Docket #2378 Date Filed: 10/10/2024

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 (LMJ)
Debtors.	(Jointly Administered)

CASE HISTORY AND STATUS REPORT OF ALDRICH PUMP LLC AND MURRAY BOILER LLC

[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.

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On June 18, 2020 (the "Petition Date"), Aldrich Pump LLC ("Aldrich") and Murray Boiler LLC ("Murray" and, together with Aldrich, the "Debtors")[2] commenced their reorganization cases (the "Chapter 11 Cases") by filing voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").

In connection with the filing of these Chapter 11 Cases, on the Petition Date, the Debtors filed the *Informational Brief of Aldrich Pump LLC and Murray Boiler LLC* [Dkt. 5] (the "Informational Brief"), which detailed, among other things, the Debtors', and the Debtors' predecessors', asbestos-related history through the Petition Date and their objectives for these Chapter 11 Cases. Since that time, much has happened in these cases, and, as a result, the Debtors offer the Court this *Case History and Status Report of Aldrich Pump LLC and Murray Boiler LLC* (the "Status Report"). The Status Report seeks to inform the Court in the following areas:

First, the reasons the Debtors filed these Chapter 11 Cases, which have only become more salient since the Petition Date.

Second, the general case history and various key events that have occurred since the filings of the Chapter 11 Cases.

Finally, the Debtors' theory of and goals for these cases.

I. Introduction

To the Debtors, the unfortunate reality of these cases is that a successful resolution could have occurred years ago, in which case claimants would already be receiving payments on their claims from a section 524(g) trust. Little more than a year after the Petition Date, the Debtors filed a plan of reorganization establishing a $545 million section 524(g) trust to compensate

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[2] When discussing historical matters preceding the 2020 Corporate Restructuring (as defined herein), the terms "Aldrich," "Murray," and "the Debtors" refer to the Debtors herein and their historical predecessors.

asbestos claimants. The Debtors subsequently obtained approval of and funded a qualified settlement fund in the amount of $270 million. This amount was sized to fully fund the Debtors' plan after accounting for likely recoveries from the Debtors' insurers, which historically have covered approximately half of the Debtors' asbestos claim indemnity and defense costs.

By way of comparison, the trust funding proposed by the Debtors is $65 million more than the $480 million trust established in a case involving a debtor in this jurisdiction, Garlock Sealing Technologies LLC ("Garlock"), with a very similar asbestos litigation history and essentially the same asbestos containing products.[3] The key difference between the cases is that Garlock filed for bankruptcy 10 years earlier than the Debtors, so the $480 million Garlock trust had to compensate 10 more years of claims than the Debtors' proposed $545 million trust. Thus, the Debtors are proposing significantly greater value for substantially similar (albeit fewer) claims than was approved by the Court in *Garlock*.

The Debtors' plan was negotiated with, and has the full support of, the Future Claimants' Representative ("FCR"), who also was the FCR in *Garlock*. As of the Petition Date, it was estimated that future claims constituted approximately 80% of the Debtors' asbestos liability. As such, the FCR represents the vast majority of asbestos claimants who will be compensated by a plan resolution in these cases. Counsel to the Official Committee of Asbestos Personal Injury Claimants (the "ACC"), which represents the remaining minority of claimants, has acknowledged this point, stating at one hearing in these cases:

> The real issue here is the futures. As [counsel to the FCR] said, the currents are, are, you know, a small percentage of the money that is going to be required in order to fully pay all of the asbestos claims against these debtors.

Tr. of Jan. 28, 2021 Hr'g [Dkt. 575] at 139:14-18.

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[3] *In re Garlock Sealing Techs., LLC*, No. 10-31607 (Bankr. W.D.N.C.).

The FCR's willingness to engage in good faith negotiations with the Debtors builds on the foundation created by the scores of asbestos trusts that have been established both before and after the enactment of section 524(g) of the Bankruptcy Code that have been effective in compensating those afflicted with asbestos-related disease. The FCR in these cases,[4] and numerous courts in others, have observed that such trusts are far preferable to tort litigation for all parties involved. For instance, the Third Circuit, where a large portion of asbestos bankruptcy cases have been filed, has stated:

> [Asbestos] trusts appear to have fulfilled Congress's expectation that they would serve the interests of both current and future asbestos claimants and corporations saddled with asbestos liability. In particular, observers have noted the trusts' effectiveness in remedying some of the intractable pathologies of asbestos litigation, especially given the continued lack of a viable alternative providing a just and comprehensive resolution. Empirical research suggests the trusts considerably reduce transaction costs and attorneys' fees over comparable rates in the tort system. . . . In sum, section 524 trusts are the only national statutory scheme extant to resolve asbestos litigation through a quasi-administrative process.[5]

This sentiment was echoed recently by the Fourth Circuit, which stated in the *Bestwall* case currently pending before Judge Beyer:

> [B]ankruptcy procedures promote the equitable, streamlined, and timely resolution of claims in one central place compared to the state tort system, which can and has caused delays in getting payment for legitimate claimants.[6]

Unlike the FCR, the ACC has not prioritized negotiating a plan with the Debtors. Instead, the ACC's primary, if not exclusive, focus in these cases has been to end (or at least

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[4] *See The Future Asbestos Claimants' Representative's Response to the Debtors' Motion for Estimation of Prepetition Asbestos Claims*, [Dkt. 888] at 2 ("Indeed, for every asbestos bankruptcy case, a fully funded asbestos trust is the optimal result for the separate classes of present and future claims. Such trusts, properly configured and funded, provide the maximum benefit for the greatest number of asbestos victims – ensuring that every valid claim can be paid quickly, efficiently, and fairly.").

[5] *In re Federal-Mogul Glob. Inc.*, 684 F.3d 355, 362 (3d. Cir. 2012).

[6] *In re Bestwall LLC*, 71 F.4th 168, 183 (4th Cir. 2023).

obstruct) them—through dismissal or otherwise. This appears to be a path chosen for the ACC by the tort lawyers, a conclusion also apparently considered by the Fourth Circuit in questioning the motives behind the plaintiffs' bar's same chapter 11 "dismissal or bust" strategy in the *Bestwall* case,[7]

> [i]t is not clear why Claimant Representatives' counsel have relentlessly attempted to circumvent the bankruptcy proceeding, but we note that aspirational greater fees that could be awarded to the claimants' counsel in the state-court proceedings is not a valid reason to object to the processing of the claims in the bankruptcy proceeding.[8]

Sadly, approximately 58% of the money spent in the tort system goes to lawyers rather than to actual asbestos claimants,[9] and asbestos tort litigation is incredibly profitable for a relative few. A small group of tort lawyers, advertisers, firms that screen and aggregate claims, and litigation lenders have a virtual monopoly on asbestos litigation recoveries, and such recoveries are substantial. Hence, the asbestos plaintiffs' bar has clear financial incentives to protect the status quo.

Ultimately, notwithstanding a fully funded plan on file supported by the representative of the vast majority of claimants, the cases have been unable to move forward. The Debtors submit that this delay must end.

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[7] The *Bestwall* case, No. 17-31795 (Bankr. W.D.N.C.), is another asbestos-driven bankruptcy pending in the Western District of North Carolina in which the debtor engaged in a pre-petition divisive merger restructuring similar to the Debtors here. A third similar asbestos-driven bankruptcy case, *In re DMBP LLC*, No. 20-30080, is also pending in this district. Each of *Bestwall*, *DBMP*, and this case have asbestos claimants' committees with substantially overlapping membership.

[8] *Bestwall*, 71 F.4th at 184.

[9] *See* STEPHEN J. CARROLL, ET AL., ASBESTOS LITIGATION xxvi, RAND INST. FOR CIV. JUST. (2005).

II. Review Of Prepetition Events

A. The Debtors' Parent Company

The Debtors are indirect subsidiaries of Trane Technologies plc ("Trane Technologies"), a global leader and innovator in the climate industry that brings efficient and sustainable climate solutions to buildings, homes, and transportation. The Trane enterprise is an integral part of both the global and North Carolina business communities – it employs nearly 40,000 people across the globe, including 25,000 in the United States, and frequently participates in a variety of nationally recognized, and industry-leading, environmental, social, and governance initiatives.[10] For example, Trane Technologies' citizenship strategy, Sustainable Futures, which was launched in 2021, aims at providing access to science, technology, engineering, and mathematics ("STEM") education and career opportunities specifically for people under-represented in their industry, including ethnic minorities and women.[11] Trane Technologies' Executive Offices are located in Davidson, North Carolina, and have been located there for over a decade. The Debtors maintain their headquarters in Davidson as well.

B. Asbestos Product History

Aldrich and Murray have legacy asbestos liability related to component parts of equipment they sold over forty years ago. Unlike many other companies with asbestos liability, neither Aldrich, Murray, nor their predecessors ever mined asbestos or used raw asbestos to manufacture a product. Instead, Aldrich's and Murray's asbestos litigation history primarily arose from their manufacture of large industrial equipment that sometimes incorporated third party asbestos-containing components. These components were primarily: (a) gaskets,

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[10] Trane 10-K at 8 (Feb. 8, 2024).
[11] *Id.* at 9.

ring-shaped components fitted to metal piping to prevent sealing failures that could cause catastrophic injury or damage; and (b) packing, a component that was used around moving shafts for the same purpose.[12] The gaskets and packing components containing asbestos were industry standard, and Aldrich and Murray were merely among the numerous companies that purchased and incorporated these components into their products. Aldrich and Murray ceased the use of asbestos-containing gaskets and packing materials in their equipment in the early to mid-1980s.

Many of the asbestos claims asserted against the Debtors and other asbestos defendants allege that asbestos exposure caused the claimant to develop mesothelioma, a fatal cancer. While exposure to sufficient quantities and frequency of friable asbestos can cause mesothelioma, mesothelioma can occur for other reasons as well.[13] In fact, we now know that mesothelioma can be caused not by exposure to external substances, but, instead, by spontaneous gene mutation.[14] As such, there is a natural or idiopathic rate of mesothelioma that always occurs, regardless of whether there has been asbestos exposure.[15]

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[12] Over 70 years ago Murray also designed and produced a limited amount of boilers that may have been externally insulated with asbestos-containing insulation, which was standard for that time period. Murray stopped using asbestos-containing insulation in the 1950s.

[13] Stergios Boussios et al., *Malignant Peritoneal Mesothelioma: Clinical Aspects, and Therapeutic Perspectives*, 31(6) ANN. GASTROENTEROL. 659 (2018).

[14] Bertram Price & Adam Ware, *Time Trend of Mesothelioma Incidence in the United States and Projection of Future Cases: An Update Based on SEER Data for 1973 Through 2005*, 39(7) CRIT. REV. TOXICOL. 576, 584 (2009); *see also* Michele Carbone, et al., *Malignant Mesothelioma: Facts, Myths and Hypotheses*, 227(1) J. CELL. PHYSIOL. 44 (2012).

[15] Bertram Price & Adam Ware, *supra* note 14 at 584 (reporting that the spontaneous or natural mesothelioma rate around the time of the study was at least 27%); Michele Carbone, et al., *supra* note 14 at 14 (estimating that at least 70-80% of female mesotheliomas are not caused by asbestos exposure).

C. The Rise Of Asbestos Litigation

Asbestos litigation in the United States commenced in earnest in the 1970s.[16] Early litigation normally targeted entities known as the "big dusties," which utilized raw asbestos to manufacture various products, often friable[17] thermal insulation. Amphibole asbestos, the most toxic type,[18] was often used in these friable thermal insulation products.[19] These miners, sellers, and manufacturers of friable asbestos products were, collectively, paying hundreds of millions—if not billions—of dollars annually to resolve mesothelioma and other asbestos claims in the tort system.[20] By comparison, the asbestos in the gaskets and packing that Aldrich and Murray incorporated into their industrial products before the 1980s was overwhelmingly the far less toxic chrysotile asbestos.[21] Moreover, the asbestos in the gaskets and packing was not friable but instead was encapsulated.[22] The nature and amount of asbestos exposure that would occur from

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16 Joseph J. Welter, et al., *Asbestos Litigation: Alive and Strong in 2014*, FOR THE DEFENSE (Apr. 2004), at 50.

17 *Id.*; *cf.* Occupational Safety and Health Standards Toxic and Hazardous Substances, 29 C.F.R. § 1910.1001, Appendix G (2008) ("Friable means that the material can be crumbled with hand pressure and is therefore likely to emit fibers.").

18 As an example, Unibestos, manufactured by Pittsburgh Corning, was a prominent thermal insulation that contained amphibole asbestos. *See In re Garlock Sealing Techs., LLC*, 504 B.R. 71, 84 (Bankr. W.D.N.C. 2014) ("[Garlock attempted to show that he was exposed to Unibestos amphibole insulation manufactured by Pittsburgh Corning.").

19 *Where is Asbestos Found?*, CDC: AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY (May 19, 2023), https://www.atsdr.cdc.gov/csem/asbestos/where_is_asbestos_found.html (describing former commercial uses of mined asbestos including amphibole-contaminated vermiculite insulation, which was used in homes and other buildings in the United States that were built before 1975).

20 *See* Stephen J. Carroll, *et al*., RAND Institute for Civil Justice, Asbestos Litigation (2005) at 55 ("U.S. defendants have spent from $20 billion to $24 billion on asbestos litigation through 2000. In their bankruptcy filings and related documents, corporations filing for bankruptcy have reported expenditures (including costs recovered from insurance) ranging from $450 million to $5 billion. We are aware of at least five defendants who have each spent more than a billion dollars apiece.").

21 *See In re Garlock Sealing Techs., LLC*, 504 B.R. 71, 75 (Bankr. W.D.N.C. 2014) ("[I]t is clear under any scenario that chrysotile is far less toxic than other forms of asbestos.").

22 In April 1970, Dr. Irving Selikoff, a pioneer on the health effects of asbestos exposure, wrote that it was "fortunate that the greatest part of [the asbestos in construction materials] has been in products in which the

the maintenance of the Debtors' equipment was significantly lower than what was released by friable asbestos products (like insulation) and would not have substantially contributed to the risk of development of an asbestos-related disease.[23] As a result, the Debtors, from the mid-1980s through 2000, paid less than $4 million in **total** over approximately 15 years to resolve mesothelioma claims asserted against them.

By the early 2000s, however, asbestos litigation had shifted significantly after virtually all of the primary, "big dusty" defendants filed for bankruptcy and exited the tort system. Relying upon section 524(g) of the Bankruptcy Code, these primary defendants established asbestos personal injury trusts that contained tens of billions of dollars.[24] Even though these billions of dollars remained available to satisfy claims, following the "Bankruptcy Wave"[25] the plaintiffs' bar began to target other "solvent bystanders" such as Aldrich and Murray.[26] At the time of the Bankruptcy Wave, even though no facts regarding the manufacture, sale, or use of the Debtors' equipment had changed, claims against the Debtors, along with settlement and trial demands, began to be made as if the primary, "big dusty" defendants had never existed, exposure

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asbestos is locked in—that is, it is bound with cement or plastics or other binder so that there is no release, certainly no significant release, of asbestos fiber in either working areas or general air." Irving J. Selikoff, *Partnership for Prevention – The Insulation Industry Hygiene Research Program*, 39(4) INDUS. MED. 164 (Apr. 1970).

[23] *See Garlock*, 504 B.R. at 73 (describing Garlock's liability for products which generally "spent their working lives bolted between steel flanges or valves" as "relatively de minimus.").

[24] U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-11-819, ASBESTOS INJURY COMPENSATION: THE ROLE AND ADMINISTRATION OF ASBESTOS TRUSTS 3 (2011) ("In the last decade, with the number of asbestos-related bankruptcies increasing, the number of asbestos personal injury trusts increased from 16 trusts with a combined total of $4.2 billion in assets in 2000 to 60 with a combined total of over $36.8 billion in assets in 2011.").

[25] The history of the Bankruptcy Wave is discussed in more detail in the Informational Brief at 17-20.

[26] This phrase was coined by Mr. Scruggs, a plaintiff's lawyer, who described asbestos litigation as "an endless search for a solvent bystander." *See* 'Medical Monitoring and Asbestos Litigation'–A Discussion with Richard Scruggs and Victor Schwartz, 17-3 MEALEY'S LITIG. REP.: ASB. 19 (Mar. 1, 2002).

to their products had never occurred, and recovery against those primary defendants was not available through the tens of billions of dollars in the bankruptcy trusts.

Following the Bankruptcy Wave, the number of mesothelioma claims asserted against the Debtors increased two-fold in one year alone—between 2001 and 2002—and ultimately settled at around 2,500 new claims a year by the end of the decade. By then, a new claim was being filed against the Debtors essentially every working hour of every weekday, every week of the year. Aldrich was being named as a defendant in roughly 80% of all mesothelioma claims estimated to have been filed in the United States, and Murray was being named as a defendant in 60% of all such cases.

The number of suits being filed against the Debtors did not correlate with reality. Given that only a fraction of the Debtors' equipment contained component parts with chrysotile asbestos, given that the asbestos component was typically internal and encapsulated, and given the thousands of other asbestos-containing products that had been on the market, this extensive naming of the Debtors in mesothelioma suits simply could not be justified. This "over-naming problem [became] an epidemic, driving up costs for those entities [like the Debtors] that simply do not belong as defendants."[27]

In conjunction with over-naming, the product information plaintiffs provided in the tort system also changed. Detailed recollections in the tort system of alleged asbestos exposures to the products of the remaining tort system defendants (like the Debtors) continued. However, testimony or other information regarding exposure to the more toxic products of companies that

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[27] James Lowery, *The Scourge Of Over-Naming In Asbestos Litigation: The Costs to Litigants and the Impact on Justice*, MEALEY'S (Jan. 18, 2018), https://www.mealeys.com/mealeys/articles/1631229 (providing example of a complaint listing 118 separate defendants but where plaintiff at deposition could identify only three manufacturers that he believed incorporated any asbestos into products that he worked with or around during his career).

now had bankruptcy trusts, and, therefore, were no longer in the tort system, became minimal to non-existent.[28] Nonetheless, following resolution of the plaintiffs' claims against tort system defendants like the Debtors, tort lawyers often would assert numerous claims on behalf of their clients against the trusts of the now bankrupt defendants.[29]

Judge Hodges' seminal decision in *Garlock* helped expose this "widespread" pattern of plaintiffs who failed to disclose in the tort system their exposures to asbestos products of now bankrupt companies that were no longer in the tort system.[30] "[I]t was a regular practice by many plaintiffs' firms to delay filing Trust claims for their clients so that remaining tort system defendants would not have that information."[31] Thus, defendants would not be able to evaluate a case's trial risk appropriately when attempting to settle, or to present a fulsome picture of the plaintiff's asbestos exposure to a judge or jury.[32] The *Garlock* case further demonstrated that this practice of withholding evidence in the tort system could also involve plaintiffs changing their story when they later asserted claims against bankruptcy trusts. As the court noted in *Garlock*, "while it is not suppression of evidence for a plaintiff to be unable to identify exposures, it **is** suppression of evidence for a plaintiff to be unable to identify exposure in the tort case, but then later (and in some cases previously) to be able to identify it in Trust claims."[33]

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[28] Lloyd Dixon and Geoffrey McGovern, *Asbestos Bankruptcy Trusts and Tort Compensation* at 16 n. 8, RAND INST. FOR CIV. JUST. (2011).

[29] *Garlock*, 504 B.R. at 84-86.

[30] *Id*. at 85.

[31] *Id.* at 84.

[32] Defendants typically have the burden of establishing that other potentially responsible parties not named in the lawsuit were the legal cause of the plaintiff's injuries and the percentage of fault to be allocated to those entities. Defendants must by necessity rely in large part on evidence from the plaintiff to establish alternative shares of liability.

[33] *Garlock*, 504 B.R. at 86 (emphasis in original).

Because the asbestos-containing products the Debtors incorporated into their products were largely the same type of sealing products that Garlock manufactured, the Debtors believe plaintiffs were also engaging in similar behavior as they pursued claims against the Debtors.[34] The *Garlock* court decried these practices as "demonstrable misrepresentation."[35]

D. The Overwhelming Burden Of Asbestos Litigation

In the tort system, the extensive over-naming of the Debtors was made evident by the fact that Aldrich and Murray were able to obtain dismissals without any settlement payment in approximately two-thirds of the mesothelioma cases brought against them. But that, itself, was an expensive exercise. Even with that success, the cost of addressing the thousands of remaining cases was staggering. The cost of fully defending a single mesothelioma case through trial can exceed $1 million.[36] Given that, even after dismissals, the Debtors still were facing approximately 1,000 cases per year, the annual cost to the Debtors to fully defend the claims brought against them could have been **$1 billion annually**. Indeed, the staggering number of mesothelioma claims that the Debtors faced, paired with the growing challenges to defend those claims, which were exacerbated by litigation tactics employed by the plaintiffs' bar, combined to create crippling potential defense costs. Judge Hodges in *Garlock* recognized that:

> [o]ne of the unique aspects of asbestos injury litigation is its high cost to all parties. The cost of expert witnesses alone is staggering because of the array of disciplines

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34 In many instances, Garlock was the manufacturer from whom the Debtors purchased asbestos-containing gaskets to be used as components in the Debtors' pumps, compressors, and other equipment.

35 *Garlock*, 504 B.R. at 85. There is a significant overlap between those plaintiffs who were parties to a case against Garlock and those plaintiffs who are claimants in these cases. In fact, over three quarters of the mesothelioma claims filed against the Debtors in the decade prior to Garlock's petition date also filed claims against Garlock. *See* Expert Report of Charles H. Mullin, PHD, Feb. 5, 2021 at 8, n.12, attached as Exhibit 24 to *Declaration of Brad B. Erens*, Adv. No. 20-03041 [Adv. Dkt. 194] ("There is a large overlap in [Aldrich and Murray] and Garlock mesothelioma claimants: approximately 80% of [Aldrich and Murray] Mesothelioma Claimants filed from January 1, 2001 to June 5, 2010 (the date of Garlock's bankruptcy reorganization filing) also sued Garlock.).

36 *See Declaration of Allan Tananbaum in Support of Debtors' Objection to Motion of Maune Raichle Claimants to Dismiss Chapter 11 Cases*, [Dkt. 1782] at 7.

> needed. . . . In addition, the time and effort required to prepare and try an asbestos case is significant. Because of the number of defendants and the length of work history to be examined, the deposition of the plaintiff often requires weeks.[37]

The prospect of potentially crippling defense costs left the Debtors with essentially no option other than to settle claims rather than litigate the wave of suits against them, regardless of the presence or extent of liability.[38] Plaintiffs asserting exposure to the Debtors' products on U.S. Navy ships or in industrial facilities, which constitute the vast bulk of asbestos exposure claims against the Debtors, were almost certainly exposed to asbestos from a variety of other products. This necessarily includes highly toxic friable amphibole insulation manufactured by companies that had filed for bankruptcy and had established trusts against which plaintiffs now filed claims outside of the tort system. In light of the lower toxicity of (encapsulated) chrysotile and the minimal exposure risk attributable to working with and around gaskets and packing, it is much more likely that exposure to those other companies' potent, friable asbestos products was the cause of the claimant's mesothelioma or other asbestos-related disease. Judge Hodges reached that conclusion in *Garlock*, finding that Garlock's asbestos liability is "relatively de minimus and akin to what a "bucket of water" would be to the "ocean's volume."[39]

However, the more complete picture of a claimant's exposure history had disappeared from the tort cases. Hence, the inconsequential contribution of the Debtors' equipment to the claimants' asbestos exposure compared to the claimants' exposure to friable thermal insulation

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[37] *Garlock*, 504 B.R. at 87.

[38] The circumstances were similar in *Garlock*, where the court found that the "great expense of defending a trial drove Garlock to settle cases regardless of its actual liability." *Id.* at 73.

[39] *Id*. at 73 ("It is clear that Garlock's products resulted in a relatively low exposure to asbestos to a limited population and that its legal responsibility for causing mesothelioma is relatively de minimus. The Sixth Circuit has noted in an individual pipefitter's case that the comparison is as a 'bucket of water' would be to the 'ocean's volume.'") citing *Moeller v. Garlock Sealing Techs., LLC*, 660 F.3d 950, 954-55 (6th Cir. 2011)).

was no longer self-evident in the tort system. This left the Debtors with the need to either incur staggering defense costs to develop such evidence, or resolve claims to avoid those defense costs and the risk of a trial that presented an incomplete picture. Since plaintiffs often failed to identify exposure to the products of now bankrupt entities, the Debtors were left with the virtually impossible task of obtaining the testimony of acquaintances of the plaintiff who could testify to the plaintiff's detriment. The Debtors would need to somehow identify these individuals, find them, subpoena them, and obtain testimony from them that would be unfavorable for the plaintiff's case. Multiplied by thousands of cases every single year, such a task was both economically and practically infeasible.

Importantly, of the cases that were resolved by the Debtors, very few of them were resolved for substantial sums. The Debtors paid more than $250,000 in only 1% of their mesothelioma cases. Average mesothelioma settlements were much lower, averaging in the mid-five figures. Given that the Debtors' average payment was but a small fraction of the multi-million-dollar award that plaintiffs often received in total damages from a jury when successful in pursuing a mesothelioma claim through verdict, clearly the plaintiffs' bar did not believe that the Debtors were a primary cause of their client's disease. Nevertheless, the Debtors still were required to spend approximately $100 million per year in settlements and defense costs in the years leading up to the Petition Date.

Congress enacted section 524(g) to allow companies facing this type of mass asbestos litigation to create and fund a trust to allow for streamlined, fair payments to current and future claimants in return for a permanent injunction that enjoins such claimants from filing or continuing to prosecute lawsuits other than against the trust.[40] Once the section 524(g) trust is

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[40] Section 524(g) is discussed in more detail in Section III.

established, asbestos claimants are able to resolve their claims through an administrative process that reduces transaction costs and spares claimants the delay, uncertainty, and stress of litigation.[41] Since the enactment of section 524(g) in 1994, more than 60 asbestos defendants successfully have utilized the bankruptcy process to create trusts that address their asbestos liabilities.[42]

E. The Prepetition Corporate Restructuring

Aldrich's predecessor, the former Trane Technologies Company LLC, successor by merger to Ingersoll-Rand Company (a former New Jersey corporation) ("Old IRNJ"), and Murray's predecessor, the former Trane U.S. Inc. ("Old Trane") on May 1, 2020 underwent a prepetition corporate restructuring pursuant to Texas law (the "2020 Corporate Restructuring").[43] As a result of the 2020 Corporate Restructuring, Old IRNJ and Old Trane ceased to exist and four new entities were formed—Aldrich, Murray, Trane Technologies Company, LLC ("New Trane Technologies"), and Trane U.S. Inc ("New Trane").

The 2020 Corporate Restructuring allowed Aldrich and Murray to evaluate whether a final resolution of their asbestos liabilities could be obtained through a bankruptcy filing, without subjecting the entire Trane corporate enterprise to bankruptcy.[44] Subjecting the entire Trane enterprise to chapter 11 filings would have had "serious negative consequences," such as increased costs and risks, potential reputational damage, concerned employees, shareholder

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[41] *See Federal-Mogul*, 684 F.3d at 362 ("Empirical research suggests the trusts considerably reduce transaction costs and attorneys' fees over comparable rates in the tort system.").

[42] *See* Evelyn Fletcher Davis & William T. Wood, III, *A 2021 Look at Bankruptcy Trust and Transparency Issues in Asbestos Litigation*, 36(6) MEALEY'S LIT. REPORT: ASBESTOS 1 (Apr. 28, 2021) ("Approximately sixty bankruptcy trusts are presently in operation.").

[43] The 2020 Corporate Restructuring is described in greater detail in the Declaration of Ray Pittard in Support of First Day Pleadings [Dkt. 27].

[44] *See In re Aldrich Pump LLC*, 2021 WL 3729335, at *8 (Bankr. W.D.N.C. Aug. 23, 2021).

litigation, and loss of consumer confidence.[45] If nothing else, this dramatic increase in costs for the bankruptcy proceeding would have had no benefit. Even in a filing for the entire enterprise, (a) the asbestos claims still would have been stayed, (b) because of the Funding Agreements (defined below), asbestos claimants would have had access to no more value for payment of their claims than they have today, and (c) the sole issue in the case would still have been the right amount to place in a trust to compensate asbestos claimants. Instead, the 2020 Corporate Restructuring streamlined the bankruptcy proceeding and created the potential to reach resolution of the asbestos claims with dramatically less cost and potentially in a much shorter period of time.

The Debtors' key assets include certain operating subsidiaries, legacy insurance assets, and funding agreements between (a) Aldrich and New Trane Technologies and (b) Murray and New Trane (the "Funding Agreements"). The Funding Agreements and other assets ensure that each of the Debtors has the same ability to satisfy asbestos claims that Old IRNJ and Old Trane had prior to the 2020 Corporate Restructuring. Following the 2020 Corporate Restructuring, the Debtors filed for bankruptcy in this Court on the Petition Date.

III. Case History/Major Case Milestones

A. Appointment Of Official Committee of Asbestos Personal Injury Claimants' And Future Claimants' Representative

Shortly after the Petition Date, the Bankruptcy Administrator solicited law firms representing current claimants who were included in the list of 20 law firms with significant asbestos claims against the Debtors. The Bankruptcy Administrator then filed a motion proposing the appointment of the ACC.[46] One additional claimant moved to be added to the

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[45] *Id.* at *8, n. 61.

[46] *Motion of the Bankruptcy Administrator to Appoint Official Committee of Asbestos Claimants* [Dkt. 126].

proposed ACC, however the Court denied that request and approved the creation of the committee as the Bankruptcy Administrator proposed.[47]

On August 21, 2020, the Debtors filed the *Debtors' Motion for an Order Appointing Joseph W. Grier, III as Legal Representative for Future Asbestos Claimants* [Dkt. 276] (the "FCR Motion"). Mr. Grier, a local attorney with extensive experience serving as a state and federal court receiver, bankruptcy trustee and in other fiduciary roles, had also served as the Future Asbestos Claimants' Representative in the *Garlock* case.[48] The ACC opposed Mr. Grier's appointment and moved for appointment of their own candidate,[49] which was unprecedented in the history of asbestos mass tort cases.[50] The Court held a contested evidentiary hearing on the FCR Motion on September 29, 2020, and the Court orally granted the Debtors' FCR Motion on October 6, 2020 and denied the ACC's motion. The written Order appointing Mr. Grier was entered on October 14, 2020.[51]

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[47] *Order Appointing the Official Committee of Asbestos Personal Injury Claimants* [Dkt. 147].

[48] *In re Garlock Sealing Technologies LLC*, No. 10-31607 (Bankr. W.D.N.C.).

[49] *See Motion of the Official Committee of Asbestos Personal Injury Claimants for an Order Appointing Sander L. Esserman as Legal Representative for Future Asbestos Claimants and Opposition to the Debtors' Motion for an Order Appointing Joseph W. Grier, III, as Legal Representative for Future Asbestos Claimants* [Dkt. 324].

[50] *See Bankruptcy Administrator's Response to (I) Motion of the Debtors for Order Appointing Joseph W. Grier, III as Legal Representative for Future Asbestos Claimants and (II) Motion of the Official Committee of Asbestos Personal Injury Claimants for an Order Appointing Sander L. Esserman as Legal Representative for Future Asbestos Claimants and Opposition to the Debtors' Motion for an Order Appointing Joseph W. Grier, III, as Legal Representative for Future Asbestos Claimants* [Dkt. 344] at 5 ("The parties here ask of the Court something that no other bankruptcy court has been asked to decide: to choose between the Debtors' and the ACC's competing nominees to be FCR "). The Bankruptcy Administrator did not oppose the retention of either nominee, finding both to be qualified. *Id.*

[51] *Order Appointing Joseph W. Grier as Legal Representative for Future Asbestos Claimants* [Dkt. 389].

B. Application Of The Automatic Stay And Preliminary Injunction For Assertion Of Asbestos Claims Against Third Parties

In addition to seeking various first day relief, on the Petition Date, as is typical in asbestos mass tort cases,[52] the Debtors filed a complaint and motion seeking to enjoin asbestos claimants with asbestos claims against the Debtors from pursuing those claims against certain non-debtor affiliates, insurance carriers, and other parties, for the duration of these cases.[53] The Debtor sought a declaration that the automatic stay already applied to such third party litigation, or, in the alternative, a preliminary injunction staying such litigation. The Court scheduled a hearing on the request for temporary restraining order on June 22, 2020, which certain claimants opposed.[54] The Court granted the request for a temporary restraining order on June 25, 2020.[55]

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[52] *See Memorandum Opinion and Order Granting the Debtor's Request for Preliminary Injunctive Relief, In re Bestwall LLC*, No. 17-31795, Adv. No. 17-03105 (Bankr. W.D.N.C. July 29, 2019) [Adv. Dkt. 164]; *Order Granting Debtor Kaiser Gypsum Company, Inc.'s and Hanson Permanente Cement, Inc.'s Request for Preliminary Injunctive and Declaratory Relief, In re Kaiser Gypsum Co., Inc.*, No. 16-31602, Adv. No. 16-03313 (Bankr. W.D.N.C. Nov. 4, 2016) [Adv. Dkt. 18]; *Order Granting Motion For Preliminary Injunction, In re Garlock Sealing Techs. LLC*, No. 10-31607, Adv. No. 10-3145 (Bankr. W.D.N.C. June 7, 2010) [Adv. Dkt. 9]; *Order Granting Debtor's Emergency Motion For Preliminary Injunction and Declaratory Relief, In re Leslie Controls, Inc.*, No. 10-12199, Adv. No. 10-51394 (Bankr. D. Del. Aug. 9, 2010) [Adv. Dkt. 12]; *Order Granting the Debtors' Request for a Temporary Restraining Order, In re Specialty Prods. Holding Corp.*, No. 10-11780, Adv. No. 10-51085 (Bankr. D. Del. June 4, 2010) [Adv. Dkt. 13]; *Order Granting Motion for Preliminary Injunction, In re Quigley Co., Inc.*, No. 04-15739, Adv. No. 04-04262 (Bankr. S.D.N.Y. Dec. 17, 2004) [Adv. Dkt. 122]; *Order Granting Preliminary Injunction, In re Combustion Eng'g, Inc.*, No. 03-10495, Adv. No. 03-50839 (Bankr. D. Del. Mar. 7, 2003) [Adv. Dkt. 19]; *Order Granting Temporary Restraining Order, In re Harbison-Walker Refractories Co.*, No. 02-21627, Adv. No. 02-02080 (Bankr. W.D. Pa. Feb. 14, 2002) [Adv. Dkt. 9]; *Order Granting Preliminary Injunction, In re W.R. Grace & Co.*, No. 01-01139, Adv. No. 01-00771 (Bankr. D. Del. May 3, 2001) [Adv. Dkt. 34]; *Order Granting Temporary Restraining Order, In re Pittsburgh Corning Corp.*, No. 00-22876, Adv. No. 00-02161 (Bankr. W.D. Pa. Apr. 16, 2000 and Apr. 22, 2003) [Adv. Dkts. 6, 162].

[53] *See Complaint for Injunctive and Declaratory Relief (I) Preliminarily Enjoining Certain Actions Against Non-Debtors, or (II) Declaring that the Automatic Stay Applies to Such Actions, and (III) Granting a Temporary Restraining Order Pending a Final Hearing*, No. 20-30608 [Dkt. 28]; Adv. No. 20-3041 (the "PI AP") [Adv. Dkt. 1] (the "PI Complaint"); *Motion for an Order (I) Preliminarily Enjoining Certain Actions Against Non-Debtors, or (II) Declaring that the Automatic Stay Applies to Such Actions, and (III) Granting a Temporary Restraining Order Pending a Final Hearing*, PI AP [Adv. Dkt. 2] (the "PI Motion").

[54] *See* PI AP [Adv. Dkts. 17, 18].

[55] *Temporary Restraining Order*, PI AP [Adv. Dkt. 26] (the "TRO").

After appointment of the ACC, the TRO was extended and ultimately a preliminary injunction entered (PI AP [Adv. Dkt. 51]) pending the conclusion of an evidentiary hearing and the Court's ruling on the merits of the relief requested in the PI Complaint and PI Motion, which the ACC again opposed.[56] The parties engaged in extensive discovery over a period of approximately eight months, which included:

- the ACC serving multiple requests for the production of documents and numerous notices of deposition;
- the Debtors, New Trane Technologies, and New Trane producing over 90,000 pages of documents, with privilege and redaction logs containing in excess of 4,000 entries; and
- the ACC conducting twenty-two (22) depositions consisting of more than 100 hours of testimony and over 5,000 pages of deposition transcripts (including five Rule 30(b)(6) witnesses on dozens of deposition topics).

The Court held an evidentiary hearing on May 5 through 7, 2021.[57] The Debtors, certain non-debtor affiliates, and the FCR all supported entry of the preliminary injunction, while the ACC opposed the PI Motion.

On August 23, 2021, the Court granted the PI Motion.[58] The Court concluded that the preliminary injunction was necessary because its absence "would undoubtedly interfere with and almost surely would end, the Debtors' reorganization cases."[59] Accordingly, "if there is to be a

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56 *Agreed Order Regarding Debtors' Request for Extension or Application of the Automatic Stay to Certain Actions against Non-Debtors* [Adv. Dkt. 58].

57 *See* PI AP [Adv. Dkts. 84, 90, 129, 152, 187, 188, 193, 196].

58 *In re Aldrich Pump LLC*, 21 WL 3729335 (Bankr. W.D.N.C. Aug. 23, 2021) ("PI Order").

59 *Id*. at *38.

Chapter 11 Case, there can be no dispute that the preliminary injunction is necessary."[60] The Court also concluded that entering the preliminary injunction and allowing the Debtors' case to move forward was in the public's interest because "Aldrich and Murray's successful reorganization . . . would promote Congress's particular goal in section 524(g) that would efficiently and equitably resolve tens of thousands of asbestos claims."[61]

Prior to the evidentiary hearing, the Debtors also filed a motion for summary judgment asserting that as a matter of law the automatic stay applied to the assertion of the asbestos claims against the designated third parties.[62] The Court also granted the Debtors' summary judgment motion at the time it approved the PI Motion, finding that the automatic stay does apply to such litigation.[63]

C. Plan Negotiations And Motions For A Bar Date, Issuance Of A Personal Injury Questionnaire, Claims Estimation, And Mediation

Once the FCR was appointed, the Debtors and FCR almost immediately began negotiating over formulation of a consensual plan of reorganization that would establish and fund a trust for payment of asbestos personal injury claims pursuant to 11 U.S.C. § 524(g). Though the ACC was invited to participate in these negotiations, it declined to do so. As part of these discussions, the Debtors and FCR agreed to seek entry of a bar date order for current

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60 *Id*. at *37.

61 *Id*.

62 *See Debtors' Motion for Partial Summary Judgment that All Actions Against the Protected Parties to Recover Aldrich/Murray Asbestos Claims are Automatically Stayed by Section 362 of the Bankruptcy Code*, PI AP [Adv. Dkt. 90].

63 *See Order Declaring that the Automatic Stay Applies to Certain Actions Against Non-Debtors, Preliminarily Enjoining Such Actions, and Granting in Part Denying in Part the Motion to Compel*, PI AP [Adv. Dkt. 307]; *Findings of Fact and Conclusions of Law Regarding Order: (I) Declaring that the Automatic Stay Applies to Certain Actions Against Non-Debtors, (II) Preliminarily Enjoining Such Actions, and (III) Granting in Part Denying in Part the Motion to Compel*, PI AP [Adv. Dkt. 308].

mesothelioma claimants and also seek approval of a personal injury questionnaire to be submitted by any mesothelioma claimant who filed a proof of claim in the cases.[64] The ACC objected to the Bar Date/PIQ Motion,[65] which the Court overruled.[66] The Bar Date Order established July 29, 2022 as the deadline for current mesothelioma claimants to submit a proof of claim against the Debtors, and the PIQ Order set December 16, 2022 as the deadline for asbestos claimants who submitted a proof of claim to provide a completed personal injury questionnaire in the form approved by the PIQ Order.

After extensive negotiations with the FCR, the Debtors and FCR reached agreement on the terms of a plan of reorganization. The Debtors filed their *Joint Plan of Reorganization* [Dkt. 831] (the "Plan") on September 24, 2021, along with *the Notice of Filing of Plan Support Agreement* [Dkt. 832], which attached the Plan Support Agreement between the Debtors and FCR. The Plan proposes creation of a section 524(g) trust for payment of current and future asbestos claims, with funding totaling $545 million.

To secure funding for the Plan, the Debtors also filed their *Motion for an Order Authorizing Establishment of a Qualified Settlement Fund for Payment of Asbestos Claims* [Dkt. 834] (the "QSF Motion"), which sought to establish a qualified settlement fund of $270 million irrevocably set aside for payment of asbestos claims either through the Plan, another confirmed plan, or, in the event these cases are dismissed, in the tort system. The proposed

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[64] *See Joint Motion of the Debtors and the Future Claimants' Representative for an Order (I) Establishing a Bar Date for Certain Known Asbestos Claims, (II) Approving Proof of Claim Form, (III) Approving Personal Injury Questionnaire, (IV) Approving Notice to Claimants, and (V) Granting Related Relief* [Dkt. 471] (the "Bar Date/PIQ Motion").

[65] *See* [Dkt. 502].

[66] *Order (I) Establishing a Bar Date for Certain Known Mesothelioma Claims, (II) Approving Proof of Claim Form, (III) Approving Notice of Claimants, and (IV) Granting Related Relief* [Dkt. 1093] (the "Bar Date Order")*; Order Approving Personal Injury Questionnaire and Granting Related Relief* [Dkt. 1246] (the "PIQ Order").

qualified settlement fund was sized to fully fund the Plan (without the need to further access the Funding Agreements) after accounting for likely recoveries from the Debtors' insurers, which historically have covered approximately half of the Debtors' asbestos claim indemnity and defense costs. Also on September 24, 2021, in conjunction with filing the Plan, the Debtors filed their *Motion for Estimation of Prepetition Asbestos Claims* [Dkt. 833] (the "Estimation Motion") by which the Debtors sought to have the Court estimate, pursuant to 11 U.S.C. § 502(c), the allowed amount of current mesothelioma claims against the Debtors. The ACC opposed both the QSF Motion and the Estimation Motion.[67] The Court overruled the ACC's objections to both.[68] With respect to estimation, the Court found "estimation of these [asbestos] claims under section 502(c) of the Bankruptcy Code is required, necessary, and appropriate[.]"[69] The qualified settlement fund was fully funded on March 2, 2022.[70]

Nearly a year after the Plan was filed, on July 7, 2022, the Bankruptcy Administrator filed her *Motion for Order Directing Parties to Mandatory Mediation and Establishing Mediation Procedures* [Dkt. 1247] (the "Mediation Motion"), seeking to have the parties attempt to mediate to reach a consensual plan of reorganization. While each of the FCR, Debtors, and certain non-debtor affiliates supported the relief requested in the Mediation Motion (with the Debtors suggesting consideration of the motion be deferred to a later date),[71] the ACC opposed

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67 *See* [Dkts. 891-892].

68 *See Order Authorizing Estimation of Asbestos Claims* [Dkt. 1127] (but determining that it should estimate the allowed amount of both current and future asbestos claims); *Order Authorizing the Debtors to Establish a Qualified Settlement Fund for Payment of Asbestos Claims* [Dkt. 994].

69 *See Order Authorizing Estimation of Asbestos Claims* [Dkt. 1127] at 2.

70 *See Notice of Filing of Aldrich/Murray Settlement Facility Audited Financial Report for the Period of March 2, 2022 (Inception) Through December 31, 2022* [Dkt. 1728].

71 S*ee* [Dkts. 1298, 1370, 1373].

mediation.[72] Ultimately, while Judge Whitley noted that he did not generally force parties to mediate if they do not want to,[73] the Court granted the Mediation Motion and ordered the parties to mediation. Since that time the Court has entered two agreed orders regarding protocol and procedures for the mediation process.[74] While the parties are not at liberty to discuss the substance of the mediation, the mediation has not yielded a resolution to these cases.

D. Estimation Discovery And Related Disputes

The Debtors sought to have the Court estimate the Debtors' liability for asbestos claims to (a) provide an objective judicial determination regarding the adequacy of the proposed funding under the Plan, and (b) aid in plan negotiations, with the goal of reaching a fully consensual plan with both the ACC and FCR. Among the information relevant to estimation of the Debtors' liability for current and future asbestos claims are the proofs of claim filed pursuant to the Bar Date/PIQ Order, as well as the information about current asbestos claims garnered from the personal injury questionnaires. Further, the Debtors anticipate that, if a contested estimation proceeding is necessary, the ACC will present an estimation methodology that relies on the Debtors' historical settlement information and extrapolates those results into the future.

There are many reasons the Debtors believe that their settlement histories in the tort system are not a proxy for the Debtors' legal liability for asbestos claims. Among those reasons is that the Debtors in the tort system were forced to settle asbestos claims, regardless of the presence or extent of liability, because it was economically infeasible to pay the staggering

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[72] S*ee* [Dkt. 1371].

[73] *See* Tr. of Mar. 31, 2022 Hr'g [Dkt. 1112] at 77:23-78:1 ("I . . . generally don't impose mediation over objections of parties."); Tr. of Oct. 28, 2021 Hr'g [Dkt. 869] at 37:7-11 ("I philosophically have never made any parties mediate if they didn't ask for it themselves. The judge I worked for was a strong believer that nothing settles cases like the courthouse steps and that has been our philosophy, for the most part.").

[74] *See* [Dkts. 1608, 1726].

defense costs that would have been required to fully defend the avalanche of suits filed against them. In addition, the Debtors believe that, during their time in pre-petition tort litigation, significant exposures to other asbestos products, including in some cases highly toxic, friable amphibole asbestos products, were not known to the Debtors at the time of settlement, and evidence of those exposures would have reduced the share of liability. Judge Hodges found such a pattern of non-disclosure in *Garlock*, where he found that Garlock's "settlement history data [did] not accurately reflect fair settlements because exposure evidence was withheld."[75] As further described in the Informational Brief, the Debtors were involved in many of the same cases where Judge Hodges found that the settlement history was tainted due to claimants' failure to disclose alternative asbestos exposures.

In order to obtain information similar to that which Judge Hodges found persuasive in *Garlock*, the Debtors filed a motion (the "Trust Discovery Motion") seeking authority from the Court to issue subpoenas to: (a) 19 trusts that had been established under section 524(g) to pay the liability of historical co-defendants of the Debtors; and (b) Paddock Enterprises LLC ("Paddock"), another debtor with, at the time, a pending chapter 11 case, who had likewise historically been a co-defendant of the Debtors in the tort system.[76] These historical co-defendants had filed bankruptcy and were no longer litigating in the tort system, and the Debtors sought information from those entities as to whether claimants with whom the Debtors had settled in the tort system had made allegations of exposure to the asbestos products of those entities. On July 1, 2022, the Court approved the Trust Discovery Motion over the objections of

75 *Garlock*, 504 B.R. at 71.

76 *See Motion of the Debtors for an Order Authorizing the Debtors to Issue Subpoenas on Asbestos Trusts and Paddock Enterprises, LLC* [Dkt. 1111] (the "Trust Discovery Motion").

the ACC and Paddock.[77] The Debtors then had to litigate motions to quash the subpoenas filed by the trusts and Paddock in the District Courts for the Districts of Delaware, New Jersey and the District of Columbia, and the Bankruptcy Court for the District of Delaware. A number of those motions to quash were transferred back to the Bankruptcy Court here for decision. Ultimately, after a full year of litigation from when the subpoenas were issued, all of the motions to quash filed by the subpoena recipients were denied, and Paddock and the various trusts were ordered to comply with those subpoenas.[78] Production of that information finally concluded in early 2024, more than 18 months after the Bankruptcy Court first approved the issuance of the subpoenas.

In regard to other discovery related to the estimation proceeding, on June 9, 2022, the Debtors and ACC each filed competing motions to establish case management procedures for fact discovery related to estimation.[79] After full briefing and oral argument, the Court entered its *Case Management Order for Estimation of Asbestos Claims* [Dkt. 1302] (the "Estimation CMO") on August 2, 2022. In 2022 and 2023, the Debtors produced over 150,000 pages of documents in response to discovery requests submitted by the ACC. The ACC has sought additional document discovery from the Debtors, asking the Debtors to produce the historical litigation files maintained by the Debtors' (both in-house and with outside counsel) in their defense of individual mesothelioma claims.

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77 *See Order Granting Motion of the Debtors for an Order Authorizing the Debtors to Issue Subpoenas on Asbestos Trusts and Paddock Enterprises, LLC* [Dkt. 1240] (the "Trust Discovery Order").

78 The relevant Trust Discovery Orders and Stipulated Dismissals are listed on **Exhibit A** hereto.

79 *See* [Dkts. 1205, 1207].

After a Motion by the FCR,[80] and litigation of the ACC's opposition to the Debtors' insistence that only a sample of claims files be discovered given the tens of thousands of claims in the Debtors' litigation history,[81] the parties agreed to, and the Court approved, a 1,200 claimant sample from which this so-called "claims file discovery" would be taken. These 1,200 historical mesothelioma claims were defended by dozens of different law firms, many of which are no longer counsel for the Debtors, and, understandably, implicate a significant number of privileged documents. As a result, since December 2023, the parties have been negotiating two protocols that will govern the discovery process for those claims files:

- A claims file discovery protocol, which will govern what and from whom claim file documents, including email and other ESI, will need to be collected and produced. The parties are trying to reach agreement on issues such as search terms, methods of collection, sources of collection, and the depth of any review of such collections, among other things.
- A potential consent order under FRE Rule 502(d), which would govern the disclosure of certain privileged information contained in the claims files without a waiver of said privilege. Similar orders have been entered in both *Bestwall* and *DBMP*.

After numerous discussions concerning both protocols, the parties have narrowed their disputed issues. The ACC has now requested that further discussions be tabled for the near term, as the ACC assesses next steps for estimation. The Debtors have informed the ACC of their desire to continue negotiations. The Debtors hope that the parties will be in a position in the near term to

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[80] *Motion of the Future Asbestos Claimants' Representative for an Order to Establish a Protocol For Determining a Representative Sample of Resolved Claims for Purposes of Discovery and Use in the Estimation Proceeding* [Dkt. 1342].

[81] *Objection of the Official Committee of Asbestos Personal Injury Claimants to Motion of the Future Asbestos Claimants' Representative for an Order to Establish a Protocol For Determining a Representative Sample of Resolved Claims for Purposes of Discovery and Use in the Estimation Proceeding* [Dkt. 1364].

either present to the Court proposed consent orders or submit the remaining dispute to this Court for resolution.

Once finality is reached, on the protocols, the Debtors can begin the process of collecting the requested documents. This collection effort will potentially involve millions of pages and dozens of law firms, all of whom will have various privileges including some that belong to these law firms' other clients whom they were defending in asbestos litigation at the same time as they were defending the Debtors. Given these complexities, the Debtors cannot at this time fully predict how long it will take to collect the requested materials, but it is clear that collection will take a material amount of time. The Estimation CMO initially set a deadline for the completion of fact discovery for 365 days after the entry of the Estimation CMO. That deadline, however, was later modified and has since been suspended as the parties continue to negotiate protocols in regard to document discovery sought by the ACC related to the collection and production of claims files.[82]

E. ACC's Motion For Derivative Standing And Related Adversary Proceedings

On October 18, 2021, the ACC filed its *Motion for Entry of an Order Granting Leave, Standing, and Authority to Investigate, Commence, Prosecute, and to Settle Certain Causes of Action* [Dkt. 848] (the "Derivative Standing Motion"), seeking leave to pursue alleged causes of action against certain non-debtor affiliates, and their officers and directors, related to the pre-petition restructuring. The next day, the ACC filed a complaint and related motion seeking substantive consolidation of the Debtors with certain non-debtor affiliates.[83] The Debtors, FCR,

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[82] *See First Amended Case Management Order for Estimation of Asbestos Claims* [Dkt. 1408]; *Order Suspending the Deadlines Established by the Agreed Case Management Order for Estimation of the Debtors' Current and Future Asbestos Claims* [Dkt. 2229].

[83] *See* Adv. No. 21-30129 [Adv. Dkt. 1]; [Dkt. 850] (the "Subcon Action"); *Official Committee of Asbestos Personal Injury Claimants Motion for Substantive Consolidation of Debtors' Estates with Certain*

and certain non-debtor affiliates all opposed the Derivative Standing Motion.[84] After a contested hearing, the Court granted the Derivative Standing Motion on April 14, 2022.[85] Approximately two months later, on June 18, 2022, the ACC instituted two derivative suits against various parties.[86] The Fraudulent Conveyance Action alleged, among other things, claims for constructive and fraudulent transfer against the defendant non-debtor affiliates. The Fiduciary Duty Action alleged, among other things, claims for breach of fiduciary duty against certain non-debtor affiliates, officers and directors of the Debtors.

The Debtors and certain non-debtor affiliates each moved to dismiss the Subcon Action on December 20, 2021.[87] The FCR supported the Subcon Dismissal Motions.[88] The Court, after a hearing on March 3, 2022, and after taking the matter under advisement, ruled denying in part and granting in part the Subcon Dismissal Motions at a hearing on March 31, 2022.[89] The

Nondebtor Affiliates or, Alternatively, to Reallocate Debtors' Asbestos Liabilities to Those Affiliates [Dkt. 851].

84 *See* [Dkts. 893, 894, 895].

85 *Order Granting Motion of the Official Committee of Asbestos Personal Injury Claimants for Entry of an Order Granting Leave, Standing, and Authority to Investigate, Commence, Prosecute, and to Settle Certain Causes of Action* [Dkt. 1121].

86 *Complaint by Official Committee of Asbestos Personal Injury Claimants Against Ingersoll-Rand Global Holding, Trane Technologies Holdco Inc., Trane Technologies Company LLC, Trane Inc., TUI Holdings Inc., Trane U.S. Inc., Murray Boiler Holdings LLC*, Adv. No. 22-03028 [Adv. Dkt. 1]; [Dkt. 1216] (the "Fraudulent Conveyance Action"); *Complaint by Official Committee of Asbestos Personal Injury Claimants Against Trane Technologies PLC, Ingersoll-Rand Global Holding Company Limited, Trane Technologies Holdco Inc., Trane Technologies Company LLC, Trane Inc., TUI Holdings Inc., Trane U.S. Inc., Murray Boiler Holdings LLC, Sara Brown, Richard Daudelin, Marc Dufour, Heather Howlett, Christopher Kuehn, Michael Lamach, Ray Pittard, David Regnery, Amy Roeder, Allan Tananbaum, Evan Turtz, Manilo Valdes, Robert Zafari*, Adv. No. 22-03029 [Adv. Dkt. 1]; [Dkt. 1217] (the "Fiduciary Duty Action" and, collectively with the Subcon Action and Fraudulent Conveyance Action, the "ACC Actions").

87 *See* Adv. No. 21-03039 [Adv. Dkts. 17, 18] (the "Subcon Dismissal Motions").

88 *See* Adv. No. 21-03029 [Adv. Dkt. 29].

89 *See Order Denying in Part and Granting in Part the Motions of the Debtors and Non-Debtor Affiliates to Dismiss the Adversary Complaints*, Adv. No. 21-03039 [Adv. Dkt. 71].

Debtors and defendant non-debtor affiliates filed answers to the complaint in the Subcon Action on May 5 and 6, 2022.[90] The non-debtor affiliates answered the complaint in the Fraudulent Conveyance Action on September 9, 2022.[91]

The Debtors believe the allegations of the ACC Actions, particularly the allegations of the Debtors' insolvency, are fundamentally inconsistent with both the facts and also with the ACC's allegations in their efforts to dismiss these cases, discussed below. After years of prosecuting the ACC Actions and alleging the Debtors' insolvency, the ACC changed course and instead sought to dismiss these cases based on an alleged lack of financial distress.[92] Therefore, the Debtors believe the Court erred in authorizing the ACC to bring, and ultimately maintain, the derivative actions on behalf of the Debtors' estates and took several actions seeking to have the Court reconsider that ruling and withdraw derivative standing or stay the ACC Actions pending a determination of the Debtors' estimated liability for asbestos claims.[93] The ACC objected to each of these motions,[94] and the Court denied each of the Debtors' motions.[95]

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[90] *See* Adv. No. 21-03029 [Adv. Dkts. 74, 76].

[91] *See* Adv. No. 22-03028 [Adv. Dkt. 11].

[92] *See The Official Committee of Asbestos Personal Injury Claimants' Motion to Dismiss the Debtors' Chapter 11 Cases* [Dkt. 1756] (the "ACC Dismissal Motion") at ¶ 47 ("[T]here was–and is–no credible threat to the Debtors' continued economic viability or ability to fully and timely pay all their creditors.")

[93] *See Motion of the Debtors to (I) Define the Scope of the Court's January 27, 2022 Derivative Standing Ruling or (II) Reconsider Order Granting the Committee's Request for Derivative Standing* [Dkt. 995]; *Motion of Debtors and Non-Debtor Affiliates for an Order (A) Authorizing the Debtors to Enter into Tolling Agreement and (B) Staying Litigation*, Adv. No. 21-03029 [Adv. Dkt. 47]; [Dkt. 1044]; *Debtors' Motion to Withdraw Derivative Standing from the Official Committee of Asbestos Personal Injury Claimants* [Dkt. 1814].

[94] [Dkts. 1004, 1071, 1886]; Adv. No. 21-03029 [Adv. Dkt. 55].

[95] [Dkts. 1120, 1119, 2046].

Discovery has been ongoing in each of the Subcon Action and Fraudulent Conveyance Action but has been stayed in the Fiduciary Duty Action.[96] The history and status of discovery in each of these suits is accurately set forth in the *Plaintiff Official Committee of Asbestos Personal Injury Claimants' Objection and Response to Notice of Intent to Dismiss*, Adv. No. 21-03029 [Adv. Dkt. 148]; Adv. No. 22-03028 [Adv. Dkt. 77]; Adv. No. 22-03029 [Adv. Dkt. 61].

F. Motions For Relief From Stay, Motions To Dismiss, And Related Appeals

On January 23, 2023, Robert Semian, a claimant represented by Maune Raichle Hartley French & Mudd, LLC ("Maune"), a law firm serving on the ACC, filed a motion to lift the automatic stay in order to pursue its asbestos suit against the Debtors notwithstanding the bankruptcy case (the "Semian Stay Relief Motion").[97] The Debtors, FCR, and certain non-debtor affiliates each opposed the Semian Stay Relief Motion.[98] The Court denied the Semian Stay Relief Motion after holding a hearing on March 30, 2023. The Court agreed with the Debtors that the movant had not demonstrated cause under section 362(d) and that, in any event, permitting one asbestos claimant to continue its asbestos lawsuit would inevitably lead to a flood of lift stay motions by claimants such that the automatic stay in this mass tort asbestos case, and the case itself, would be all but meaningless. [99]

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96 Adv. No. 22-039029 [Adv. Dkt. 35] at 3.

97 *See Robert Semian's Motion for Relief from the Automatic Stay Pursuant to 11 U.S.C. § 362(d)* [Dkt. 1588].

98 *See* [Dkts. 1638, 1639, 1640].

99 *See* Tr. of Mar. 30, 2023 Hr'g [Dkt. 1702] at 67:3-12 ("It will not, probably, surprise anyone that I feel compelled to deny the motion basically for the reasons stated by the debtor and, and the FCR, if not going back to the preliminary injunction and the reasons I stated then. I have no doubt, I don't think anyone could have any reasonable doubt that if I grant relief from stay to one creditor to liquidate the claim, all of the claimants will – not all – but a substantial number of the claimants, enough to wreck the bankruptcy case, will seek like measure and that effectively precipitates a de facto dismissal of the case.").

Almost immediately thereafter, on April 6, 2023, almost three years after the Petition Date, Maune instead filed a motion to dismiss these Chapter 11 Cases. Shortly after that, on May 15, 2023, the ACC filed its own motion to dismiss these cases.[100] The Debtors and FCR opposed each of the Creditor Dismissal Motions.[101] In the Creditor Dismissal Motions, both the ACC and Maune took the position that the Court should dismiss the Chapter 11 Cases because the Debtors were not in financial distress on the Petition Date, an assertion that, of course, they could have made upon the appointment of the ACC soon after the Petition Date. In any event, this position was in direct conflict, and wholly inconsistent with, the position the ACC took in the ACC Actions and the Subcon Action one year prior, where the ACC alleged numerous times in its complaints and motions that the Debtors were insolvent. After holding a hearing on the Creditor Dismissal Motions on July 14, 2023, the Court issued a written opinion denying both of the Creditor Dismissal Motions on December 28, 2023.[102]

The Dismissal Opinion is lengthy. At base, however, it found, like Judge Beyer found four years earlier in the *Bestwall* case,[103] that the movants had not shown that the Chapter 11 Cases are "objectively futile" under the two part test for dismissal set forth in *Carolin*.[104] The Court also rejected, like Judge Beyer again did in *Bestwall* in 2023,[105] the ACC's novel theory

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100 *See* ACC Dismissal Motion, *Motion to Dismiss on Behalf of Robert Semian and Other Clients of MRHFM* [Dkt. 1712] (the "Maune Dismissal Motion" and, with the ACC Dismissal Motion, the "Creditor Dismissal Motions").

101 *See* [Dkts. 1779, 1781, 1809, 1813].

102 *See In re Aldrich Pump, LLC et al.*, No. 20-30608 (Bankr. W.D.N.C. Dec. 28, 2023) [Dkt. 2047] (the "Dismissal Opinion").

103 *In re Bestwall LLC*, 605 B.R. 43, 50 (Bankr. W.D.N.C. 2019).

104 Dismissal Opinion at 63, citing *Carolin Corp v. Miller*, 886 F.2d 693 (4th Cir. 1989).

105 *In re Bestwall LLC*, 658 B.R. 348, 380 (Bankr. W.D.N.C. 2024).

that the Court somehow did not have jurisdiction to hear the Chapter 11 Cases under the Constitution of the United States.[106] Finally, Judge Whitley noted that "there has been no unreasonable delay by Aldrich and Murray" (as alleged by the ACC) and, rather the Debtors "have from the outset attempted to move these cases forward with dispatch."[107] Further, in his opinion, Judge Whitley found that the ACC's and Maune's delay in filing the dismissal motions was inexcusable.[108]

The Dismissal Opinion resulted in notices of appeal by both the ACC and Maune, as well as requests by the ACC and Maune for the Court to certify the Dismissal Opinion for direct appeal to the Fourth Circuit Court of Appeals (the "Certification Motions").[109] While the Court granted the Certification Motions over the Debtors' and FCR's objections, the Fourth Circuit denied in mid-April of 2024 the ACC's and Maune's request that it accept a direct appeal of the Dismissal Opinion.[110] The ACC and Maune next took the unprecedented step of requesting *en banc* review of the Fourth Circuit's decision not to accept a direct appeal.[111] As far as the Debtors are aware, this was the first request of its kind ever, nationwide. Both petitions for

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106 Dismissal Opinion at 41.

107 *Id.* at 61-63.

108 *Id.* at 17.

109 *See* [Dkts. 2058, 2063]; *Request for Certification of Direct Appeal to the Court of Appeals of Order Denying Mr. Robert Semian and Forty-Six Other MRHFM Plaintiffs' Motion to Dismiss* [Dkt. 2061]; *Request of the Official Committee of Asbestos Personal Injury Claimants for Certification of Direct Appeal to the Court of Appeals of Order Denying Committee's Motion to Dismiss* [Dkt. 2074].

110 *See* [Dkts. 2111, 2092-93]; *Order Filed Denying Petitions for Permission to Appeal* [Dkt. 2208].

111 *See Robert Semian and Forty-Six Other Clients of MRHFM's Petition for Rehearing and Rehearing En Banc, Official Committee of Asbestos Personal Injury Claimants v. Aldrich Pump LLC*, No. 24-128 (4th Cir. May 1, 2024) [Dkt. 52]; *Official Committee of Asbestos Personal Injury Claimants' Petition for Rehearing En Banc, Official Committee of Asbestos Personal Injury Claimants v. Aldrich Pump LLC*, No. 24-128 (4th Cir. May 1, 2024) [Dkt. 53].

rehearing *en banc* were summarily denied by the Fourth Circuit.[112] The appeals of the Dismissal Opinion are now before the United States District Court for the Western District of North Carolina (Case Nos. 24-00042 and 24-00044), and the motions for leave to appeal filed by both Maune and the ACC have been fully briefed.

Approximately four months after entry of the Dismissal Opinion, Maune filed another motion to lift the automatic stay.[113] This lift stay motion was almost identical to the Semian Stay Relief Motion, which Judge Whitley had denied.[114] The two lift stay motions filed in these cases are part of a larger effort by Maune to derail these and other cases. Maune has filed six significantly similar lift stay motions in the mass tort bankruptcy cases in this jurisdiction within the past year and a half alone.[115] All such lift stay motions have been denied. This pattern of behavior elicited rebuke from both Judge Whitley and Judge Beyer, who stated that the filings were part of an improper effort to evade binding dismissal standards, and were otherwise

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112 *Order Denying Petition for Rehearing and Rehearing En Banc, Official Committee of Asbestos Personal Injury Claimants v. Aldrich Pump LLC*, No. 24-128 (4th Cir. May 15, 2024) [Dkt. 74].

113 *See Shaun and Lisa N. Beaudoin's Motion for Relief from the Automatic Stay Pursuant to 11 U.S.C. § 362(d)* [Dkt. 2243].

114 *See* Tr. of Mar. 30, 2023 Hr'g [Dkt. 1702] at 67:3-12 ("It will not, probably, surprise anyone that I feel compelled to deny the motion basically for the reasons stated by the debtor and, and the FCR, if not going back to the preliminary injunction and the reasons I stated then. I have no doubt, I don't think anyone could have any reasonable doubt that if I grant relief from stay to one creditor to liquidate the claim, all of the claimants will – not all – but a substantial number of the claimants, enough to wreck the bankruptcy case, will seek like measure and that effectively precipitates a *de facto* dismissal of the case.").

115 *Shaun and Lisa A. Beaudoin's Motion for Relief from the Automatic Stay Pursuant to 11 U.S.C. § 362(d)*, [Dkt. 2243]; *Robert Semian's Motion for Relief from the Automatic Stay Pursuant to 11 U.S.C. § 362(d)*, [Dkt. 1588]; *see also Wilson Buckingham and Angelika Weiss' Motion for Relief from the Automatic Stay Pursuant to 11 U.S.C. § 362(d)*, *In re Bestwall LLC*, No. 17-31795 (Bankr. W.D.N.C. Dec. 28, 2023) [Dkt. 3242]; *Richard and Joann Dale's Motion for Relief From the Automatic Stay Pursuant to 11 U.S.C. § 362(d)*, *In re Bestwall LLC*, No. 17-31795 (Bankr. W.D.N.C. Sept. 27, 2023) [Dkt. 3127]; *see also Michael N. And Ann Herlihy's Motion For Relief From the Automatic Stay Pursuant to 11 U.S.C. § 362(d)*, *In re DBMP LLC*, No. 20-30080 (Bankr. W.D.N.C. Apr. 18, 2024) [Dkt. 2755]; *The Estate of Peter L. Bergrud's Motion for Relief From The Automatic Stay Pursuant To 11 U.S.C. § 362(d)*, *In re DBMP LLC*, No. 20-30080 (Bankr. W.D.N.C. Apr. 18, 2024) [Dkt. 2753].

wasteful, duplicative, and potentially sanctionable litigation.[116] As a result, the Debtors strongly suggested to Maune that it withdraw its lift stay motion in these cases. While at first, Maune resisted, forcing the Debtors to expend funds on an objection as the hearing date approached, ultimately Maune agreed to do so "without prejudice." The Debtors and Maune entered into the *Stipulation with Respect to Shaun and Lisa N. Beaudoin's Motion for Relief from the Automatic Stay Pursuant to 11 U.S.C. § 362(d*) [Dkt. 2267] on June 17, 2024.

IV. The Disputes Among The Parties Over The History Of These Cases Have Had Various Consistent Themes

While seeking to directly or indirectly dismiss, or otherwise thwart, these Chapter 11 Cases, the ACC and others have repeatedly embraced certain thematic inaccuracies, whether about the tort system, these Chapter 11 Cases, or otherwise. Certain of these inaccuracies are corrected below.

A. Opponents Claim These Bankruptcies Are Improper – They Are Not

In their fraudulent transfer litigation, dismissal motions, and lift stay motions, the ACC and Maune have repeatedly insisted that these bankruptcies are improper and/or unconstitutional because only companies that are in immediate financial distress should be able to utilize bankruptcy. Despite having had multiple opportunities to push this narrative before multiple courts, no court in this District has countenanced this point of view. The Bankruptcy Code does not contain any such "immediate financial distress" requirement. Judge Whitley stated as such in his Dismissal Opinion, including holding that "financial distress" is not a constitutional or jurisdictional requirement for a chapter 11 case.[117] And even if it were, Judge Beyer found, in

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[116] *See generally Order Denying Wilson Buckingham and Angelika Weiss' Motion for Relief from the Automatic Stay Pursuant to 11 U.S.C. § 362(d)*, *In re Bestwall LLC*, No. 17-31795 (Bankr. W.D.N.C. Feb. 26, 2024) [Dkt. 3290]; *Transcript of Proceedings*, *In re Bestwall LLC*, No. 20-31795 (Bankr. W.D.N.C. Jan. 18, 2024) [Dkt. 3268]; *Transcript of Proceedings*, *In re DBMP LLC*, No. 20-30080 (Bankr. W.D.N.C. May 28, 2024) [Dkt. 2810].

[117] *See* Dismissal Opinion at 62-63.

the *Bestwall* case, "[t]he volume of current asbestos claims that Bestwall faced as of the Petition Date, coupled with the projected number of claims to be filed through 2050 and beyond, is sufficient financial distress for Bestwall to seek resolution under section 524(g) of the Bankruptcy Code."[118] The same holds true in these cases. The Fourth Circuit also commented on the ACC's various jurisdictional arguments in its recent *Bestwall* opinion, noting that "Claimants Representatives appear to be using their jurisdictional arguments as a back-door way to challenge the propriety of the reorganization and the merits of a yet-to-be-filed chapter 11 plan. This is both premature and improper."[119]

The Debtors are not unique in their approach to addressing their asbestos liability. For example, Garlock faced similar liability and underwent a similar corporate restructuring to the Debtors with Garlock's solvent parent.[120] Paddock is another example. Paddock is an asbestos defendant that engaged in a prepetition restructuring transaction similar to the restructurings undertaken by the Debtors, recently pursued a bankruptcy filing, and negotiated a consensual plan that resulted in a 524(g) trust.[121] Paddock's predecessor, a holding company that faced significant mass tort asbestos liabilities, effectuated a restructuring under Delaware law, which

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118 *Bestwall*, 605 B.R. at 49**.**

119 *Bestwall*, 71 F.4th at 183. The Fourt Circuit recently granted a petition by the *Bestwall* ACC to review the bankruptcy court's denial of that ACC's second dismissal motion. *See The Official Committee of Asbestos Claimants v. Bestwall LLC*, Case No. 24-170 (4th Cir. 2024) [Dkts. 1, 2]. Briefing in the Fourth Circuit for that appeal is ongoing.

120 *Order (A) Recommending Confirmation of the Modified Joint Plan of Reorganization of Garlock Sealing Technologies LLC, et al. and Oldco, LLC, Successor by Merger to Coltec Industries Inc, (B) Issuing Proposed Findings of Fact and Conclusions of Law Supporting Confirmation of the Joint Plan, and (C) Recommending Granting of Motions to Approve Certain Settlements* at 15-18, *In re Garlock Sealing Techs., LLC*, No. 10-31607 (Bankr. W.D.N.C. May 24, 2017) [Dkt. 5972].

121 *See Findings of Fact, Conclusions of Law, and Order Confirming the Third Amended Plan of Reorganization for Paddock Enterprises, LLC Under Chapter 11 of the Bankruptcy Code*, *In re Paddock Enters., LLC*, No. 20-10028 (Bankr. D. Del. May 26, 2022) [Dkt. 1406].

ultimately created the Paddock debtor and vested it with all of the corporate family's asbestos liability.[122] Paddock and a non-debtor affiliate entered into a support agreement that required the non-debtor affiliate to provide Paddock with funding for certain permitted uses, including costs related to managing and paying asbestos claims, just like the Debtors in these cases.[123] Following this restructuring, Paddock filed for bankruptcy. Ultimately, with the support of the plaintiffs' bar and the future claimants representative in that case, Paddock confirmed a chapter 11 plan that created a $610 million asbestos trust, which was funded almost exclusively by its non-debtor, indirect parent.[124]

Garlock and Paddock are not alone in this approach. In fact, with the support of the plaintiffs' bar, several asbestos debtors that were part of a solvent, often extremely solvent, corporate family have filed for chapter 11 to effectuate a section 524(g) result where all, or substantially all, of the funding for the section 524(g) asbestos trust came from the non-debtor corporate parent. Examples of such debtors are set forth below:

Case	Parent Company	Case Number/Jurisdiction	**Approximate Equity Value of Parent Company at time of Chapter 11 Filing**
In re Pittsburgh Corning Corp.	PPG Industries, Inc. and Corning, Inc.	00-22876 (Banker. W.D. Pa.)	**$4.5 billion (PPG)** **$18.5 billion (Corning)**

[122] *See Declaration of David J. Gordon, President and Chief Restructuring Officer of the Debtor, in Support of Chapter 11 Petition and First Day Pleadings* at ¶¶ 24-26, *In re Paddock Enters., LLC*, No. 20-10028 (Bankr. D. Del. Jan. 6, 2020) [Dkt. 2].

[123] *Id.* ¶ 28.

[124] *See Disclosure Statement for First Amended Plan of Reorganization for Paddock Enterprises, LLC Under Chapter 11 of the Bankruptcy Code* at vi, *In re Paddock Enters., LLC*, No. 20-10028 (Bankr. D. Del. Feb. 17, 2022) [Dkt. 1220] (stating that Paddock's trust was to be funded with assets worth $610 million, $601.5 million of which was to come from cash contributions from non-debtor affiliates).

Case	Parent Company	Case Number/Jurisdiction	**Approximate Equity Value of Parent Company at time of Chapter 11 Filing**
In re North American Refractories Corp.	Honeywell International, Inc.[125]	02-20198 (Bankr. W.D. Pa.)	**$27 billion**
In re Mid-Valley, Inc.	Halliburton, Inc.	03-35592 (Bankr. W.D. Pa.)	**$13 billion (at exit)**
In re Quigley Co. Inc.	Pfizer, Inc.	04-15739 (Bankr. S.D.N.Y)	**$232 billion**
In re TH Agriculture & Nutrition, LLC	Koninklijke Philips N.V.	08-14692 (Bankr. S.D.N.Y.)	**$18 billion**
In re Specialty Products Holding Corporation	RPM International	10-11780-JKF (Bankr. D. Del.)	**$7.2 billion[126]**
In re Yarway Corporation	Tyco International	13-11025 (Bankr. D. Del.)	**$15 billion**

B. Opponents Claim These Bankruptcies Infringe On Claimants' Due Process And Jury Trial Rights – They Do Not

Maune has argued that the asbestos trust proposed pursuant to the Plan unconstitutionally infringes on claimants' due process and jury trial rights. In reality, section 524(g) provides that a trust under that section can only be created if the plan receives the support of 75% of a class of asbestos claimants.[127] As such, the Fourth Circuit in *Bestwall* stated that "[t]his mandatory

125 Honeywell was formerly a parent of North American Refractories Corporation and became the main funding source for the NARCO bankruptcy case.

126 Valuation is as of confirmation of the chapter 11 plan.

127 *See Bestwall LLC*, 71 F.4th at 183 ("At plan confirmation, claimants holding "at least two-thirds in amount and more than one-half in number of the allowed claims of such class" must accept the plan for the bankruptcy court to confirm it (with some exceptions not relevant here). 11 U.S.C. § 1126(c); *id.* § 1129(a)(7)–(8). Therefore, [the debtor] must propose a plan that addresses the concerns held by a majority of the claimants.").

reality of chapter 11 bankruptcy belies the dissent and Claimant Representatives' false narrative that some subterfuge will befall the claimants" from the chapter 11 process.[128] Moreover, the FCR's presence in section 524(g) cases is designed to protect future claimants' due process rights.[129]

As to jury trial rights, more than 99% of asbestos claims in the tort system do not go to trial.[130] In any case, if an asbestos trust is created, claimants' jury trial rights are preserved by allowing claimants to pursue a jury trial in the tort system if they cannot agree to a settlement of their claims against the trust. These types of provisions have been approved, in fact written, by the plaintiffs' bar, in scores of chapter 11 asbestos trusts over the last several decades.

C. Opponents Claim That These Bankruptcies Are Causing Asbestos Claimants To Go Without Compensation – That Is Inaccurate

The ACC and Maune have asserted that, by virtue of the bankruptcy filing, claimants are going without compensation. However, even after an asbestos defendant files for bankruptcy, claimants efforts to recover continue unabated against numerous other co-defendants, as well as bankruptcy trusts. As to the Debtors, the remaining co-defendants and trusts typically pay at least 97% of the settlement dollars.[131] Thus, claimants continue to receive recoveries even while Aldrich and Murray are in bankruptcy and, once a trust is established, these same claimants have the ability to seek a more efficient, full recovery from such trust.

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128 *Bestwall*, 71 F.4th at 183 (emphasis added).

129 *See* 11 U.S.C. § 524(g)(2)(B)(ii)(IV)(bb).

130 Michelle White, *Understanding the Asbestos Crisis* at 19, (May 2003) https://law.yale.edu/sites/default/files/documents/pdf/white.pdf ("Less than one percent of asbestos claims are tried in court, while the rest are settled without going to trial.").

131 *See* Expert Report of Charles H. Mullin, PHD, Feb. 5, 2021 at 8, n.13, attached as Exhibit 24 to *Declaration of Brad B. Erens*, Adv. No. 20-03041 [Adv. Dkt. 194].

D. Opponents Claim That The Debtors Seek To Avoid Liability – All Actions Of The Debtors Demonstrate Otherwise

Both the ACC and Maune have accused Aldrich and Murray of filing bankruptcy to avoid being held accountable for their asbestos claims. But by filing bankruptcy, neither Aldrich nor Murray are avoiding liability or accountability. No lawsuits have been dismissed or terminated by this bankruptcy filing. Bankruptcy will allow for the creation of a trust that will allow claimants to receive full and fair compensation for their claims, faster than they would in the tort system.

Aldrich and Murray have negotiated a $545 million plan, requested that the bankruptcy court estimate their liability, and funded a $270 million qualified settlement fund for the sole benefit of claimants. Far from avoiding accountability, Aldrich and Murray are using the bankruptcy process to get a plan approved that will provide for the prompt payment in full of all legitimate current and future asbestos claims against them.

E. Opponents Claim The Debtors' Plan Has No Support – In Fact, The Debtors Have Proposed A Plan That Has The Support Of 80% Of Asbestos Claimants

The ACC and Maune have asserted that no claimants support, or will ever support, the resolution of Aldrich's and Murray's asbestos liability through a bankruptcy process that results in the creation and funding of an asbestos trust. However, the Debtors' proposed plan has the support of the FCR, who represents approximately 80% of asbestos claimants with claims against Aldrich and Murray. Further, assertions by counsel to the ACC and Maune that no claimant will support a bankruptcy resolution are belied by the reality that dozens of asbestos defendants have successfully confirmed consensual plans that created asbestos trusts. Judge Whitley recognized this reality in stating in this case:

> Multiple contentious asbestos bankruptcy cases have resulted in confirmed section 524(g) plans . . . . Having sat on two other hotly

> contested and apparently irreconcilable asbestos bankruptcy cases that wound up with consensual plans as between these same constituencies (*Garlock Sealing* and *Kaiser Gypsum*) and many of the same attorneys, this Court is unable to conclude that our parties cannot reach an agreement, as well.[132]

F. Opponents Claim The Debtors Seek Delay – In Fact, It Is The Debtors That Have Moved These Chapter 11 Cases Forward

Both the ACC and Maune have asserted that the Debtors intend to languish in bankruptcy, benefitting from the automatic stay and/or preliminary injunction. This fallacy is quickly undermined by the record in these cases, which shows that the Debtors have attempted to move these cases forward and proposed a plan, **<u>nearly three years ago</u>**, that would allow for the resolution of these Chapter 11 Cases. Any delay in these cases is directly the result of the acts of the ACC. The history of the actions in these cases, described in Section III above, make this clear. The ACC has opposed virtually every effort of the Debtors to make progress, whether it was extensive discovery on the Preliminary Injunction, failing to participate in negotiations with the FCR, the litigation of a Bar Date, personal injury questionnaires, opposition to estimation, opposition to discovery of claims to asbestos bankruptcy trusts, and opposition to the sampling of the thousands of claims files requested in discovery. Indeed, the ACC even opposed the Debtors' motion to add $270 million to the Debtors' estates through the creation of a Qualified Settlement Fund. This was even apparent to the Fourth Circuit, where it noted in the *Bestwall* case, "[i]t is not clear why Claimant Representatives' counsel have relentlessly attempted to circumvent the bankruptcy proceeding."[133]

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132 *Aldrich Pump LLC*, 2021 WL 3729335, at *35.

133 *Bestwall*, 71 F.4th at 184.

V. Conclusion

Chapter 11 provides a path for claimants to achieve quick, fair, and equitable compensation for their asbestos-related claims. Currently, however, as Judge Whitley noted, the "cases are simply spinning round and about, to the growing frustration of all."[134] Whatever delay these cases have experienced is the result of the actions of the ACC and others, who have focused solely on frustrating these cases. This mindset has led to extensive delays and wasteful litigation—all while a fully funded $545 million plan, that has the support of the FCR (who represents 80% of claimants), sits on the docket, and $270 million in funding that is solely earmarked for claimants, goes untouched. If the ACC or other constituencies have concerns with the Plan's proposed funding, procedures, or structure—they should actively engage in discussions and negotiations to bring these claims to a resolution.

[Signature Page Follows]

[134] Dismissal Opinion at 21.

Dated: October 10, 2024
Charlotte, North Carolina

Respectfully submitted,

/s/ *John R. Miller, Jr.*

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Exhibit A

Trust Discovery Orders and Stipulated Dismissals

Trust Discovery Orders and Stipulated Dismissals

- *Letter Ruling*, *In re Paddock Enterprises, LLC*, No. 20-10028 (LSS) (Bankr. D. Del. Sept. 22, 2022) [Dkt. 1632]
- *Memorandum Order*, *In re Aldrich Pump LLC et al.*, Misc. No. 22-00308 (CFC) (D. Del. Sept. 26, 2022) [Dkt. 40]
- *Notice of Voluntary Dismissal*, *Aldrich Pump LLC et al. v. Paddock Enter., LLC*, Misc. No. 22-51346 (GAD) (E.D. Mich. Oct. 26, 2022) [Dkt. 6]
- *Consent Order Regarding Respondents Aldrich Pump LLC and Murray Boiler LLC's Motion to Transfer Subpoena-Related Motions to the Issuing Court, the United States Bankruptcy Court for the Western District of North Carolina*, *AC&S Asbestos Settlement Trust et al., v Aldrich Pump LLC et al.*, No. 22-05116 (MAS) (D.N.J. Jan. 4, 2023) [Dkt. 48]
- Tr. of January 6, 2023 Hr'g, *In re Paddock Enter.*, *LLC*, No. 20-10028 (LSS) (Bankr. D. Del. Jan. 6, 2024)
- *Order Denying Motion to Proceed Anonymously*, *AC&S Asbestos Settlement Trust et al., v Aldrich Pump LLC et al.*, Misc. No. 23-00300 (JCW) (Bankr. W.D.N.C. Feb. 22, 2023) [Dkt. 21]
- *Order Denying Motions to Quash and Motion to Strike*, *AC&S Asbestos Settlement Trust et al., v Aldrich Pump LLC et al.*, Misc. No. 23-00300 (JCW) (Bankr. W.D.N.C. July 3, 2023) [Dkt. 85]
- *Order (I) Denying Motions to Quash and Motion to Strike and (II) Granting Motion for Rehearing*, *In Aldrich Pump LLC, et al.*, Misc. No. 22-00303 (JCW) (Bankr. W.D.N.C. July 3, 2023) [Dkt. 170]
- *Joint Stipulation of Voluntary Dismissal of Appeal Pursuant to Federal Rule of Bankruptcy Procedure 8023*, *Non-Party Certain Matching Claimants v. Aldrich Pump LLC,* No. 23-00099 (MOC) (W.D.N.C. Nov. 14, 2023) [Dkt. 13]
- *Joint Stipulation of Voluntary Dismissal of Appeal Pursuant to Federal Rule of Bankruptcy Procedure 8023*, *Non-Party Certain Matching Claimants v. Aldrich Pump LLC*, No. 23-00144 (FDW) (W.D.N.C. Nov. 14, 2023) [Dkt. 11]
- *Memorandum Opinion and Order*, *Manville Trust Matching Claimants v. Aldrich Pump LLC et al.*, Misc. No. 22-00080 (TJK) (D.D.C. Jan. 5, 2024) [Dkt. 15]