

each current and future plaintiff is owed on facts like these, not a fabricated debtor, an FCR, trustees, or a cadre of bankruptcy professionals.

The United States Supreme Court rejected settlements—of the type Trane requires—involving asbestos defendants with much ***less*** money and much ***more*** good faith than Trane and its affiliates have. *See Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 845-46 (1999)(rejecting a class action asbestos settlement because of "serious constitutional concerns that come with any attempt to aggregate individual tort claims on a limited fund rationale" because it "compromises [objecting and future plaintiffs'] Seventh Amendment rights without their consent."); *Amchem Prods. v. Windsor*, 521 U.S. 591, 628 (1997)(rejecting Rule 23 class certification, in part, due to inadequate notice to people exposed to asbestos but not yet injured: "those without current afflictions may not have the information or foresight needed to decide, intelligently, whether to stay in or opt out" and litigate their claims).

Reasoning that claims against Trane and its affiliates are in the first instance claims against the Debtors, and that pursuing these claims would interfere with or end the bankruptcy case, in 2021, this Court held that both the automatic stay and preliminary injunction protected New Trane, New TTC, and others. *See* Findings at ¶¶ 181, 190, 194-199, 225-29. These protections, however, are based at least in part on the likelihood of a successful plan of reorganization, and that depends upon New TTC and New Trane being

"true to their word." *See* Findings at ¶ 227. MRHFM gave New TTC and New Trane the opportunity to address the Court's concerns by filing this Motion, and they failed.

MRHFM's plaintiffs won't help Trane cap what it owes the people who it poisoned to death with asbestos. Trane is displeased by this, and it shows. But absent irrevocable and unequivocal admissions from Trane and the Debtors that the Funding Agreements be honored and enforced—if, for example, the case is dismissed or if a plan that protects plaintiffs' Constitutional rights is proposed—the Non-Debtor Affiliates should no longer be protected by the automatic stay or the preliminary injunction.

Date: April 22, 2024

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing ROBERT SEMIAN AND ALL MRHFM'S CLAIMANTS' REPLY IN SUPPORT OF MOTION TO REQUIRE THE DEBTORS AND TRANE TO MAKE IRREVOCABLE, UNEQUIVOCAL, AND UNCONDITIONAL ADMISSIONS ABOUT THE ENFORCEABILITY 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 22nd day of April, 2024.

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Exhibit 1

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PROPOSED ATTORNEYS FOR DEBTOR

In re:	Chapter 11
LTL MANAGEMENT LLC,[1]	Case No.: 23-12825 (MBK)
Debtor.	Judge: Michael B. Kaplan

DECLARATION OF JOHN K. KIM

John K. Kim deposes and states as follows:

1. My name is John K. Kim. I am a lawyer and the Chief Legal Officer of LTL Management, LLC ("LTL" or the "Debtor"), a North Carolina limited liability company and the debtor in the above-captioned chapter 11 case. I have held this position since the Debtor's formation on October 12, 2021.

2. I am employed by Johnson & Johnson Services, Inc. ("J&J Services"), a non-debtor affiliate of the Debtor and a subsidiary of the Debtor's ultimate non-debtor parent

[1] The last four digits of the Debtor's taxpayer identification number are 6622. The Debtor's address is 501 George Street, New Brunswick, New Jersey 08933.

JJCI, and J&J, which agreement had been entered into with the primary purpose of financially supporting and otherwise facilitating LTL's reorganization through chapter 11 proceedings, actually required that LTL's 2021 Chapter 11 Case be dismissed.

24. The 2021 Funding Agreement was intended to financially support and facilitate LTL's reorganization through chapter 11 proceedings, including the funding of a Section 524(g) trust from which pending and future claims would be paid. J&J had no obligation to supply the backstop provided in the 2021 Funding Agreement. It did so solely to facilitate and support LTL's reorganization in chapter 11 proceedings. The Third Circuit itself noted the "irony" that an agreement the primary purpose of which was to facilitate and support LTL's bankruptcy filing, including a financial backstop from J&J that "it was never required to provide to claimants," actually would bar LTL's access to bankruptcy reorganization. Third Cir. Panel Op., 58 F.4th at 763.

25. The Third Circuit's ruling frustrated and defeated the primary purpose of the 2021 Funding Agreement. As a result, J&J took the position that the 2021 Funding Agreement was no longer enforceable because it was rendered void or voidable. See Haas Depo. Tr. at 12:14-20; 87:5-12. From LTL's perspective, the Third Circuit's decision and J&J's position imposed material risk that the 2021 Funding Agreement was in fact void or voidable. I return to this risk and the Board's consideration of it below, but the risk of the unenforceability of the 2021 Funding Agreement itself imposed financial distress. If LTL were to return to the tort system without an enforceable funding agreement or suitable replacement funding, LTL's ability to meet even short-term litigation costs in the tort system would have been materially impaired.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: June 23, 2023 */s/ John K. Kim*

John K. Kim