Docket #0084 Date Filed: 10/10/2024

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re ALDRICH PUMP LLC, *et al.*,[1] Debtors.	Chapter 11 Case No. 20-30608 (LMJ) (Jointly Administered)
OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS, Plaintiff, v. ALDRICH PUMP LLC, MURRAY BOILER LLC, TRANE TECHNOLOGIES COMPANY LLC, and TRANE U.S. INC., Defendants.	Adv. Pro. No. 21-03029
OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS, on behalf of the estates of Aldrich Pump LLC and Murray Boiler LLC, Plaintiff, v. INGERSOLL-RAND GLOBAL HOLDING COMPANY LIMITED, TRANE TECHNOLOGIES HOLDCO INC., TRANE TECHNOLOGIES COMPANY LLC, TRANE INC., TUI HOLDINGS INC., TRANE U.S. INC., and MURRAY BOILER HOLDINGS LLC, Defendants.	Adv. Pro. No. 22-03028

[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) (hereinafter the "**Debtors**"). The Debtors' address is 800-E Beaty Street, Davidson, North Carolina 28036.

2030608241010000000000008

OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS on behalf of the estates of Aldrich Pump LLC and Murray Boiler LLC, Plaintiff, v. 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, MANLIO VALDES, and ROBERT ZAFARI, Defendants.	Adv. Pro. No. 22-03029

STATUS REPORT AND STATEMENT OF THE OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS

Dated: October 10, 2024

TABLE OF CONTENTS

The Official Committee of Asbestos Personal Injury Claimants ("**Committee**")[2] files this status report and statement to provide the Court with background information and the current status of the above-captioned cases and adversary proceedings.

PRELIMINARY STATEMENT

What Is This Case About?

1. This case is about suffering and dying asbestos victims and their families, and an attempt by a fully solvent and massively profitable corporation to transfer its vast asbestos liabilities to special newly created companies—which it then places in bankruptcy—while sending its assets to other newly created companies that remain unfettered by the bankruptcy process. This violates, of course, fundamental principles of law. The debtors, Aldrich Pump LLC ("**Aldrich**") and Murray Boiler LLC ("**Murray**," and together with Aldrich, "**Debtors**"), are the result of a stratagem known as the "Texas Two-Step." Weeks before the Debtors filed for reorganization under chapter 11 of the Bankruptcy Code, their profitable predecessors engaged in a "divisional merger" under Texas law, each splitting into two new companies. Two of the new companies, Trane Technologies Company LLC ("**TTC**") and Trane U.S., Inc. ("**Trane**"), received virtually all their predecessors' operating assets. The Debtors received the asbestos liabilities of their predecessors and thereafter filed their chapter 11 petitions with this Court.

2. Through the Texas Two-Step, extremely wealthy corporations with liability for injuries from their asbestos-containing products have manipulated state law, corporate forms, venue, and bankruptcy law with the express goal of using the bankruptcy court to limit their asbestos liabilities without those entities actually filing for bankruptcy. As this Court recognized,

[2] The Committee is comprised of 11 victims (or the victims' estates) of asbestos-related disease caused by exposure to the Debtors' asbestos-containing products.

> The 2020 Corporate Restructuring and the Divisional merger were undertaken so that the Trane Enterprise might obtain the injunctive benefits of an asbestos bankruptcy plan and trust without filing themselves.
>
> ***
>
> Nor were these actions undertaken for the benefit of the asbestos claimants.[3]

3. This case is the third in a series of Texas Two-Step cases, whereby highly profitable enterprises seek to shed their liabilities. The Third Circuit in the *LTL* (Johnson & Johnson) bankruptcy dismissed an attempt to use the Two-Step and concluded that the stratagem's inequitable features were deeply troubling.[4] The Two-Step upends, of course, the very purpose of bankruptcy: to aid the "honest but unfortunate debtor."[5]

4. Indeed, the Two-Step's attempted exploitation of corporate and bankruptcy law to shield the vast majority of a company's assets from its suffering asbestos victims violates the core principle of bankruptcy that companies should bear the burdens of bankruptcy in order to enjoy its benefits.[6]

Why Is This Case Taking So Long?

5. Because of the Texas Two-Step, the assets and operations placed in TTC, Trane, and their nondebtor affiliates remain outside the reach of this Court. These nondebtors also benefit from a stay of litigation via an indefinite, nationwide preliminary injunction previously granted by

---

[3] 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, ¶¶ 120-121, Adv. Pro. No. 20-03041, ECF No. 308 ("**Court's Findings and Conclusions**").

[4] *In re LTL Mgmt., LLC*, 64 F.4th 84 (3d Cir. 2023).

[5] *Loc. Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934) (citations omitted).

[6] A "cardinal principle of bankruptcy law" is to provide relief to only those debtors that come into bankruptcy with all of their liabilities *and* all of their assets. *Robbins v. Chase Manhattan Bank, N.A.*, No. CIV A. 93-0063-H, 1994 WL 149597, at *6 (W.D. Va. Apr. 4, 1994) (quoting *Venture Props., Inc. v. Norwood Grp., Inc. (In re Venture Props., Inc.)*, 37 B.R. 175, 177 (Bankr. D.N.H. 1984)).

this Court. Thus, there is little reason for the Debtors and their affiliates to resolve this case expeditiously as the rules and consequences of a normal bankruptcy case are not present here. The Debtors are instead free to engage in litigation tactics at a leisurely pace, while their non-bankrupt affiliates continue business as usual. Indeed, the Debtors and their solvent parent companies have every reason to stay in bankruptcy, where they do not have to pay asbestos victims, or even their own costs of defense. So, four years later, the cases languish.

6. Meanwhile, the Debtors' asbestos victims are barred from seeking compensation while they suffer and die from asbestos diseases like mesothelioma and lung cancer. Perversely, the ordinary non-asbestos creditors of the present nondebtors continue to be paid as if bankruptcy never happened. Even the present shareholders of the nondebtors—shareholders of the original companies that produced the asbestos—are receiving dividends. Equity is paid first in this upside-down world.

How Will This Case Be Brought to a Conclusion?

7. **Litigation.** The Committee has sought to address these injustices by filing three adversary proceedings. It seeks to substantively consolidate Aldrich with TTC and Murray with Trane, thereby bringing the assets that were transferred away from asbestos victims back into these bankruptcy cases. This Court also granted the Committee standing to bring claims on behalf of the Debtors' estates. Consequently, the Committee is challenging the Two-Step transactions as fraudulent transfers and has asserted breach of fiduciary duty, aiding and abetting, and civil conspiracy claims related thereto. Each of those adversary proceedings is pending and is in the discovery phase.

8. **Dismissal.** The Committee, along with certain individual claimants, moved to dismiss these bankruptcies. This Court denied the Committee's motion to dismiss, but certified a direct appeal to the Fourth Circuit, finding, *inter alia*, that these bankruptcies "raise some very

fundamental questions about what bankruptcy is about and who it is for and who can use the tools of bankruptcy."[7] The Fourth Circuit did not accept the direct appeal, but the appeal remains pending in the District Court. The Committee intends to vigorously prosecute that appeal.

9. **Plan of Reorganization.** Finally, given the pace at which these other avenues are proceeding, and the Debtors' refusal to advance their own plan, the Committee is preparing a creditor plan that the Committee submits will be supported by the creditors. This plan will include full and fair opt-outs to the tort system in accordance with the Seventh Amendment's mandated right to a trial by jury and applicable jurisprudence.

BACKGROUND

I. THE TEXAS TWO-STEP IS DEPLOYED TO SEPARATE ASSETS FROM ASBESTOS LIABILITIES

A. Asbestos Lawsuits Against Ingersoll-Rand and Trane

10. The Debtors' predecessors, Ingersoll-Rand Company ("**Ingersoll-Rand**") and former Trane spent decades in the tort system defending and resolving lawsuits brought by individuals who were exposed to these companies' asbestos products.[8] According to the Debtors, Ingersoll-Rand and Trane were the subject of roughly 100,000 asbestos-related lawsuits filed throughout the United States.[9] The Debtors' predecessors historically paid approximately $95 million a year for asbestos-related settlements and defense costs.[10] Most of the indemnity payments went to mesothelioma plaintiffs.

---

[7] Hr'g Tr. 77:17-19 (Feb. 9, 2024).

[8] Court's Findings and Conclusions ¶¶ 30-36.

[9] Motion of the Debtors 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, at 18, Adv. Pro. No. 20-03041, ECF No. 2 ("**PI Motion**").

[10] Informational Brief of Aldrich Pump LLC and Murray Boiler LLC, at 31, ECF No. 5 ("**Informational Brief**").

11. Ingersoll-Rand and Trane settled "approximately 900 mesothelioma claims each year."[11] The "remaining indemnity payments" were "used to settle the mass of other [asbestos] claims" against Ingersoll-Rand and Trane, "of which there also [were] thousands, with the majority of these payments made to claimants alleging lung cancer."[12] While defending against asbestos suits in the tort system, Ingersoll-Rand and Trane used insurance receivables, including those received under settlements or certain "coverage-in-place" agreements, to fund or offset the defense and indemnity costs of their asbestos liabilities.[13]

B. Project Omega

12. The Texas divisional mergers, collectively known as the "**Corporate Restructuring**," were the result of months of secret and meticulous planning involving a select group of Ingersoll-Rand employees, as well as in-house and outside counsel, which bore the codename "Project Omega." Project Omega was not disclosed to asbestos claimants or their attorneys prior to the Corporate Restructuring.[14]

13. Since its inception, the sole objective of Project Omega was the commencement of a years-long asbestos-driven bankruptcy case that would secure the Trane Technologies plc ("**Trane plc**") enterprise group a "bankruptcy discount" on their asbestos tort liabilities without any negative effect on the group's business operations.[15] For example:

---

[11] *Id.* at 31-32.

[12] *Id.* at 32.

[13] Court's Findings and Conclusions ¶ 38 (citing ACC Ex. 271 at F-46). Unless otherwise noted, all references to "ACC Ex." refer to exhibits introduced in the preliminary injunction adversary proceeding. Exhibit Record, No. 20-03041, ECF No. 257; *see also* Stipulation Regarding Evidentiary Matters in Connection with the May 5-7 Hearing, Adv. Pro. No. 20-03041, ECF No. 283.

[14] 2021 Tananbaum Dep. 217:18-22.

[15] *See* Court's Findings and Conclusions ¶ 50 ("The weight of the evidence . . . reflects that a bankruptcy filing . . . was the sole objective of Project Omega.").

(a) an internal document entitled "OMEGA Comms plan" states as of March 5, 2020: "We will *isolate* the Asbestos liabilities into stand alone entities *and will take the entities bankrupt*."[16]

(b) "Project Omega team members expected and planned for a long-term bankruptcy prior to the 2020 Corporate Restructuring, which they estimated would last for five or more years."[17]

(c) Long before the petition date, Project Omega team members explicitly discussed plans to merge the Debtors' operating subsidiaries, 200 Park, Inc. ("**200 Park**") and ClimateLabs LLC ("**ClimateLabs**"), back into the Debtors' affiliates after the Debtors' bankruptcies concluded.[18]

(d) Manlio Valdes, a member of the boards of Aldrich and Murray, admitted in deposition that he thought it was "***a probability***" that Aldrich and Murray would end up paying less to asbestos claimants in bankruptcy than in the tort system.[19]

Indeed, this Court has already found that "these bankruptcies were designed to isolate the asbestos claimants from the overall corporate enterprise and strand them in bankruptcy until such time as they agree to a Section 524(g) plan."[20]

C. Implementing the Corporate Restructuring

14. The centerpiece of the Corporate Restructuring was a pair of parallel divisional mergers under Texas law, in which each of the Debtors' predecessors essentially divided themselves into two companies, with one company receiving substantially all of the operating assets and the other company receiving all of the asbestos liabilities. Thus, Ingersoll-Rand effectively divided itself into two companies: TTC and Aldrich, with Ingersoll-Rand's asbestos

---

[16] ACC Ex. 192 at TRANE_00014949 (emphasis added).

[17] Court's Findings and Conclusions ¶ 50; *see also id.* n.64 ("ACC Ex. 18 at TRANE_00006711 (stating on December 4, 2019, that bankruptcy was estimated to last 2 to 5 years); ACC Ex. 192 at TRANE_00014949 (stating on March 5, 2020, that the Debtors expected to stay in bankruptcy for 5 to 8 years). Moreover, a number of the intercompany agreements have initial terms of five years, which supports the idea that the Debtors had planned for a multi-year bankruptcy. ACC Ex. 89 at DEBTORS_00001650 (five-year initial term); ACC Ex. 90 at DEBTORS_00003330 (same).").

[18] Court's Findings and Conclusions ¶ 50; ACC Ex. 18 at TRANE_00006711; ACC Ex. 192 at TRANE_00014949; Kuehn Dep. 239:15-241:16, Mar. 19, 2021.

[19] Court's Findings and Conclusions ¶ 116; Valdes Dep. 264:21-265:7, Mar. 1, 2021; ACC Ex. 33) (emphasis added).

[20] Court's Findings and Conclusions ¶ 121.

liabilities allocated to Aldrich. Trane similarly divided itself into two companies: "new" Trane and Murray, and "old" Trane's asbestos liabilities were allocated to Murray. In the Corporate Restructuring, TTC received 99% of Ingersoll-Rand's assets, with the remaining 1% allocated to Aldrich.[21] "New" Trane received 98% of "old" Trane's assets, with the remaining 2% going to Murray.[22] As of December 2020, the "new" TTC and Trane each had a book value of $7.8 billion (TTC) and $3.0 billion (Trane), respectively.[23]

D. Straw Entities and Multiple Roles of Officers and Managers

15. The Debtors are "inert vessels" with no employees[24] or meaningful operations[25] of their own. The in-house attorneys charged with asbestos defense duties, including the Debtors' chief legal officer, are seconded from the Debtors' ultimate parents.[26] In addition to having two seconded lawyers, the Debtors each have officers who are employees within the enterprise group headed by Trane plc and a board of managers composed of current and former employees of the Debtors' affiliates.[27]

16. Because the Debtors' officers and board members also hold positions with nondebtor affiliates, the independence of the Debtors is illusory, and the evidence adduced thus far has done nothing to ameliorate the inherent conflicts. For example, on May 27, 2020, Rolf Paeper, a Project Omega member, asked why the bankruptcy filings had been delayed since the

---

[21] Court's Findings and Conclusions ¶ 55; Hr'g Tr. 396:11-18 (May 6, 2021) (Diaz Direct).

[22] Court's Findings and Conclusions ¶ 59; Hr'g Tr. 394:1-3 (May 6, 2021) (Diaz Direct).

[23] Court's Findings and Conclusions ¶ 129.

[24] "Creating two companies with no employees [*i.e.*, Aldrich and Murray] evidences the fact that Aldrich and Murray were simply inert vessels designed to carry their predecessors' asbestos liabilities into bankruptcy." Court's Findings and Conclusions ¶ 87.

[25] Court's Findings and Conclusions ¶ 3.

[26] *See* Declaration of Allan Tananbaum in Support of Debtors' Complaint for Injunctive and Declaratory Relief, Related Motions, and the Chapter 11 Cases, at 2-3, Adv. Pro. No. 20-03041, ECF No. 29.

[27] Court's Findings and Conclusions ¶ 89; ACC Ex. 107 at 3; Turtz Dep. 157:11-158:7, Apr. 5, 2021.

Trane entities were "pushing to do that in less than 30 [*sic*] days."[28] Eric Hankins, another Omega member, replied: "[W]e can't push, it has to be an independent [Board] decision." In response, Mr. Paeper expressed his skepticism of each board's independence by putting the word "independant" [*sic*] in scare quotes. Indeed, as this Court has recognized, "[n]or was the decision to file made by the Debtors' Boards. At best, the Board resolutions simply rubberstamped decisions to place Aldrich and Murray in chapter 11 . . . ."[29]

E. The Funding Agreements

17. There are two funding agreements that were created as part of the Corporate Restructuring: (1) the funding agreement between TTC as payor and Aldrich as payee;[30] and (2) the funding agreement between Trane as payor and Murray as payee.[31] The Funding Agreements provide that TTC and Trane will transfer funds to the Debtors to pay any "Permitted Funding Use,"[32] which includes: (a) the costs of administering the Debtors' chapter 11 cases, (b) amounts necessary to satisfy each Debtor's "Asbestos Related Liabilities" in connection with funding a § 524(g) trust, and (c) the Debtors' indemnification obligations to TTC, Trane, and the other nondebtor affiliates under any agreement provided in the plans of divisional mergers.[33]

18. Judge Whitley found that the Funding Agreements have defects and troubling features. First, "the Debtors' rights and obligations under [their respective Funding Agreements]

---

[28] Court's Findings and Conclusions ¶ 118; ACC Ex. 193 at TRANE_00007527.

[29] Courts Findings and Conclusions ¶ 120.

[30] Court's Findings and Conclusions ¶ 69; ACC Ex. 13 ("**Aldrich Funding Agreement**").

[31] Court's Findings and Conclusions ¶ 69; ACC Ex. 86 ("**Murray Funding Agreement**," and with the Aldrich Funding Agreement, the "**Funding Agreements**").

[32] Court's Findings and Conclusions ¶ 70; Aldrich Funding Agreement at DEBTORS_00003821-22 (definition of "Permitted Funding Use"); Murray Funding Agreement at DEBTORS_00004101 (definition of "Permitted Funding Use").

[33] Court's Findings and Conclusions ¶ 70; Aldrich Funding Agreement at DEBTORS_00003821-22; Murray Funding Agreement at DEBTORS_00004101-02; ACC Ex. 25 ("**Aldrich Plan of Divisional Merger**"); ACC Ex. 26 ("**Murray Plan of Divisional Merger**").

may not be assigned without the prior written consent of New TTC or New Trane."[34] Thus, "arguably a Creditor's Plan could not be funded unless New TTC and/or New Trane favor that Plan."[35] Second, and "[m]ost significant" according to the Court, "the Funding Agreements require, as a precondition to funding a § 524(g) trust, that a confirmed chapter 11 plan provide New TTC or New Trane, as applicable, 'with all the protections of section 524(g) of the Bankruptcy Code.'"[36] Third, "the Funding Agreements have 'Automatic Termination' provisions whereby New TTC's and Trane's respective funding obligations automatically cease 'on the effective date of a Section 524(g) Plan.'"[37] As a result, "the Funding Agreements could never serve as post-effective date 'evergreen' sources of funding that § 524(g) contemplates."[38] "Practicably, the only people who can enforce the agreements are the people against whom they would be enforced, the shared officers and directors of the Debtors and the Affiliates."[39]

F. Upstreaming of Cash by Nondebtor Affiliates to Pay Equity Ahead of Asbestos Victims

19. As a supposed form of "cash management," the net earnings of Trane and its subsidiaries are swept into a set of bank accounts held by TTC, New Trane's indirect parent.[40] Through this practice, cash is moved from Trane and its operating subsidiaries to the upper echelons of the organization chart.

20. "In short, by their own estimation, the Debtors owe $240 million in asbestos liabilities net of insurance—a sum greater than the assets allocated to them in the merger.

---

[34] Court's Findings and Conclusions ¶ 74 (footnote omitted).

[35] *Id.*

[36] Order Denying Motions to Dismiss, at 15, ECF No. 2047 ("**Order Denying Motions to Dismiss**"); Court's Findings and Conclusions ¶ 76 (footnote omitted).

[37] Court's Findings and Conclusions ¶ 77 (footnote omitted).

[38] *Id.*

[39] Order Denying Motions to Dismiss at 14.

[40] Kuehn Dep. 134:8-18, Apr. 9, 2021; Hr'g Tr. 534:10-20 (May 7, 2021) (Kuehn Cross-Exam).

However, they were designed to be reliant on the Trane organization, through the Funding Agreement[s]. And the Trane organization boasts $16 billion in *annual* revenues, *annual* excess cash flow eclipsing $1.8 billion ($620.7 million in dividends plus $1.2 billion stock buyback; three-year total over $1.5 billion in dividends and $2.5 billion in stock buybacks), and a market cap of $54 billion."[41]

21. All of these payments provide overwhelming evidence that the Trane plc enterprise group is distributing profits to equity holders postpetition. TTC, Trane, and their operating subsidiaries are also timely paying all of their other creditors in the ordinary course of business.[42] From the standpoint of non-asbestos creditors, shareholders, employees, suppliers, vendors, and other stakeholders, it has been "business as usual," even after the Corporate Restructuring and the chapter 11 filings.[43]

22. Yet, after over four years, the asbestos claimants have received nothing. The Debtors have achieved this payment holiday for themselves and their affiliates through the protections attendant to a bankruptcy case, a process they have manipulated and continue to abuse.

II. THE DEBTORS TARGET THE CLAIMANTS WHILE PROCEEDING DOWN A ROAD TO NOWHERE

23. As this Court has already concluded, these bankruptcies were designed to isolate the asbestos claimants from the overall corporate enterprise and strand them in bankruptcy until such time as they agree to a Section 524(g) plan.[44]

---

[41] Order Denying Motions to Dismiss at 14.

[42] Court's Findings and Conclusions ¶ 62; Hr'g Tr. 394:19-395:15; 402:19-23 (May 6, 2021) (Diaz Direct); Kuehn Dep. 59:25-60:16, Apr. 9, 2021; Kuehn Dep. 237:9-13, Mar. 19, 2021.

[43] *See, e.g.*, ACC Ex. 18 (emails dated December 2019 describing TTC and Trane's operations post-Corporate Restructuring as "business as usual"). *See also* Court's Findings and Conclusions ¶ 62 (noting that TTC and Trane are paying their creditors in the ordinary course of business); Hr'g Tr. 402:19-23 (May 6, 2021) (Diaz Direct); Kuehn Dep. 235:11-236:8; 237:3-13, Mar. 19, 2021; Kuehn Dep. 59:25-60:16, Apr. 9, 2021.

[44] Court's Findings and Conclusions ¶ 121.

24. Indeed, the evidence in these cases reflects that "Project Omega team members expected and planned for a long-term bankruptcy prior to the 2020 Corporate Restructuring, one which they estimated would last for five or more years."[45]

25. In this case, delay has real—and tragic—consequences. Claimants may not receive funds for needed medical care or to support their families.[46] In some instances, claimants will die during the delay.[47] Moreover, the death of a claimant can result and has resulted in lost legal rights and compensation because some states limit the causes of action or damages a decedent's estate or personal representative may assert.[48] For example, compensation for pain and suffering—often valued in millions of dollars—are no longer available to a decedent's estate.[49] A lengthy delay also presents the risk of critical evidence being lost, as aging witnesses die or their memories fade.[50] Thus, the delay has led to substantial prejudice to asbestos victims in the form of lost claims, lost remedies, lost evidence, and the loss of immediate financial support that an award of damages could provide.[51]

---

[45] *Id.* ¶ 112. *See also id*. (Project Omega team members "also circulated standard bankruptcy forms to one another that would have to be completed and filed after the chapter 11 filing(s). And long before the Petition Date, Project Omega team members explicitly discussed plans to merge the Debtors' operating subsidiaries, 200 Park and ClimateLabs, back into New TTC and New Trane after the Debtors' bankruptcies concluded.").

[46] *See, e.g.*, *Kadel v. Folwell*, 446 F. Supp. 3d 1, 11 (M.D.N.C. 2020) (identifying harm from continued denial of healthcare coverage for medically necessary procedures).

[47] As set forth *infra* ¶ 37, all of the Committee members in *Bestwall* have sadly passed away since that case began.

[48] *See, e.g.*, FLA. STAT. ANN. § 768.21 (specifying damages available to decedent's estate or personal representative); *Bailey v. Exxon Mobil Corp.*, 76 So. 3d 53, 54-55 (La. App. 2011) (holding that punitive damages could not be recovered in a wrongful death action).

[49] *See, e.g.*, ARIZ. REV. STAT. ANN. § 14-3110 (providing that damages for pain and suffering do not survive death of tort victim); IDAHO CODE § 5-327(2) (specifying limited damages available in survival actions).

[50] *See, e.g.*, *Shearin v. Doe 1 Through 10*, No. CIV.A. 03-503-JJF, 2007 WL 4365621, at *2 (D. Del. Dec. 11, 2007) ("The lengthy passage of time involves the risk of loss of evidence or the fading of memory.").

[51] Mr. Tananbaum, the Debtors' Chief Legal Officer, has admitted that it was "impossible to assert . . . that there's no harm [to asbestos claimants] from delay." 2021 Tananbaum Dep. 259:6-8.

26. The human toll from such delay is thus significant and profound. For example, Robert Semian was diagnosed with testicular mesothelioma in April 2022.[52] He was exposed to asbestos primarily and regularly during his 26-year employment with the Debtors' predecessor at the company's facility in Dunmore, Lackawanna County, Pennsylvania.[53] If these bankruptcies continue and Mr. Semian is not permitted to liquidate his claim against the Debtors, he will be extremely prejudiced. Indeed, Mr. Semian very likely will die before these cases are ever resolved. Mr. Semian, or most likely his decedent estate, will have to file another lawsuit against the Debtors to pursue the same claims that he has now resolved against other named defendants. That second trial will add another case to the state court trial docket, expending additional judicial resources, and will cost Mr. Semian's decedent estate time and money.[54] Tragically, it will also deprive Mr. Semian of the opportunity to personally pursue his constitutional right to a jury trial. That is not justice, but a stark reminder of the real human costs of the Debtors' strategy to strand asbestos victims in bankruptcy court indefinitely.

A. Preliminary Injunction and Extension of the Stay

27. On June 18, 2020 ("**Petition Date**"), seven weeks after the Corporate Restructuring, Aldrich and Murray filed their chapter 11 petitions with this Court. That same day, the Debtors commenced an adversary proceeding seeking an "indefinite, nationwide preliminary injunction" to protect, *inter alia*, 204 affiliates of the Debtors, *i.e.*, the entire Trane plc enterprise

[52] Robert Semian's Motion for Relief from the Automatic Stay Pursuant to 11 U.S.C. § 362(d), at 1-2, 6, ECF No. 1588.

[53] *Id.*

[54] *Id.* at 5, 22.

group.[55] The Committee opposed the Debtors' sought-after relief.[56] After discovery and a three-day evidentiary hearing,[57] the Court granted the preliminary injunction.[58] The Court nonetheless raised concerns about these chapter 11 cases, finding, *inter alia*, that the Corporate Restructuring: (a) "may well have been improper," because while Texas law permits a divisional merger, "it does not permit that company to thereby prejudice its creditors";[59] and (b) had a material, negative effect on the asbestos claimants' ability to recover on their claims."[60] Therefore, the Court concluded that "an action to contest the mergers and the exclusive allocation of all asbestos claims to Aldrich and Murray appears to be a viable cause."[61]

B. The Future Claimants' Representative

28. The Debtors unilaterally selected the Future Claimants Representative ("**FCR**") in these cases. On August 21, 2020, the Debtors filed the Motion of the Debtors for an Order Appointing Joseph W. Grier, III as Legal Representative for Future Asbestos Claimants.[62] The Committee, who was not consulted on the unilateral choice (which went against decades of

[55] 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, Adv. Pro. No. 20-03041, ECF No. 1; Court's Findings and Conclusions ¶ 5.

[56] *E.g.*, Opposition of the Official Committee of Asbestos Personal Injury Claimants to the Debtors' Motion for Preliminary Injunction or Declaratory Relief, Adv. Pro. No. 20-03041, ECF No. 151; Opposition of the Official Committee of Asbestos Personal Injury Claimants to 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, Adv. Pro. No. 20-03041, ECF No. 152; Supplemental Memorandum of the Official Committee of Asbestos Personal Injury Claimants in Opposition to Debtors' Motion for Preliminary Injunction or Declaratory Relief, Adv. Pro. No. 20-03041, ECF No. 179.

[57] *See generally* Hr'g Trs. May 5-7, 2021.

[58] Court's Findings and Conclusions ¶ 229.

[59] *Id.* ¶ 161.

[60] *Id.* ¶ 176.

[61] *Id.*

[62] Motion of the Debtors for an Order Appointing Joseph W. Grier, III as Legal Representative for Future Asbestos Claimants, No. 20-30608, ECF No. 276.

precedent) opposed the Debtors' nominee. After briefing and a contested hearing, the Court appointed Mr. Grier as the FCR.[63]

C. Debtors' Settlement with the FCR

29. On August 26, 2021, the Debtors and their handpicked FCR informed the Court that they had reached a "settlement" agreement that purportedly resolved all the asbestos liabilities in these Chapter 11 Cases.[64] The Committee is not a party to this purported settlement, had no role in its negotiation, and was not consulted even though it represents the interests of the only creditors entitled to vote for or against a § 524(g) plan.

30. The settlement agreement between the Debtors and the FCR, which is embodied in a proposed plan ("**Proposed Plan**"),[65] provides for a § 524(g) trust funded with just $545 million,[66] an amount considerably lower than the very low end of the Debtors' ultimate parent's estimate for asbestos liability.[67] No insurance proceeds are included in this settlement, despite the Debtors' insistence that there are insurance assets valued at several billion dollars.[68] In fact, the proposed

---

[63] Order Appointing Joseph W. Grier, III as Legal Representative for Future Asbestos Claimants, No. 20-30608, ECF No. 389.

[64] *See* Hr'g Tr. 6:16-25 (Aug. 26, 2021) (B. Erens); *see also* Notice of Filing of Plan Support Agreement, No. 20-30608, ECF No. 832 ("**Plan Support Agreement**"). The FCR was a signatory to the Plan Support Agreement. *Id.* at 19. The parties have asserted that the FCR has a common interest with the Debtors related to the settlement. *E.g.*, Hr'g Tr. 96:18-24 (Mar. 3, 2022) (G. Mascitti); Tananbaum Dep. 152:20-153:18, July 6, 2023 ("**2023 Tananbaum Dep.**").

[65] Joint Plan of Reorganization of Aldrich Pump LLC and Murray Boiler LLC, No. 20-30608, ECF No. 831.

[66] Motion of the Debtors for an Order Authorizing Establishment of a Qualified Settlement Fund for Payment of Asbestos Claims, No. 20-30608, ECF No. 834, ¶ 4; *see also* Plan Support Agreement, No. 20-30608, ECF No. 832, Ex. 1 at 5, 25, 26, 44, 57.

[67] Court's Findings and Conclusions ¶ 36 ("As of December 31, 2019, IR plc has projected the current and future asbestos liabilities of Old IRNJ and Old Trane to be at least $547 million.").

[68] *See, e.g.*, Declaration of Ray Pittard in Support of First Day Pleadings ¶ 16, No. 20-30608, ECF No. 27 ("**Pittard Decl.**") (discussing $750 million in unexhausted coverage for Aldrich and $1.79 billion in unexhausted coverage for Murray).

settlement amount is less than a quarter of the approximately $2.54 billion in insurance the Debtors claimed were unexhausted in their first day papers.[69]

31. The Debtors and the FCR have failed to file a disclosure statement or seek to solicit votes on the Proposed Plan, despite the Committee's invitation to do so. As this Court acknowledged, "the current asbestos claimants must first, by a 75% vote, approve the Plan. Otherwise, these Debtors have no ability to pay the asbestos claims assigned to them by the Divisional Merger."[70] This is mandatory under a Section 524(g) plan.[71] Needless to say, that settlement will never garner 75% of the current claimant vote, and is a dead letter.[72]

D. The Bar Date and Personal Injury Questionnaire

32. On April 4, 2022, the Debtors and their chosen FCR again joined forces to file the 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.[73] This Court entered an Order (I) Establishing a Bar Date for Certain Known Mesothelioma Claims, (II) Approving Proof of Claim Form, (III) Approving Notice to Claimants, and (IV) Granting Related Relief,[74] and an Order Approving the Personal Injury Questionnaire and Granting Related Relief,[75] each over the Committee's objections.

---

[69] *See, e.g.*, Pittard Decl. ¶ 16 (discussing $750 million in unexhausted coverage for Aldrich and $1.79 billion in unexhausted coverage for Murray).

[70] Order Denying Motions to Dismiss at 15.

[71] 11 U.S.C. § 524(g)(2)(B)(ii)(IV)(bb); *e.g.*, *Truck Ins. Exch. v. Kaiser Gypsum Co., Inc.*, 602 U.S. 268, 274 (2024) (discussing § 524(g)'s safeguards, including "approval from at least 75% of current claimants"); Court's Findings and Conclusions ¶ 76.

[72] On February 23, 2023, upon a motion by the Bankruptcy Administrator, the Court appointed Eric Green and Tim Gallagher as mediators in these cases. The mediators are "authorized to mediate . . . any and all issues necessary to reach a comprehensive resolution of the Debtors' liability to present and future asbestos claimant . . . ." Order Establishing Mediation Protocol, No. 20-30608, ECF No. 1608 ¶ B.

[73] No. 20-30608, ECF No. 471.

[74] No. 20-30608, ECF No. 1093.

[75] No. 20-30608, ECF No. 1246.

E. The Estimation Proceeding

33. In conjunction with their Proposed Plan, the Debtors asked the Court to estimate the liability of current asbestos claimants at no more than $125 million.[76] This Court declined, instead agreeing to allow an estimation proceeding that would estimate the Debtors' aggregate liability for all current and future asbestos personal injury claims.[77]

34. The Court entered its initial Case Management Order for Estimation of Asbestos Claims on August 2, 2022 ("**Estimation CMO**").[78] Since the entry of the Estimation CMO, the parties sought an order extending the deadlines in the Estimation CMO by one year,[79] before agreeing to suspend the Estimation CMO deadlines while they negotiate a protocol for, and begin collection of, claimant files and related documents.[80] The Court entered an order suspending the Estimation CMO deadlines on April 25, 2024.[81]

35. Notwithstanding the suspension of the Estimation CMO deadlines, the parties have commenced discovery in accord with the Estimation CMO, and have retained experts. The Debtors have sought and received voluminous discovery from various sources, including numerous asbestos trusts established in prior asbestos bankruptcies. The parties have agreed to a claims sample[82] and continue to negotiate a claims file protocol for what will be gathered, and how it will be collected and reviewed.[83] The Debtors have submitted a proposal to the Committee,

---

76 *E.g.*, No. 20-30608, ECF No. 833 ¶¶ 13, 20.

77 Order Authorizing Estimation of Asbestos Claims, No. 20-30608, ECF No. 1127 ¶ 2; Hr'g Tr. 13:6-14:2 (Jan. 27, 2022).

78 Case Management Order for Estimation of Asbestos Claims, No. 20-30608, ECF No. 1302.

79 Agreed Motion to Amend Case Management Order for Estimation of Asbestos Claims, No. 20-30608, ECF No. 1766; *see also* First Amended Case Management Order for Estimation of Asbestos Claims, No. 20-30608, ECF No. 1804.

80 *See* Hr'g Tr. 8:23-9:12 (Apr. 25, 2024).

81 Order, No. 20-30608, ECF No. 2229.

82 *See* Hr'g Tr. 8:2-6 (Apr. 25, 2024).

83 *Id.* 8:2-19.

including a proposal under Rule 502(d) of the Federal Rules of Evidence, and the parties are actively engaged in negotiations.[84] The claims file protocol and a potential Rule 502(d) order will provide the parties with a more concrete idea of how much time is required for estimation-related discovery.[85]

F. The Debtors Are Following the *Bestwall* Path Into a Morass

36. The *Bestwall* case presents a cautionary tale of what will happen if this Court continues with an estimation untethered from a competing plan process. Bestwall is a subsidiary of Georgia-Pacific, and, like the Debtors, was created in a "Texas Two-Step" transaction solely to be the transferee of billions of dollars of asbestos-related liabilities from the multi-billion dollar Georgia-Pacific enterprise. That debtor convinced the Bankruptcy Court that estimation of its asbestos liabilities was necessary—and could be accomplished in only fourteen months—so it could argue that Georgia-Pacific was the victim, rather than its tort claimants. Bestwall argued that Georgia-Pacific purportedly lacked certain information when it offered and agreed to settle prior asbestos-related litigation with plaintiffs dying of asbestos-related diseases, forcing Georgia-Pacific to settle at higher amounts than it otherwise would have, and only estimation could remedy that wrong going forward. Such goes the "blame the victim" playbook.

37. But the Bestwall estimation process—now almost three years in—is no closer to resolution because Bestwall and Georgia-Pacific never reviewed (and only recently produced) discovery regarding its own counsels' contemporaneous knowledge at the time of settlement. Bestwall continues to revisit decades-old settlements made with its' deceased victims. And the years tick on. Of the six living members appointed to the Bestwall committee in 2017, *none are*

[84] *Id.*

[85] *Id.* at 8:23-9:12.

alive today. Bestwall's manufactured estimation-related arguments have ensured that not a single original Bestwall committee member will see their rights vindicated.

38. This Court should not allow these Debtors to proceed down the same path here, especially as estimation would result in a purely advisory opinion, making estimating the Debtors' aggregate liabilities a pointless exercise.

III. THE COMMITTEE'S CONTINUING EFFORTS TO UNDO THE DAMAGE

A. The Substantive Consolidation Adversary Proceeding

39. Striving to move these cases forward and undo the harms of the Corporate Restructuring, on October 18, 2021, the Committee filed a complaint (the "**Sub Con Complaint**") seeking to substantively consolidate the Debtors' estates with certain Nondebtor Affiliates or, in the alternative, to reallocate the Debtors' asbestos liabilities to those Affiliates (the "**Sub Con Proceeding**").[86]

40. The Debtors, Trane Technologies Company LLC and Trane U.S. Inc. moved to dismiss the Sub Con Complaint on December 20, 2021 ("**Sub Con Motions to Dismiss**").[87] On April 14, 2022, the Court denied the Sub Con Motions to Dismiss with respect to Count I, seeking substantive consolidation, and granted them with respect to Count II, seeking a declaratory judgment of unconscionability.[88]

---

[86] Complaint for Substantive Consolidation of Debtors' Estates with Certain Nondebtor Affiliates, or Alternatively, to Reallocate Debtors' Asbestos Liabilities to Those Affiliates, Adv. Pro. No. 21-03029, ECF No. 1.

[87] Debtors' Motion to Dismiss Adversary Complaint and Memorandum of Law in Support Thereof, Adv. Pro. No. 21-03029, ECF No. 17; Trane Technologies Company LLC and Trane U.S. Inc.'s Motion to Dismiss and Brief in Support, Adv. Pro. No. 21-03029, ECF No. 18.

[88] Order Denying in Part and Granting in Part the Motions of the Debtors and Non-Debtor Affiliates to Dismiss the Adversary Complaint, No. 21-03029, ECF No. 71.

B. The Fraudulent Transfer and Fiduciary Duty Adversary Proceedings

41. As noted above, the Committee sought, and was granted, derivative standing to investigate and pursue estate causes of action arising from or relating to the Corporate Restructuring.[89]

42. On June 18, 2022, the Committee initiated an adversary proceeding by filing a complaint asserting causes of action based on fraudulent transfers under federal and applicable state law against certain affiliates of the above-captioned Debtors ("**Fraudulent Transfer Proceeding**").[90] The complaint, alleges, *inter alia*, that the defendants perpetrated intentional and constructive fraudulent transfers under the Bankruptcy Code and state law by implementing two divisional mergers to divide entities within the Trane plc enterprise so as to separate the Trane plc enterprise's valuable assets and non-asbestos liabilities from its asbestos liabilities and filing bankruptcies to hinder, delay and defraud asbestos victims. In lieu of moving to dismiss the Fraudulent Transfer Proceeding, defendants filed an answer to the complaint on September 9, 2022.[91]

43. The Committee commenced another adversary proceeding on June 18, 2022, in which it alleged causes of action arising from breach of fiduciary duty, aiding and abetting a breach of fiduciary duty, and civil conspiracy against certain affiliates of the Debtors ("**Fiduciary Duty Proceeding**," together with the Sub Con Proceeding and the Fraudulent Transfer Proceeding, the "**Adversary Proceedings**").[92]

---

[89] 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, No. 20-30608, ECF No. 1121.

[90] Complaint, Adv. Pro. No. 22-03028, ECF No. 1.

[91] Defendants' Answer and Affirmative Defenses, Adv. Pro. No. 22-03028, ECF No. 11.

[92] Complaint, Adv. Pro. No. 22-03029, ECF No. 1.

C. The Committee Continues to Actively Litigate the Adversary Proceedings

44. On January 10, 2023, the Court entered a Case Management Order in all the Adversary Proceedings ("**Adversary CMO**").[93] The Adversary CMO stayed the Fiduciary Duty Proceeding in its entirety, including with respect to discovery, pending final orders resolving the other adversary proceedings.[94] The parties were ordered to meet and confer to create a discovery protocol for the Fraudulent Transfer and Sub Con Proceedings.[95]

45. The Adversary CMO provides that the discovery completed in the Preliminary Injunction Proceeding will be deemed to have been conducted in the Adversary Proceedings.[96]

46. The parties met and conferred on numerous occasions regarding a discovery plan and protocol, but were unable to reach a consensus on all issues. On March 9, 2023, the Committee filed a Motion on Discovery Procedures.[97] The nondebtor defendants and the Debtor defendants filed objections to this motion.[98]

47. This Court entered an Order Establishing Joint Discovery Plan and Report (ESI Protocol) ("**Discovery Plan Order**") in both the Sub Con and Fraudulent Transfer Proceedings on April 24, 2023.[99] The Discovery Plan Order sets forth limitations on discovery, parameters for document production, and an electronically stored information protocol. The Discovery Plan Order orders the parties to "meet and confer to agree upon production completion deadlines."[100]

---

[93] Adv. Pro. No. 21-03029, ECF No. 117; Adv. Pro. No. 22-03028, ECF No. 39; Adv. Pro. No. 22-03029, ECF No. 35.

[94] Adversary CMO ¶ B.3.ii.

[95] Adversary CMO ¶ C.3.i.

[96] Adversary CMO ¶ C.2.

[97] Adv. Pro. No. 21-03029, ECF No. 119; Adv. Pro. No. 22-03028, ECF No. 50; Adv. Pro. No. 22-03029, ECF No. 46.

[98] Adv. Pro. No. 21-03029, ECF No. 121; Adv. Pro. No. 22-03028, ECF No. 52.

[99] Adv. Pro. No. 21-03029, ECF No. 142; Adv. Pro. No. 22-03028, ECF No. 69.

[100] Discovery Plan Order ¶ 7.

48. Significant discovery efforts have been undertaken in the Adversary Proceedings. Written discovery has been propounded, responded to, and documents have been produced. The parties have met and conferred on numerous occasions to discuss various discovery matters and continue to negotiate disputes related to discovery. The parties continue to work through discovery issues.

D. Committee's Motion to Dismiss the Bankruptcies

49. On May 15, 2023, the Committee moved to dismiss the Debtors' bankruptcy cases on Constitutional grounds, for cause, and for lack of good faith ("**Motion to Dismiss the Bankruptcy Cases**").[101] The Debtors and the FCR objected.[102] This Court denied the Motion to Dismiss the Bankruptcy Cases on December 28, 2023.[103] In so ruling, the Court expressed reservations. For example, "*Carolin*'s exposition of how to look at 'objective futility' when examining a company that is financially distressed is facially inapplicable to companies that are not in financial distress. In short, *Carolin* has been applied beyond its facts."[104] And, "[b]ecause *Carolin* involved a fatally insolvent debtor, the application of its two-prong standard to a case filed by a solvent, financially non-distressed debtor means all such cases survive dismissal, regardless of purpose. And given the rarity of such non-distressed entities filing bankruptcy, particularly in 1989 when *Carolin* was decided, one wonders whether the *Carolin* majority contemplated that its test would be employed to the cases of solvent, non-distressed corporations."[105]

---

[101] Motion of the Official Committee of Asbestos Personal Injury Claimants to Dismiss the Debtors' Chapter 11 Cases, ECF No. 1756. Certain asbestos victims also filed a motion to dismiss. Motion to Dismiss of Robert Semian and other Clients of MRHFH, ECF No. 1712. That motion is likewise pending appeal.

[102] ECF Nos. 1809, 1813.

[103] *See generally* Order Denying Motions to Dismiss.

[104] *Id.* at 46-47 (citation omitted).

[105] *Id.* at 50.

50. The Court granted the Committee's request to certify the Order Denying Motions to Dismiss for direct appeal to the Fourth Circuit.[106] However, the Fourth Circuit denied the Committee's petition for permission to appeal,[107] and the appeal is pending in the District Court.[108] The Committee intends to prosecute that appeal to conclusion.

E. Motion to Compel Under the Crime-Fraud Exception and/or At-Issue Waiver

51. The Committee filed a motion to compel testimony and the production of certain documents in the preliminary injunction adversary proceeding, where the Committee argued, *inter alia*, that the Debtors' assertion of attorney-client privilege is overbroad and improper as it relates to "testimony related to the Debtors' Board meetings and the conversations that were held during these meetings along with the May 2020 PowerPoint identified by Mr. Bates."[109] The Court concluded that the "Debtors selectively used the Board member's testimony to describe their decision-making. Many of these matters appear in fact privileged and the assertions were proper, but for the fact that the Debtors' corporate representatives proceeded to testify about the same topics—only to the extent that they found it advantageous."[110] Accordingly, the Court reasoned that "[o]bviously, the Debtors, New TTC, and New Trane cannot have it both ways. The attorney client and work product privileges may not be used as both shield and sword."[111] However, the Court decided that "[i]n lieu of further delaying resolution, we will instead disregard the self-serving witness testimony proffered by the Debtors, New TTC, and New Trane witnesses as to the

---

[106] Certification of the Order Denying Motion to Dismiss [ECF No. 2047] for Direct Appeal to the Court of Appeals for the Fourth Circuit Under 28 U.S.C. § 158(d)(2), No. 20-30608, ECF No. 2111.

[107] Order, *Official Committee of Asbestos Personal Injury Claimants v. Aldrich Pump LLC,* No. 24-128 (4th Cir. Apr. 17, 2024), ECF No. 50.

[108] *Official Committee of Asbestos Personal Injury Claimants v. Aldrich Pump LLC, et al.*, No. 24-00042-RJC (W.D.N.C.).

[109] Motion of the Official Committee of Asbestos Personal Injury Claimants to Compel the Debtors and Non-Debtor Affiliates to (I) Provide Testimony Regarding Certain Matters and (II) Produce Certain Withheld Documents, Adv. Pro. No. 20-03041, ECF No. 141; Court's Findings and Conclusions ¶ 103.

[110] Court's Findings and Conclusions ¶ 103.

[111] *Id.* ¶ 104.

corporate deliberations. Instead, we will look at the available documentary evidence and the circumstances that reflect on what the corporations actually did, and the factual inferences which flow from their actions."[112]

52. Because discovery completed in the Preliminary Injunction Proceeding will be deemed to have been conducted in the Adversary Proceedings[113] and because many of these same issues regarding the Corporate Restructuring and decision to file for bankruptcy are crucial to the Committee's pending claims, the Committee is entitled to access these documents if this Court finds that they are being improperly withheld. As such, the Committee intends to prosecute its motion in the near term.

F. The Committee Intends to File a Creditor Plan

53. The Debtors' exclusivity period has terminated in these cases.[114] The Proposed Plan is the only plan that has been filed in these cases thus far, and it is patently unconfirmable.[115] The Committee intends to put forth its own competing chapter 11 plan that provides asbestos claimants with an "opt-out" to the tort system, something this Court has recognized is constitutionally required in the absence of a limited fund. Indeed, in connection with the Order Denying Motions to Dismiss, this Court pointed out that asbestos claims, as tort claims, are subject to a right of trial by jury,[116] and that "[b]ankruptcy courts lack jurisdiction to determine personal injury claims and cannot deprive personal injury claimants" of this right.[117]

---

112 *Id.*

113 Adversary CMO ¶ C.2.

114 This Court's final order granting the Debtors' motion to extend exclusivity provided that the exclusive filing period expired on December 18, 2021, and the exclusive solicitation period expired on February 16, 2022. No. 20-30608, ECF No. 826 ¶¶ 2-3.

115 *See supra* § II.C.

116 Order Denying Motions to Dismiss at 36 (citing U.S. CONST. amend. VII).

117 *Id.* (citing 28 U.S.C. §§ 157(b)(1); 28 U.S.C. § 1411(a)).

54. Moreover, this Court specifically called into question the constitutionality of channeling asbestos claims to a capped fund when there is no "opt-out" provision, meaning a tort claimant cannot elect to return to the tort system to litigate his or her claims before a jury.[118] As part of that analysis, this Court discussed *Ortiz v. Fibreboard Corp.*, 527 U.S. 815 (1999), in which the Supreme Court concluded that a "mandatory 'no-opt-outs' settlement of a defendant's aggregate mass-tort liability is unconstitutional if the defendant's resources are sufficient to fully pay all of the claims."[119] Such a settlement "compromises [claimants'] Seventh Amendment [jury trial] rights without their consent."[120] *Ortiz* held that a defendant could justify depriving individual asbestos claimants of their due process right to exclude themselves from the class and to pursue their claims on an individual basis only if the defendant's resources were insufficient to fully pay all claims.[121] This Court concluded that if the Debtors have adequate resources to pay claims against them, "due process requires that a 'plaintiff [must] be provided with an opportunity to remove himself' from the aggregate resolution process."[122]

55. Here, the Trane plc enterprise is undeniably capable of paying asbestos claims in full. *See* Order Denying Motions to Dismiss at 14. As of October 8, 2024, the Trane plc enterprise had a market cap of $88.485 billion.[123] Indeed, the Debtors' Chief Legal Officer explained that if the Funding Agreements were honored, he would have no concern that the Debtors were capable of paying future claimants in the tort system until at least 2033.[124] This demonstrates that the

---

118 *Id.* at 36-37.

119 *Id.* at 38 (citing *Ortiz*, 527 U.S. at 817-18).

120 *Id.* at 38 (citing 527 U.S. at 846).

121 *Id.* at 37 (citing 527 U.S. at 837).

122 *Id.* at 37-38 (citing 527 U.S. at 848).

123 https://finance.yahoo.com/quote/TT/.

124 *See* 2023 Tananbaum Dep. 167:6-168:1.

Proposed Plan, which does not include opt-outs, does not comply with *Ortiz* because the Trane plc enterprise's resources are sufficient to fully pay all asbestos claims.[125]

56. For all of these reasons, the Committee's plan will provide for an opt-out to the tort system for asbestos claimants from any aggregate resolution process to protect claimants' right to a jury trial and ensure claimants' due process rights are protected. Such an opt-out would give asbestos claimants' the choice to pursue their claims in local state or federal court with a waiver by the Debtors of any removal rights, ensuring that asbestos claimants' have their choice of venue to adjudicate their claims. This remains an essential non-economic condition precedent to any outcome in this case.

CONCLUSION

This case, and the Texas Two-Step it attempts to legitimize, threatens the integrity of bankruptcy. It has attracted national attention. Congress has held two Senate Judiciary Committee hearings on the Two-Step.[126]

The Committee looks forward to discussing how justice might be achieved as swiftly as possible at the status conference before the Court on October 24, 2024.

[*The remainder of this page has been intentionally left blank*]

[125] *See* Order Denying Motions to Dismiss at 40; *Ortiz*, 527 U.S. at 817-18.

[126] *Evading Accountability: Corporate Manipulation of Chapter 11 Bankruptcy*, Senate Judiciary Committee, Sept. 19, 2023, https://www.judiciary.senate.gov/committee-activity/hearings/evading-accountability-corporate-manipulation-of-chapter-11-bankruptcy; *Abusing Chapter 11: Corporate Efforts to Side-Step Accountability Through Bankruptcy*, Senate Judiciary Committee, Subcommittee on Federal Courts, Oversight, Agency Action, and Federal Rights, Feb. 8, 2022, https://www.judiciary.senate.gov/committee-activity/hearings/abusing-chapter-11-corporate-efforts-to-side-step-accountability-through-bankruptcy.

Respectfully submitted, Dated October 10, 2024

HAMILTON STEPHENS STEELE
+ MARTIN, PLLC

/s/ Robert A. Cox, Jr.
Glenn C. Thompson (Bar No. 37221)
Robert A. Cox, Jr. (Bar No. 21998)
525 North Tryon Street, Suite 1400
Charlotte, North Carolina 28202
Telephone: (704) 344-1117
Facsimile: (704) 344-1483
Email: gthompson@lawhssm.com
rcox@lawhssm.com

Local Counsel for the Official Committee of Asbestos Personal Injury Claimants

CAPLIN & DRYSDALE, CHARTERED
Kevin C. Maclay (admitted *pro hac vice*)
Todd E. Phillips (admitted *pro hac vice*)
Jeffrey A. Liesemer (admitted *pro hac vice*)
James P. Wehner (admitted *pro hac vice*)
1200 New Hampshire Ave NW, 8th Floor
Washington, DC 20036
Telephone: (202) 862-5000
Facsimile: (202) 429-3301
Email: kmaclay@capdale.com
tphillips@capdale.com
jliesemer@capdale.com
jwehner@capdale.com

Counsel to the Official Committee of Asbestos Personal Injury Claimants

ROBINSON & COLE LLP
Natalie D. Ramsey (admitted *pro hac vice*)
Davis Lee Wright (admitted *pro hac vice*)
1201 North Market Street, Suite 1406
Wilmington, Delaware 19801
Telephone: (302) 516-1700
Facsimile: (302) 516-1699
Email: nramsey@rc.com
dwright@rc.com

Counsel to the Official Committee of Asbestos Personal Injury Claimants

David Neier (admitted *pro hac vice*)
Carrie V. Hardman (admitted *pro hac vice*)
WINSTON & STRAWN LLP
200 Park Avenue
New York, NY 10166
Telephone: (212) 294-6700
Fax: (212) 294-4700
Email: dneier@winston.com
chardman@winston.com

Special Litigation Counsel to the Official Committee of Asbestos Personal Injury Claimants