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.*,	:	Chapter 11
Debtors.	:	Charlotte, North Carolina
	:	Thursday, April 25, 2024 9:45 a.m.
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TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE J. CRAIG WHITLEY, UNITED STATES BANKRUPTCY JUDGE

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P R O C E E D I N G S

THE COURT: All right. Let's see. That takes us over to my third agenda. All right. We're purely in the Aldrich case now. This is the agenda that's at Docket No. 2220.

If there are other parties that wish to announce for the Aldrich base case, the primary, maybe the only matter we have is the Semian and MRHVM's [sic] motion to require, essentially, an admission. I'm paraphrasing now.

Does anyone else need to announce that has not?

Mr. Erens?

MR. ERENS: Yes, your Honor. Brad Erens, E-R-E-N-S, of Jones Day on behalf of the debtors. I'm joined here by Morgan Hirst, also of the Jones Day firm.

Thank you.

THE COURT: Okay.

MR. MILLER: Morning, your Honor. Jack Miller, Rayburn Cooper & Durham. Also with me is Matt Tomsic on behalf of the debtors.

THE COURT: All right.

We're going to take the courtroom people first and then I'll come around to those of you on the telephone.

Anyone else for the debtors?

(No response)

THE COURT: How about the Affiliates? Anyone else?

MR. MASCITTI: Your Honor, Greg Mascitti again,

McCarter & English, on behalf of the Non-Debtor Affiliates. I'm joined by Brad Kutrow of McGuireWoods and Stacy Cordes of Cordes Law.

THE COURT: Okay. If you've already announced in Aldrich, I, you don't need to do it again.

But if there's anyone else for the debtors?

Affiliates?

(No response)

THE COURT: How about on the ACC's side? Anyone new in the courtroom needing to announce? We already got you?

MR. WRIGHT: No, your Honor. Yes.

THE COURT: Okay.

How about the FCR? Got it?

MR. GUY: That's it.

THE COURT: All right.

Telephonic appearances. Let's try to keep a little bit of order, again. See if anyone else that has not previously been announced in Aldrich that's on the telephone representing the debtors.

(No response)

THE COURT: How about the Affiliates?

(No response)

THE COURT: ACC?

(No response)

THE COURT: FCR?

(No response)

THE COURT: Anyone else?

MR. TAYLOR: Good morning, your Honor. Joshua Taylor from Steptoe LLP on behalf of the Travelers Indemnity Company and Travelers insurers.

THE COURT: Okay.

Anyone else?

(No response)

THE COURT: Okay, very good.

All right. Mr. Erens, if you could lead us in today's calendar, we have that proposed agenda. I don't know if there are any preliminaries before we take up the one motion.

Got anything you want to talk about before that?

MR. ERENS: Yes, your Honor. There is one preliminary. I'm going to let Mr. Hirst handle it. It's in connection with estimation and an agreed order with the ACC.

THE COURT: Okay.

Mr. Hirst.

MR. HIRST: And your Honor, I don't know if the Maune folks wanted to announce themselves for appearances before I got into it.

THE COURT: Did I -- I thought I had everyone. So --

MR. THOMPSON: Sorry, Judge. I didn't stand up. You were on roll, so I just --

THE COURT: Okay.

MR. THOMPSON: Clay Thompson, Maune Raichle Hartley French & Mudd, LLC, on behalf of Robert Semian and other mesothelioma claimants.

THE COURT: There we go.

MR. THOMPSON: I'm here with Tom Waldrep, Waldrep & Wall, my co-counsel.

THE COURT: All right. I may have skipped over you. I didn't have another, I don't think, on the inhouse.

MR. HIRST: Good morning, your Honor. Again, Morgan Hirst for the debtors.

A quick update on estimation. And, and as part of that, let me start with where we'll finish, which is, as Mr. Erens, mentioned, we've negotiated with the ACC and the FCR an agreed order concerning the deadlines for estimation discovery and sus, and the proposal will be to suspend those deadlines, similar to what you did in DBMP. I'll explain kind of the background to why we've done that.

Just by way of status, thus far in estimation you're certainly aware of all the trust discovery work. That is, I believe, more or less, completed at this point. From a defensive standpoint, we've produced about 160,000 pages of documents thus far in response to the ACC's request, a mix of hard-copy documents, ESI from in-house custodians at the debtors, and the Affiliates. We've collected ESI from about 20 custodians. I would say that part of the ESI process is nearly

done. We still have some work to do on that.

But that leads us into what is the single, as your Honor knows, the single biggest part of estimation discovery, which will be the claims file collection and production. As you'll recall, we got our claims file sample on file and agreed and ordered by this Court right around New Year's. Since that time, we prepared -- and I think you're familiar with this in DBMP -- a claims file protocol on how we would collect, review, where we would collect all of the claims files from. We've submitted that proposal to the ACC. They are, not surprisingly, looking at it. It's a detailed --

THE COURT: Uh-huh (indicating an affirmative response).

MR. HIRST: -- probably one of the more detailed proposals I've ever done on discovery. And so we're awaiting comments from, from them.

Until we get, essentially, that protocol in place and start the process of actually collecting, it is hard to say exactly how long it's going to take. It is -- we are -- we do have unique circumstances different that DBMP, just the way that the different clients set up their outside counsel. What won't be unique is it's going to be a significant undertaking to do the claims files discovery. And so to get a better sense of that, I think we really do need to get the protocol in place and then start the collection and at that point I think we'll

be in a better situation to really inform either your Honor or your successor on true deadlines.

At the moment, we have an August 2024 written discovery cutoff. There's interim dates in between. Our proposal, much like the one you approved, I think, in DBMP about a month ago, is to suspend those until such time as we can come back to your Honor or your Honor's successor and, and put in some realistic dates on finishing that up.

And we have -- the proposed order's been sent around. The ACC and the FCR both agreed to it and we're happy to submit it to your Honor after court if your Honor approves.

THE COURT: Okay.

Mr. Wright.

MR. WRIGHT: Morning, your Honor. Davis Wright from Robinson & Cole on behalf of the Committee.

I agree with what Mr. Hirst said. We are reviewing their proposal. We are working to get comments back to them as quickly as possible on that protocol and the discovery and working on a couple other ancillary documents related to that discovery.

We did receive a copy of the order. We agreed with it and we would also ask your Honor enter the order.

Thank you, your Honor.

THE COURT: Thank you.

Anything from you, Mr. Guy?

MR. GUY: Yes.

We're in agreement, your Honor. I think you will know that we wish things had moved a little bit more expeditiously, but we have to be realistic about it.

THE COURT: Sure.

MR. GUY: Thank you, your Honor.

THE COURT: Anything from any others? Affiliates or anyone else? Good-of-the-order announcements?

(No response)

THE COURT: Okay. Ready to get to your motion?

MR. THOMPSON: Yes, sir.

THE COURT: Okay.

MR. THOMPSON: So I -- may I approach?

THE COURT: You may.

(Presentation provided to the Court and counsel)

THE COURT: Thank you.

THE COURTROOM DEPUTY: Thank you.

MR. THOMPSON: And it was up and running, your Honor, and then I made the mistake of turning it off while you were speaking. So now --

THE COURT: Take a moment.

(Pause)

MR. THOMPSON: There we go.

Okay. So good morning. Clay Thompson, Maune Raichle Hartley French & Mudd, on behalf of Robert Semian.

This is a motion that's based on a very simple question. It's easy to answer and what we get back is 20 pages of not answering a very simple question. And this Court has found consistently in this case some key things that are the subject of this motion. Your dismissal order at page 13, "The funding agreements are the basis of Aldrich/Murray's bold proclamation that the debtors have the same ability to pay as their predecessors."

This is at page 15:

"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. Funding agreements are not secured, they are not enforceable by creditors, and they cannot be assigned without written consent. Practically, the only people that can enforce them are the people against whom they would be enforced, the shared officers and directors of the debtors and the Affiliates. Thus, my" --

This is page 15 of your dismissal order:

"Thus, my conclusion in the preliminary injunction hearing was that these agreements are conditional, potentially enforceable, and they will be honored only if the Affiliates wish them to be honored."

So I'm going to walk through two funding agreements, both of which were before your Honor. One was in J&J, the LTL

Management case that was here in 2021 --

THE COURT: Uh-huh (indicating an affirmative response).

MR. THOMPSON: -- and Trane, okay?

So I'm accused or, you know, my motion is accused of, of, of material misleading of, of the funding agreements that, and what happened in LTL. So we're going to walk through LTL.

So as you recall, John Kim was the Chief Legal Officer for LTL Management. He testified in this case when it was here. This was filed in that proceeding, Case 21-30589. This was the funding agreement in LTL 1. Payee, LTL Management; Payors, J&J and JJCI. This is at Docket 5 in that case.

Trane agreement, which was filed in 2020 at the time that this case was filed, Payee in this instance -- this is at Docket 27 -- Aldrich/Murray, or Aldrich Pump; Trane Technologies LLC. And there's a separate funding agreement that's materially the same between Trane and Murray Boiler.

Permitted Use Funding in the J&J funding agreement. Essentially, "Talc-related liabilities established by a court of competent jurisdiction" in subparagraph (i) of Paragraph (c) at page 39 to 40, "or following the commencement of any bankruptcy case the Payee's talc-related liabilities in connection with the funding of a trust."

Here's the Trane funding agreement at page 28 to 29. Permitted Use Funding. "When there's no proceeding in the

bankruptcy court with respect to the Payee, the funding of any amounts to satisfy the Payee's asbestos-related liabilities." This is Permitted Use Funding, subparagraph (c).

Subparagraph (d), "On" -- "or on the effective date of a Section 524(g) plan, the funding of an amount to satisfy Payee's asbestos-related liabilities."

So materially the same funding agreements so far.

Representations and Warranties in the J&J funding agreement. "Binding effect." This is Paragraph 3 at page 41 to 42, Docket 5 in the J&J/LTL Management case, "This Agreement has been duly executed and delivered by such Payor. This Agreement constitutes a legal, valid, and binding obligation of such Payor," in that instance meaning JJCI and, and J&J.

Trane funding agreement Representations and Warranties. "Binding effect," at page 31, Docket 27:

"This Agreement has been duly executed and delivered by the Payor. This Agreement constitutes a legal, valid, and binding obligation of the Payor enforceable against the Payor in accordance with its terms."

J&J funding agreement, Docket 5 at 48:

"Counterparties' Entire Agreement. This Agreement constitutes the entire contract among the parties hereto relating to the subject matter hereof and supersedes in its entirety the original funding agreement and any and all previous agreements and

understandings, oral or written."

Trane funding agreement, Section 11:

"Counterparts' Entire Agreement. Electronic Execution," Docket 27 at page 36:

"This Agreement, including the schedules attached hereto, constitutes the entire contract made among the parties relating to the subject matter hereof and supersedes the Amended and Restated Funding Agreements."

So those are the funding agreements as of 2020 in this case, 2021 in J&J.

Now Mr. Gordon -- I understand this is not -- he's not under oath. It's a conference. He's speaking more freely. It's not binding. He's not advocating for a position. I get that. But what he's saying in the summer of 2022 is very revealing and he's talking about this case. He's talking about the cases in this District at that time and he's doing it in April of 2022. And what had happened in April of 2022 was the Committee had sought standing to pursue fraudulent tran, conveyance and substantive consolidation and other actions in these two cases, DBMP and Aldrich. And so he says at page 18 and 19, "We would like to avoid an argument that there was any kind of fraudulent transfer." And so one of the things they'd been clear about all along, the same assets that are available before the chapter 11 to support the payments are available

post chapter 11.

Then at page 26, "We've seen these fraudulent conveyance allegations. Typically, when you read the complaints" -- and what he's talking about is these cases. He's talking about DBMP and Aldrich --"When you read the complaints or hear the allegations, the way they get there is they just ignore the funding agreements as if the funding agreements don't exist."

"I've heard judges say that" -- this is at page 27 to 28 -- "you know, the problem is you've got the Affiliates and the debtor is never going to enforce the funding agreements." And that was a concern that your Honor has expressed, both in your findings in 2021, which were available by this time in 2022, and the claimants are a step removed.

And then Mr. Gordon says:

"The debtor isn't going enforce it. And my reaction to that is it's kind of insult to the bankruptcy judge where they're in bankruptcy court. We're a debtor in possession. We're a fiduciary. The other side breaches and we elect not to enforce. Is the bankruptcy court going to let us get away with that." So that's April of 2022.

And so before the Third Circuit ruled in LTL Management, the funding agreements were the cure-all for every problem in these two-step cases. Funding agreements are going

to be enforced. We've got these binding agreements. All the respective Payor officers and Payee officers have signed on the dotted line and we've got these funding agreements that are going to be enforced. And then what happened was the Third Circuit said, "Okay. You've got a funding agreement and it's enforceable inside or outside of bankruptcy." And the appellate lawyer for LTL said, "Yes." And Judge Ambro said, "Okay. That's what I thought." And then they dismiss because LTL's not distressed because they've got a funding agreement with J&J and JJCI. So now the funding agreements aren't as fun anymore, okay?

So what LTL does is they file for bankruptcy a second time. And I spent my summer last summer in Trenton fighting a second J&J bankruptcy. So I may be a little bit bitter about it, your Honor. I'm sorry. Okay? So -- but what Mr. Kim said in his declaration that I attached as an exhibit, Paragraph 25, "The Third Circuit's ruling frustrated and defeated the primary purpose of the 2021 funding agreement." Now that "primary purpose," whatever that is, wasn't in the funding agreement.

So whatever the "primary purpose" was that Mr. Kim said was frustrated wasn't in the funding agreement. As a result, J&J took the position that the '21 funding agreement was no longer enforceable because it was rendered void/avoidable. So that's the exact situation Mr. Gordon had alluded to that now we've got a situation where the Affiliates

are taking a position that they don't want to enforce, they're not going to honor it. Well, of course, they filed for bankruptcy again. The debtors didn't try to enforce it. They filed for bankruptcy again, then that case was dismissed.

So then, in July, we had the dismissal and, and, and before the dismissal, I -- I -- we did a deposition. The Committee and I deposed Mr. Tananbaum and I raised LTL to Mr. Tananbaum. And this is at his transcript at page 57, 157-23 to 158 at 16:

"If Judge Whitley were to dismiss this case, will the debtors enforce the funding agreements they have with the new, with New Trane?"

Answer at 7:

"A You know, I haven't really thought that through. I don't have an opinion on that at the moment" --

Line 12:

-- "whether the agreements are voidable or not. I don't know."

And then I asked him a leading question because I wanted the answer to be, "Yes, we're going to hon, we're going to enforce the funding agreements."

"You would enforce the funding agreement regardless of whether or not Judge Whitley or the Fourth Circuit dismisses this case, right?

"I don't know what we'd do at the moment."

That's at, that's at page 158-17 to 159-5.

Then I came back to it:

"Put aside dismissal. If some reason New Trane or New Trane Technologies were to refuse to honor the funding agreement, the debtors would push to have those enforced, would they not?

"Yeah, I don't know how that would work," is the answer.

Now he says:

"I don't know what that would look like, but I would imagine, yes, that we would press to have those commitments honored."

That's not good enough, your Honor, especially when your Honor has found that this is a problem. The entire basis for this case is the enforceability of the funding agreements. They could have gotten declarations and submitted them to this Court before this hearing. This hearing's not even necessary. All they've got to do is agree to enforce the, the funding agreements on both sides. The, the Affiliates have got to, to affirm that they're going to honor them and they won't do it. That's what -- we get an objection. There's a bunch of procedural infirm allegations and my motion is, is, according to Trane, "an inexcusable ignorance or intentional obfuscation of the underlying facts." One of the gross misrepresentations I'm accused of making is that the debtors must rely on Trane.

That's at Docket 2212 at 5. One of the outlandish things that I'm saying is that they must rely on Trane to satisfy their asbestos liabilities. Well, your Honor found that. That wasn't just my opinion. Your Honor found that in the dismissal order. Page 14, "These debtors were designed to be reliant on the Trane organization through the funding agreement."

Previously in your Findings of Fact in 2021, Docket 308 at Paragraph 127, "The debtors will have the necessary financial resources to achieve their reorganization objective only if New TTC and New Trane provide them under the funding agreements."

So ultimately, your Honor, this is a court of equity and they have benefited from a 40-month-long, New Trane and New TTC, from a 40-month-long litigation stay and it's entirely premised on these funding agreements. 'Cause if the funding agreements don't exist, I'm not a bankruptcy lawyer, but that's an obvious fraudulent transfer, right? If they don't, if they don't have a funding agreement, that's fraud. They can't do that. So they need the funding agreement.

So the entire basis for this case is the enforceability of the funding agreements and they won't agree to enforce them. They won't affirm them. They want to have the flexibility. They want to see how it plays out.

And so your Honor, I would suggest -- and, and, and you can condition the -- this is the, your findings about the

standards from a preliminary injunction -- you can condition the relief as you see fit, but they have to satisfy this Court that they're going to, from the perspective of New Trane and New TTC, they're going to honor the funding agreement and from the perspective of the debtor, they need to enforce it.

Now whether that is we're going to set a deadline within the next seven days for them to provide declarations, great. We're going to have an evidentiary hearing and we're going to put Mr. Tananbaum on the stand and we're going to put some people from Trane on the stand, great. Or you lift the preliminary injunction. Because the only reason that New TTC and New Trane are benefiting -- 'cause I know that you extended the automatic stay to them as well as the preliminary injunction -- was based on the concept that they were providing funding to the trust. The, the funding agreements were going to be forming the basis for paying claims.

Well, if they're not going to enforce them and they can't commit, all they got to do is commit to it and they're not going to do it today. They're going to argue about procedural infirmities and they're going to argue about all the outlandish things in my motion, but what they're not going to do is commit to enforce and to honor the funding agreement.

Your Honor, at this point in time we're the prejudiced party. We're the ones, the victims are the ones that have been overall harmed and it tips in their favor at this point.

Whatever the form of the remedy is that your Honor sees appropriate, I would urge you to require them to commit to this Court that they're going to honor the funding agreements and they're going to enforce them. They knew what they were getting into. This is from your dismissal order at 19. They knew this was going to be a contentious case. They knew it was highly controversial. We're now 40 months in. They should be made to honor their agreements.

And with that, I thank you.

THE COURT: All right.

I don't know that we had any joinders here. Did anyone that is a proponent of the, of the motion need to say anything else or ready to hear responses?

(No response)

THE COURT: Okay.

Let's go back to the debtors, then. Mr. Erens?

MR. ERENS: Thank you, your Honor. If it's okay, I'd go over to the lectern.

THE COURT: Please.

MR. ERENS: Thanks.

Thank you, your Honor. Again, Brad Erens, E-R-E-N-S, on behalf of the debtors.

Your Honor, I don't think we have much to say that's not really in our pleadings, but I think I'll go through that in some detail. I do want to say Mr. Thompson said a lot of

things in his presentation. If I don't address all of them, I don't want that to be some indication that we agree. I think --

THE COURT: Uh-huh (indicating an affirmative response).

MR. ERENS: -- we probably disagree with everything he said, but we're obviously happy to answer questions.

Your Honor, we do think this is pretty straightforward. I think Maune, to some extent, tried to mock our overall response, but we, we still assert that these mo, or this so-called motion -- I don't know. I think I can only call it a "so-called motion" -- is both unprecedented, patently improper procedurally, wholly unsupported in law, and does contain several material misstatements. And I'll go over in more detail the LTL issue since that was a feature of Mr. Thompson's presentation. And yes, both their original pleading and that presentation, we would assert, are, is materially misleading because of the actual underlying facts and I'll go through those.

With respect to the, again, so-called motion, Maune asks this Court that the debtors admit that the funding agreements are valid and enforceable outside of bankruptcy. The structure of the demand itself demonstrates what, to us, is obvious, that this is not a motion at all. It's not a motion properly directed to the Court and is a waste of the Court's

time. As set forth in our objection, we have several points: (1) this is, at best, a request for admission. It's not a motion; (2) notwithstanding, there's no authority in the motion, legally. 1123 and 105 are not sufficient bases for the relief, or the so-called relief requested. The relief is not ripe or the request, I should say, is not ripe, that we, frankly, view this as harassment, your Honor. We have said in public statements repeatedly throughout this case that the agreements are enforceable. And we have discovery, as Mr. Thompson indicated, that Mr. Tananbaum has been deposed on this issue not once, but twice, including by Mr. Thompson, himself, within the last year.

We saw a variety of snippets in the presentation of that deposition testimony. We set forth in the exhibits to our objection, effectively, the full answers, not just snippets and we think those speak for themselves, but I'll go through that in some detail. In addition, the hypotheticals that are set forth in the motion, we think, are really, lack credibility and again, are materially misleading. So let's go through those items one by one.

With respect to the procedural infirmities of which there are several, again, the debtors' position is this is not a motion at all and, as a result, should be denied on that basis. You, you can file a piece of paper in court, I guess, your Honor, and you can call it whatever you want. But

obviously, there are rules. This is a court of law and this is not a motion. At best, it's a request for admission. That is, itself, or the, the request is itself improper because it doesn't actually comply with the exactness standards of Federal Rule of Civil Procedure 36.

Related, in a bankruptcy case requests for admissions may be served only in adversary proceedings and contested matters. We don't have either, your Honor. This request is completely untethered, frankly, to anything. As a result, the so-called motion should be denied on that basis, or those bases.

In terms of the so-called legal authority, there is none, your Honor. Two statutes are cited, 1123(a)(5) and 105(a). First of all, the, the main focus of the motion is what would happen to the funding agreements outside of bankruptcy if there were no bankruptcy. Well, if there's no bankruptcy, there's no bankruptcy. So we don't even understand how this is a legitimate issue in this particular case at this particular point in time.

With respect to the so-called plan, there's obviously no confirmation process in place right now. We're not at confirmation. We're not leading into confirmation. So in our view, your Honor, 1123(a)(5) is not a sufficient statutory basis for this request, which is coming sort of leftfield at this time. We do cite, we did cite the LATAM case just to

provide another example where there was a, a backstop funding agreement proposed to the court in that case. Objections on the basis that it would render the -- the -- a plan unconfirmable and the judge said, "Well, that's," you know, "it's not ripe. It's not for today."

As a result, 105 itself can, cannot support as a, or cannot be a basis for this motion. 105 has to be tethered to some other provision of the Bankruptcy Code and as a result, there is no, as a result of what he's mentioned, there is no other provision of the Bankruptcy Code that supports this specific request.

In addition, the motion's not ripe. This -- I don't want to spend a lot of time on this. This is getting a little bit more far afield, but, of course, you know, for a, a request to have some ripeness, there actually has to be a, a, a live controversy or an injury in fact. Basically, what they're saying is outside of bankruptcy some particular claimant could have a claim, that would have to be liquidated to judgment, and then the judgment would have to be not honored. None of that, obviously, has happened. We're, we're obviously still in bankruptcy, your Honor. So the request also is not ripe.

Finally, a point that I think should be focused on maybe a little bit more than we had in our pleadings and kind of was implicated by one of the things Mr. Thompson was saying. Maune is not really the right party to be raising these issues,

from our standpoint, your Honor. At best, this is something that could be a request for admission in connection with the derivative litigation. That's where the issue of the funding agreements is in place. And the Committee was given specifically derivative standing, or standing to bring actions in connection with the restructuring, including the funding agreement.

So it's the ACC, your Honor, if anybody is going to pursue this, they should be pursuing this. Because the issues that are being raised by Mr. Thompson are not unique to his particular claimants. They apply to all the claimants equally in this particular case.

So that's the legal infirmities, your Honor. Again, several.

In terms of the unnecessariness, I'll call it that, of the motion and why we think this is, frankly, harassment, your Honor. Again, the debtors have been clear in the public record, stated numerous times that the funding agreements are enforceable and we give some examples, but they're not, you know, exclusive in our pleading.

With respect to discovery, Mr. Tananbaum, again, was deposed twice, once in the PI litigation, once in connection with dismissal. We attach as Exhibit 1 just sort of more fulsome description of his answers in the PI and more importantly, in Exhibit 2 is a more fulsome description of his

answers.

To Mr. Thompson's own questions, in the dismissal litigation -- and I'll just focus on the end of the portion that we actually put in the pleading rather than the exhibit. It was sort of referenced by Mr. Thompson, but he kind of passed over it -- the answer was -- and the question is, "What would happen in, in dismissal," or "after a dismissal?" Mr. Tananbaum said:

> "Yes, I don't know how that would work, but if you're asking if at some point the funders weren't honoring their commitments under the agreements, would we press to have them do so, and I don't know what that would look like, but I would imagine, yes, that we would press to have those commitments honored."

So your Honor can form your own conclusion, but, from our standpoint, we think that's more than sufficient.

In terms of the hypotheticals lacking credibility and being materially misleading, let's go through a couple things.

So first of all, I suppose to try to tether this to some type of bankruptcy issue since their focus is really what would happen outside of bankruptcy they say, "Well, would happen if your Honor confirmed a plan where all the claims just went back to the tort system?" Well, from our standpoint, your Honor, that's not a plan. And in fact, this actually came up in the Bestwall case. That is, effectively, the plan the ACC

filed in that case a couple years ago -- I don't remember exactly when -- and Judge Beyer declined to have that plan move forward. The debtors' position, of course, our position as well is that's not a plan at all. That's not a resolution of the issues. That's just a disguised dismissal, one of maybe five motions to dismiss that have been filed directly or indirectly in the Bestwall case to date.

With respect to the funding agreement, Maune states, "The funding agreements are the only mechanism that will allow the claimants to recover anything on their claims in this bankruptcy case." Well, your Honor, I mean, we don't have to tell you this. You know the record. Obviously, that's not even remotely true. The only plan on the table to date is the debtors' agreed plan with the FCR, fully funded not through the funding agreements, but separately, but fully funded through a QSF and insurance.

So with respect to that plan, the funding agreements, we would assert, are not even necessary.

Now let's get to, to LTL. The point, your Honor, I think we were clear in our pleadings, is there, there is a factual distinction between LTL and this case, to the extent even relevant, to the extent any of this is even relevant.

So going into the LTL case, the ultimate parent company, J&J, a $500 billion market-cap company, provided what we'll effectively call a guaranty of the funding. There was

also a funding agreement from the entity from which the debtor was borne in the divisional merger. That's the structure that exists here. There's, obviously, a dual structure 'cause there's two debtors. And the Third Circuit in the dismissal of the first LTL case said sort of ironically, but unfortunately for you, debtor, that parent guaranty renders you lacking financial distress.

So going into the second bankruptcy case in New Jersey, that parent guaranty did not exist going into the case and the point is, your Honor, the ultimate funding agreements still did exist, the structure that exists here. And in fact, the irony in this case, your Honor, is notwithstanding there was no parent guaranty, Judge Kaplan found that the funding agreements of the type that exist in this case were still sufficient such, such that the debtors lacked financial distress and had to be dismissed again, or the debtor. Excuse me. There's only one debtor there.

So the, the obvious implication from Maune Raichle is, "Well, your Honor, I mean, look at LTL and Jones Day was involved and they just ripped up the funding agreements and," you know, "they're going to do that again outside of bankruptcy." Well, again, the facts are not the same, apples and oranges. And again, the funding was in place in the second LTL case, such that those cases were dismissed as lacking financial distress.

Finally, on the PI point, your Honor, we find that also a little bit ironic. Because it's the -- the -- I think Maune Raichle, or Mr. Thompson keeps saying it's the funding agreements that were the basis for the PI. We sort of see it as the opposite. That's when your Honor started to express concerns about the funding agreements. It wasn't that the PI was based on the funding agreements and in fact, Maune Raichle keeps saying your Honor extended the automatic stay. My recollection is based on the debtors' summary judgment motion your Honor found that the automatic stay applied to claims against Non-Debtor Affiliates. It wasn't you extended the automatic stay. The automatic stay existed, already.

So we don't think that recitation of the facts, either, is correct, nor applicable.

Your Honor, in conclusion, we find this motion to be not only improper and harassment, but sort of odd. It came out of leftfield. Why is this motion being presented now. We question the motivations. It was filed at the time when the Fourth Circuit was considering certification. We think it has something to do with that.

But for all the reasons mentioned, we think it's a waste of your Honor's time. It's not an actual motion, itself. It's not proper. It's procedurally improper.

We do find it a little bit troubling. We see a pattern and practice here developing with the Maune firm that's

led them to be sanctioned already once in the Bestwall case and some developing problems in that case, again. We hope that that doesn't continue here. If it does, I suppose we'll have to address that down the road on another day, probably with your Honor's successor.

But for today, your Honor, we would simply ask that you deny the "so-called motion" for all the reasons mentioned.

Thank you.

THE COURT: Okay. Thank you.

Mr. Mascitti.

MR. MASCITTI: Good morning, your Honor. Greg Mascitti, McCarter English, on behalf of the Non-Debtor Affiliates.

Your Honor, I had a, a moment of panic when I saw the first slide and the, and the movants called their motion a "funding motion." I thought for a second maybe I prepared for the wrong motion. And then towards the end of the argument I had a similar concern when counsel was talking about reconsideration of the preliminary injunction order and had to go back to the motion to see if I had, again, prepared for the wrong motion.

I can only -- it seems like the request for relief is a bit of a moving target and I can only address the relief that's requested in the motion. And in the motion the movants request that the Court compel the Non-Debtor Affiliates to make

admissions that the funding agreements are valid and enforceable. The relief requested in the motion, however, is neither necessary, nor supported by any facts or law. Three points, your Honor, with respect to the facts.

First, it is undisputed that the debtors have in excess of $540 million of assets before consideration of the funding agreements. And I want to address this "inexcusable ignorance" point.

On page 8 of the motion the movants inexplicably state that, "The funding agreements are the only mechanism that will allow the claimants to recover anything on their claims." They further state that, "Without the funding agreements, the debtors have no ability to pay the asbestos claims assigned to them by the divisional mergers."

Those are the fundamental factual predicates for the motion and they are indisputably false. In fact, the debtors are capable of fully funding the plan proposed by the debtors and the FCR through their existing assets without consideration of any additional funding through the funding agreements.

Second point, your Honor, it is undisputed that the Non-Debtor Affiliates have already admitted the validity and enforceability of the funding agreements. Each of the funding agreements contains an express representation by the applicable Non-Debtor Affiliate that the funding agreement has been duly executed and delivered by the Non-Debtor Affiliate, constitutes

a legal, valid, and binding obligation of the Non-Debtor Affiliate, and is enforceable against the Non-Debtor Affiliate in accordance with its terms.

Movants fail to explain why the admissions requested in the motion are necessary, given the express representations of the Non-Debtor Affiliates in the funding agreements. In fact, both the motion and the movants' reply fail to even mention the Non-Debtor Affiliates' express representations, much less explain how the requested admissions would do more than what the express representations in the funding agreements already do.

Counsel -- I was please to see that counsel quoted the funding agreement provisions in the slides not referenced in the motion and no explanation as to, again, why those representations are somehow insufficient. Counsel also made some requests that there could have been a declaration submitted that affirms the agreements. Your Honor, the best commitment a party could give is its written agreement and representation that an agreement is valid, binding, and enforceable against it and that's what the Non-Debtor Affiliates have done.

Third point, your Honor, it is undisputed that the Non-Debtor Affiliates have performed every single obligation arising under the funding agreements to date and have testified as to their intention to continue to do so in the future.

Movants don't even allege that the Non-Debtor Affiliates have failed to perform any, perform any obligation under the funding agreements or have in any way repudiated any of their obligations thereunder.

In short, the undisputed facts establish that further admissions as to the validity and enforceability of the funding agreements are unnecessary and the motion is devoid of any facts supporting the requested relief. Likewise, your Honor, the motion is not supported by any law. And again, three points with respect to the law.

First, as a threshold matter, Federal Rule of Bankruptcy Procedure 7001 requires that any request for injunctive or other relief, equitable relief, must be sought in an adversary proceeding, not by a motion. As a result, the motion is procedurally defected and should be denied on that basis alone.

Second, your Honor, setting aside the procedural deficiency, movants' reliance on Sections 1123 and 105 is misplaced. Section 1123 establishes the required contents of a plan and is relevant in the context of a confirmation hearing. No confirmation hearing is pending before the Court. Further, the Court's authority under Section 105 cannot be used to revise the Bankruptcy Code and apply the provisions of Section 1123 to a debtor outside of a confirmation plan hearing. Even if 1123 was somehow presently applicable, the debtors currently

have adequate means to implement the plan that has been proposed by the debtors and the FCR without consideration of the funding agreements. The movants' hypothetical facts about a dismissal of the case or some other alternative plan or the need to enforce the agreement are not, are not facts that are presently before the Court and are additional evidence that if any claim did exist, it's not currently ripe for adjudication.

Third point, your Honor, the movants fail to cite a single case in which any court has granted the requested relief.

In summary, your Honor, the motion is both unnecessary and completely devoid of any facts or law supporting the requested relief and should be denied.

Thank you.

THE COURT: Okay. Thank you.

All right. I think those were the only two responses. Ready to rebuttal?

MR. THOMPSON: Absolutely, Judge.

THE COURT: Mr. Thompson.

We had a debate when we were building this courtroom of whether to put the, the podium in the middle and whether to put one in at all and opted for the middle ground of pointing it over to the side because North Carolina practice doesn't use the podium. We argue from the table, normally. But every time we have one of these asbestos cases, I think I may have made

the wrong decision and should have put it here.

Go ahead, Mr. Thompson, when you're ready.

MR. THOMPSON: So -- okay. I thought I'd be, you know, it'd be more fun if I mixed it up a little bit, but it sounds like you'd rather have me over -- that's okay.

THE COURT: No, no. You're all right. Go ahead.

MR. THOMPSON: So I didn't hear a commitment there, Judge, and you know, it's -- why now? 'Cause you're the judge that knows the facts of this case. That's why we're moving now. It's not a waste of time. It's one motion. This is a $56 billion company. Being cheap doesn't mean you're entitled to bankruptcy protection, which is what Trane wants. It's not a waste of time. These are critical issues. We got a lot of sick people whose state law remedies and constitutional rights are being trampled upon by a $56 billion company. It's not a waste of time.

I -- you know, your Honor can read Mr. Tananbaum's testimony. I think it's pretty clear. He's not committal. They did attach the whole thing. I thought I, I think I attached the whole thing as well.

They, they say that there's a plan that they don't need any more funding for. A constitutional plan is going to require the funding agreement. 'Cause the plan that they've proposed is just facially unconstitutional and your Honor recognized that that issue was for another day and -- and --

and I understand that. It's, it's unconstitutional. You can't cap state law remedies in the absence of a limited fund. You can't fabricate artificially a limited fund, especially if the, the Non-Debtor Affiliates collectively are worth $11 billion. They've saved $400 million in this case 'cause they were paying a hundred million a year in the tort system. So they've saved $400 million. This motion is not a waste of time. I represent some sick and dying people. Mr. Semian was a future victim at the time that that plan was proposed. He's against the plan.

They're -- you know, they, they say that the Bestwall plan, that's not a bankruptcy plan. Right, because that's, that's a constitutional plan. The plan that was proposed in Bestwall is constitutional 'cause Bestwall's worth $29 billion. You can't cap remedies and that's what Trane --

THE COURT: You mean Georgia-Pacific now.

MR. THOMPSON: -- and Bestwall wants to do.

THE COURT: Georgia-Pacific's worth 29 billion.

MR. THOMPSON: Yeah.

THE COURT: You think Bestwall's worth that?

MR. THOMPSON: Well, my position is with the funding agreement, they're worth $29 billion, Judge.

THE COURT: Okay.

MR. THOMPSON: Bestwall's worth $29 billion. With the funding agreement, they're worth what New GP is.

So for, for J&J. So the distinction there is Johnson

& Johnson had independent tort liability, independent of JJCI. That was our argument. Juries found them independently liable. And so I think that there may be issues about successor liability or other legal theories, but in this case the funding agreements are with the predecessors that held the asbestos liabilities. And so it was significant in LTL when J&J removed its guarantee of the funding agreement because, from our pers, perspective as well as the perspective of juries in state courts across the country, Johnson & Johnson had its own liability.

So for Johnson & Johnson to revoke or to say it was void/avoidable was exactly on par with what this situation is here. Because here, you've got Non-Debtor Affiliates that had the liabilities previously and they're the ones that have agreed to fund these plans.

It's not harassment. I'm, I'm making this motion because you're the judge that raised these concerns. And ultimately, they have a problem with your findings, is really what I'm hearing. 'Cause they're, they're taking an issue with a motion that's asking you to in a court of equity get commitments to satisfy this Court that the entire basis of this case is honored and that's the funding agreement.

And so we listened to all of this procedural and all these other things and all they had to do is commit and they won't do it. They won't do it. They want the flexibility.

They want to string this along and then see what happens. And again, they didn't go to all this trouble to pay sick people more money. They went to all this trouble to trample on their, on their constitutional rights. They went to all this trouble to overcome the tort system, which is exactly what they're trying to do. It's not a good faith bankruptcy purpose and they shouldn't be shielded from the, by the preliminary injunction if they don't commit to enforce these agreements.

And I'll leave it to your Honor's discretion to address the concerns that I've raised, that you raised in your orders and that I'm putting before you in whatever form of relief you see fit. I would suggest that it's required here.

Thank you.

THE COURT: All right. Thank you.

That got it?

Mr. Erens.

MR. ERENS: Your Honor, I did say before that I wasn't going to address each of the points that Mr. Thompson made, but I do want to address two that were mentioned.

It won't be of any surprise that we don't view the plan that we have on file as "facially unconstitutional." I think that's the term that Mr. Thompson used, but we'll be here all day if we want to discuss the details of that. So I just wanted to put that on the record.

With respect to the debtors or Trane has saved $400

million, again, your Honor, Trane put in a $270 million QSF. We've been in bankruptcy, I guess, four years. Mr. Guy keeps putting up the fee chart. I have a feeling, unfortunately, that when you add up those fees, plus the 270 million, it probably exceeds the 400 million that Mr. Thompson indicated. So it may be the case that, actually, debtors/Trane have funded or paid more than the 400 million that supposedly would have been paid in the tort system.

That's it, your Honor. Thank you.

THE COURT: All right.

Mr. Mascitti.

MR. MASCITTI: Your Honor, I know there's no premium for being last, but I did want to address one, the comment that counsel said he didn't hear a commitment or that Trane won't commit. And I think the point has been missed. The point is Trane has already committed. It's in the funding agreement. It says -- in the agreement we've represented the agreements are valid and enforceable.

We were talking about Professor Foy earlier this morning, your Honor, and, and counsel cited the integration clause that's in the agreement. What I say now, what any deponent says is completely irrelevant, your Honor. The agreement is unambiguous and when you enforce an unambiguous agreement you look at the four corners and the validity and enforceability of the agreement is set forth in that agreement.

Thank you, your Honor.

THE COURT: All right.

Mr. Thompson, you want the last word?

MR. THOMPSON: I'm satisfied.

THE COURT: Okay.

MR. THOMPSON: Thank you, Judge.

THE COURT: All right.

Okay. The great rock philosophers Three Dog Night back in the 1970s had a song that said, "I've seen so many things I've never seen before. I don't know what it is, but I don't want to see no more." This is a most curious motion and a most curious series, pair of responses.

I agree that on the frontend this appears to be a request for an admission or a motion to reconsider the preliminary injunction filed in the base case. The request for an admission, obviously, we don't have the pending adversary proceeding that we're proceeding under. I suppose it could be renoticed and done in the preliminary injunction or a contested matter. We don't -- similarly as noted, equitable relief is generally sought under 7001 by adversary.

And I agree that the motion is asking to determine in advance of these events hypothetical facts that are not presently in prospect, dismissal of the case, given that the Fourth Circuit just declined last week to, to do a direct appeal of my order denying dismissal, and the fact that that is

also interlocutory. Judge Conrad in Bestwall has done likewise. It also contemplates confirmation of a plan that would allow all the litigants to opt out. Well, of course, we don't have any such plan on file. There is no creditor plan at this.

So bottom line is that I'm probably responsible for some of that because of my dismissal order. I have made it a point in the course of doing this job of occasionally trying to, in the course of writing an order, to try to suggest fruitful ground for negotiation and compromise and to a certain extent, some of my musings about what you can and can't do constitutionally are, you can view as a last opportunity to speak to you on these matters with hopes that, that it might bear some fruit. Obviously, that doesn't appear to be working. We're on fairly stony ground between the two parties, or three parties at this point in time as to what should be done with this case.

But I'm not in the preliminary injunction and I don't have a request for admission. So I don't think I'm in a position to make a ruling on this, to grant the motion, that is.

But I find, also, the debtor and Affiliates' responses to be almost as equally unusual. They acknowledge that they have provided in the past on several occasions the same assurances that Maune seeks. So one quick way out of this

would have been to simply say the motion should be granted. They could have said that. But instead, what we do are argue about the procedural niceties and what should be done. But again, there is the restatement that they consider the, the funding agreements enforceable.

It is also curious to me that three years ago we were over in the DBMP case where, having read some of my concerns about the funding agreement and why it might not provide the stated desire to leave the debtor equally able to fund asbestos claims, the response of that was the debtor to file a motion to authorize a Second Amended and Restated Funding Agreement. That would make it more clear that, that that's exactly what they wanted, an enforceable agreement. And on that occasion in that case -- and of course, the debtors were represented by the same counsel as here -- in that case, it was the ACC and the claimants -- and I can't remember whether Maune Raichle was on that committee -- but, but, but the, the claimants came in and objected to the motion.

So it is a curiosity that we are having this fight again. For the technical reasons, I don't think I've got anything that I can rule on here. I don't really encourage the reconsideration of the, of the preliminary injunction on the basis of this particular argument in that I believe the preliminary injunction was mandated by Fourth Circuit law regarding whose claims and the, they are and, at the end, and

Texas law to that end. And also, the, effectively, the stay being imposed under these circumstances under our Circuit's viewpoint so that the debtor may attempt a reorganization.

And with that being the case, I believe the, the rest of this is surplusage. So I would deny the motion. And again, ask for the prevailing party to give me a short order that just makes reference to the remarks and we'll go from there.

I share all your frustration. I had very much hoped that the Circuit would pick up either this or Bestwall. I don't know if they ruled in Bestwall yet, but, so that we could get some clarity on some of these points. They are far from easy issues and, and they are certainly important issues. And hopefully, someone -- I'll look forward to the happy day when a higher court gets them. But for now, I think we are, instead of going up the easy "coast road of Sicily," like Bradley and Patton's troops, we find ourselves in the position of, of General Bradley's troops going over the mountain in these cases and it looks like we're going to slog our way through. So that's where I have it at the moment.

Is there anything else we need to talk about this morning?

MR. GUY: Bradley won --

THE COURT: Mr. Guy.

MR. GUY: Bradley won, your Honor.

THE COURT: Pardon?

MR. GUY: Bradley won.

THE COURT: Oh, yes. Okay. He won, but it took a, a lot of sacrifice. So anyway. I'd said Bradley the first time, but it was actually Montgomery that was on the west coast road, so.

All right. Court's in recess.

MR. ERENS: Thank you, your Honor.

MR. HIRST: Thank you, your Honor.

THE COURT: Thank y'all.

(Proceedings concluded at 10:41 a.m.)

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* April 29, 2024

Janice Russell, Transcriber Date