Docket #0090 Date Filed: 1/25/2021

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re ALDRICH PUMP LLC, *et al.*, Debtors,	Chapter 11 Case No. 20-30608 (JCW) (Jointly Administered)
ALDRICH PUMP LLC and MURRAY BOILER LLC, Plaintiffs, v. THOSE PARTIES TO ACTIONS LISTED ON APPENDIX A TO COMPLAINT and JOHN AND JANE DOES 1-1000. Defendants.	Adversary Proceeding No. 20-03041 (JCW)

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

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PRELIMINARY STATEMENT

Pursuant to Rule 7056 of the Federal Rules of Bankruptcy Procedure and Rule 56 of the Federal Rules of Civil Procedure, plaintiffs Aldrich Pump LLC ("Aldrich") and Murray Boiler LLC ("Murray"), debtors and debtors in possession in these chapter 11 cases (together, the "Debtors"), move for partial summary judgment with respect to Count II of the complaint in this adversary proceeding (Adv. Pro. Dkt. 1, the "Complaint"). In Count II, the Debtors seek a declaratory judgment that any action filed outside of these chapter 11 cases against any of the Protected Parties to recover Aldrich/Murray Asbestos Claims against the Debtors (as those terms are defined therein) is automatically stayed by section 362(a) of title 11 of the United States Code (the "Bankruptcy Code").[1]

The Aldrich/Murray Asbestos Claims are personal injury claims against the Debtors arising from alleged exposure to asbestos in products manufactured or distributed by the Debtors' predecessors. The Debtors are now legally responsible for those claims. The Protected Parties are non-debtor affiliates of the Debtors, certain unaffiliated third parties indemnified by the Debtors for such claims, and the Debtors' insurers. None of the Protected Parties ever manufactured or distributed the products on which the Aldrich/Murray Asbestos Claims are based. As a result, any action seeking to hold a Protected Party liable for Aldrich/Murray Asbestos Claims against the Debtors is necessarily based on indirect liability theories, such as alter ego or successor liability.

[1] "Aldrich/Murray Asbestos Claim" means any asbestos-related claim against either Debtor, including all claims relating in any way to asbestos or asbestos-containing materials asserted against, or that could have been asserted against, Old TTC or Old Trane (each as defined herein). All capitalized terms not otherwise defined herein have the meaning ascribed to them in the Complaint.

While the Debtors contend that no such viable claims exist against the Protected Parties, it is nevertheless the case that any such claims, if they did exist, belong to the Debtors and are thus now property of the Debtors' estates. Accordingly:

(i) Any action to recover Aldrich/Murray Asbestos Claims from a non-debtor affiliate of the Debtors is barred by the automatic stay because it is an act to exercise control over causes of action against the affiliate that are property of the Debtors' estates. Such action is also stayed because it is in practical effect an action against the Debtors and an action to recover a claim against the Debtors.

(ii) Any action to recover Aldrich/Murray Asbestos Claims from unaffiliated third parties indemnified by the Debtors is barred by the automatic stay for the same reasons.

(iii) Any action against the Debtors' insurers to recover Aldrich/Murray Asbestos Claims is barred by the automatic stay because it constitutes an act to exercise control over the Debtors' insurance policies, which are property of the Debtors' estates.

In the Complaint, the Debtors also seek a preliminary injunction under section 105(a) of the Bankruptcy Code to enjoin the defendants from pursuing Aldrich/Murray Asbestos Claims against the Protected Parties, so as to enable the Debtors to successfully reorganize and confirm a plan that will resolve those claims through a trust under section 524(g) of the Bankruptcy Code. An evidentiary hearing on the request for a preliminary injunction is scheduled to commence on May 5, 2021, and the parties are in the midst of extensive pretrial discovery to prepare for that hearing. None of that discovery, however, bears on the legal question of whether pursuit of Aldrich/Murray Asbestos Claims against the Protected Parties is barred by the automatic stay, and all facts that are germane to resolving that legal question

are beyond genuine dispute. Accordingly, the Debtors' request in Count II for a declaration on the applicability of the automatic stay is ripe for resolution now. For the reasons detailed herein, the Debtors are entitled to summary judgment in their favor on that Count.

STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE DISPUTE

A. Background

1. The defendants in this adversary proceeding (collectively, the "Defendants") are named plaintiffs in the lawsuits alleging Aldrich/Murray Asbestos Claims that are listed on Appendix A to the Complaint, as well as John and Jane Does 1-1000.[2] The Debtors seek a declaration that section 362(a) of the Bankruptcy Code automatically stays any action by the Defendants to recover Aldrich/Murray Asbestos Claims outside of these chapter 11 cases against the Protected Parties, which are:

a. former Trane Technologies Company LLC (together with its predecessors, "Old TTC"), an entity that no longer exists and whose asbestos-related liability was allocated by divisional merger to Aldrich;

b. former Trane U.S. Inc. (together with its predecessors, "Old Trane"), an entity that no longer exists and whose asbestos-related liability was allocated by divisional merger to Murray;

c. the Debtors' non-debtor affiliates listed on Appendix B to the Complaint (the "Non-Debtor Affiliates"), including, without limitation, Trane Technologies Company LLC ("New Trane Technologies"), and Trane U.S. Inc. ("New Trane");

[2] Appendix A identifies the civil action number (where available) for each lawsuit and the law firms representing each of the Defendants on account of their asbestos claims.

d. certain entities listed on Appendix B to the Complaint that are not affiliates of the Debtors but which Aldrich or Murray has indemnified contractually, or with respect to which Aldrich or Murray otherwise has agreed to be responsible, for Aldrich's or Murray's asbestos-related liabilities (the "Indemnified Parties"); and

e. insurance entities listed on Appendix B to the Complaint, which have or had insured Aldrich or Murray for asbestos-related liabilities (the "Insurers").

Old TTC

2. Old TTC was formed in connection with an overall corporate restructuring in 2020 (the "2020 Corporate Restructuring"). Old TTC was the successor by merger to the former Ingersoll-Rand Company ("Old IRNJ," a New Jersey corporation), whose operations date back to 1905. Old IRNJ never mined or used asbestos to manufacture a product. Instead, it created or acquired certain entities that manufactured or distributed products—primarily pumps and compressors—that in some cases incorporated asbestos-containing sealing products (*i.e.*, gaskets and, to a lesser degree, packing) manufactured and designed by third parties. Old IRNJ generally eliminated the use of asbestos-containing products by the mid-1980s. Supplemental Declaration of Allan Tananbaum in Support of Debtors' Complaint for Injunctive and Declaratory Relief and Related Motions, filed contemporaneously herewith (the Tananbaum Supplemental Declaration"), ¶ 8; Declaration of Allan Tananbaum in Support of Debtors' Complaint for Injunctive and Declaratory Relief, Related Motions, and the Chapter 11 Cases, (Adv. Pro. Dkt. 3, the "Tananbaum Declaration"), ¶¶ 10-12; Declaration of Ray Pittard in Support of First Day Pleadings, (Dkt. 27, the "Pittard Declaration"), ¶¶ 8-11.

3. As a result of its divisional merger in connection with the 2020 Corporate Restructuring (described in ¶¶ 7-9, infra), Old TTC ceased to exist and its assets and liabilities were allocated between Aldrich and New Trane Technologies. Tananbaum Supp. Decl. ¶¶ 7-10; Pittard Declaration ¶¶ 10, 14.

Old Trane

4. Old Trane, whose operations date back to 1913, never mined asbestos, nor did it use asbestos to manufacture a product. Historically, the principal business of Old Trane was the design and manufacture of what today is known as climate control (HVAC) equipment, some of which, at times, included asbestos-containing internal component parts—primarily gaskets—manufactured and designed by third parties. Old Trane generally eliminated the use of such asbestos-containing parts during the 1970s and 1980s. Tananbaum Decl. ¶¶ 10, 14.

5. In 1984, Old Trane merged with American Standard, Inc. ("American Standard"), which had the primary business of manufacture and sale of hydronics equipment, such as boilers and ancillary products. Prior to the mid-1950s, some of these boilers may have been insulated externally with standard asbestos-containing insulation of that time period. American Standard no longer made boilers as of the mid-1970s and none of its boilers at that time incorporated external asbestos insulation. Tananbaum Decl. ¶ 15.

6. As a result of its divisional merger in connection with the 2020 Corporate Restructuring (described in ¶¶ 7-9, infra), Old Trane ceased to exist and its assets and liabilities were allocated between Murray and New Trane. Tananbaum Supp. Decl. ¶¶ 11-12; Pittard Decl. ¶¶ 10, 14.

B. The 2020 Corporate Restructuring

7. On May 1, 2020, both Old TTC and Old Trane completed divisional mergers under the Texas Business Organizations Code (the "TBOC"). Tananbaum Supp. Decl. ¶ 7; Pittard Decl. ¶ 14. The relevant sections of the TBOC permit a single entity to divide into two or more new entities (at which point the existing entity can cease to exist) and to allocate the assets and liabilities of the old entity among those new entities. To effect the division of a single Texas entity into two or more new entities, such transaction must be set forth in a written "plan of merger." See TBOC Section 10.001(a). The plan of merger must be in writing and must include (i) the name and organizational form of the entity that is to be divided and will cease to exist; (ii) the name and organizational form of each new entity that is to be created; (iii) the allocation among the new entities of the property of the entity that is to be divided and will cease to exist; and (iv) the allocation among the new entities of the liabilities of the entity that is to be divided and will cease to exist. Id. Sections 10.002 and 10.003. Once the divisional merger becomes effective, the allocation of such assets and liabilities among the newly created entities becomes effective as well. Id. Section 10.08.

8. Old TTC and Old Trane utilized the Texas divisional merger statute to complete their divisional mergers in connection with the 2020 Corporate Restructuring. As a result of the divisional mergers:

Old TTC Divisional Merger

a. Old TTC ceased to exist;

b. Aldrich and New Trane Technologies were formed;

c. Aldrich was allocated certain of Old TTC's assets, including its asbestos-related insurance assets, and became solely responsible for

certain of its liabilities, including the Aldrich/Murray Asbestos Claims against Old TTC and the defense of those claims; and

d. New Trane Technologies was allocated all other assets of Old TTC and became solely responsible for all other liabilities of Old TTC.

Old Trane Divisional Merger

a. Old Trane ceased to exist;

b. Murray and New Trane were formed;

c. Murray was allocated certain of Old Trane's assets, including its asbestos-related insurance assets, and became solely responsible for certain of its liabilities, including the Aldrich/Murray Asbestos Claims against Old Trane and the defense of those claims; and

d. New Trane was allocated all other assets of Old Trane and became solely responsible for all other liabilities of Old Trane.

Pittard Decl. ¶¶ 14-15; Tananbaum Supp. Decl. ¶¶ 7-12.

9. Thus, as a result of the its divisional merger, Old TTC ceased to exist and all of its assets and liabilities were allocated between Aldrich and New Trane Technologies. Aldrich is now a North Carolina limited liability company and New Trane Technologies is now a Delaware limited liability company. The headquarters and principal place of business for both Aldrich and New Trane Technologies are in Davidson, North Carolina, and both are subsidiaries of the same holding company, a Delaware corporation. Pittard Declaration ¶¶ 8, 10, 13-16 and Annex 1; Tananbaum Supp. Decl. ¶¶ 8-10, 16.

10. Similarly, as a result of the its divisional merger, Old Trane ceased to exist and all of its asset and liabilities were allocated between Murray and New Trane. Murray is now a North Carolina limited liability company and New Trane is now a Delaware corporation. Murray is an indirect subsidiary of New Trane, and the headquarters and

principal place of business for both Murray and New Trane are in Davidson, North Carolina. Pittard Decl. ¶¶ 8, 10, 13-16 and Annex 1; Tananbaum Supp. Decl. ¶¶ 11-13, 16.

11. Among the assets specifically allocated to Aldrich and Murray in their divisional mergers were "All Causes of Action" related in any way to the assets or liabilities allocated to Aldrich and Murray. Pittard Decl. ¶ 16. This allocation included, for Aldrich and Murray, respectively, all "Causes of Actions and Proceedings that seek to hold any Person responsible for the Asbestos Related Liabilities" of such entity. Tananbaum Supp. Decl. ¶ 14; Plans of Divisional Merger for Old TTC and Old Trane (attached as Exhibits 1-2 to Tananbaum Supp. Decl.), Section 5(b)(i) and related Schedule 5(b)(i) at ¶ 4.

12. As part of the 2020 Corporate Restructuring, New Trane Technologies and Aldrich entered into a funding agreement that Aldrich asserts ensures that Aldrich had the same ability to pay the Aldrich/Murray Asbestos Claims against it as Old TTC had before the 2020 Corporate Restructuring. As part of the 2020 Corporate Restructuring, New Trane and Murray also entered into a funding agreement that Murray asserts ensures that Murray had the same ability to pay the Aldrich/Murray Asbestos Claims against it as Old Trane had before the 2020 Corporate Restructuring. Pittard Decl. ¶¶ 13, 17-18; Tananbaum Supp. Decl. ¶¶ 8-9, 11-12.

13. Under the express terms of their divisional mergers, Aldrich is solely responsible for Old TTC's asbestos liability and Murray is solely responsible for Old Trane's asbestos liability. Neither New Trane Technologies nor New Trane ever produced the asbestos-containing products that give rise to the Aldrich/Murray Asbestos Claims against Aldrich and Murray, and under the express terms of the respective divisional mergers, each

has no responsibility for such liabilities. Pittard Decl. ¶ 15; Tananbaum Supp. Decl. ¶¶ 9, 12; Plans of Divisional Merger for Old TTC and Old Trane (attached as Exhibits 1-2 to Tananbaum Supp. Decl.), Sections 5(c)(i) and 5(d)(i) and related Schedule 5(c)(i).[3]

14. At various times, the Debtors communicated these allocations to counsel for some Defendants after the 2020 Corporate Restructuring. Nonetheless, in the wake of the 2020 Corporate Restructuring, the Defendants commenced naming Protected Parties such as New Trane Technologies and New Trane as defendants in newly-filed suits asserting Aldrich/Murray Asbestos Claims or adding (or seeking to add) such Protected Parties as defendants to previously-filed suits asserting Aldrich/Murray Asbestos Claims. Over roughly one month, New Trane Technologies or New Trane were named in, or added (or sought to be added) as a defendant to, approximately 65 such cases. Tananbaum Decl. ¶ 34.

15. In some of these cases, the Defendants sought to recover Aldrich/Murray Asbestos Claims against New Trane Technologies or New Trane by claiming that the 2020 Corporate Restructuring was a fraudulent conveyance. Tananbaum Decl. ¶ 34. They did so even though the Debtors explained that their funding agreements with New Trane Technologies and New Trane ensured that each of the Debtors had the same ability to fund the costs of defending and resolving present and future asbestos claims as Old TTC and Old Trane, as applicable, had before the 2020 Corporate Restructuring. Pittard Decl. ¶ 17. Several actions to recover Aldrich/Murray Asbestos Claims were asserted against a Protected

[3] In addition, in connection with the 2020 Corporate Restructuring, Aldrich has indemnified each of the Non-Debtor Affiliates with respect to Aldrich/Murray Asbestos Claims against Aldrich that are asserted against the affiliate, and Murray has indemnified each of the Non-Debtor Affiliates with respect to Aldrich/Murray Asbestos Claims against Murray that are asserted against the affiliate. Tananbaum Supp. Decl. ¶ 15.

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Party alleging alter ego and/or successor liability claims. Tananbaum Decl. ¶ 34; Tananbaum Supp. Decl. ¶ 18 and Exhibits 5-9.

16. On June 18, 2020 (the "Petition Date"), the Debtors filed voluntary chapter 11 petitions in this Court.

C. The Protected Parties

17. On the Petition Date, the Debtors filed the Complaint commencing this adversary proceeding. Count II of the Complaint, among other things, seeks a declaration that the automatic stay imposed by section 362(a) of the Bankruptcy Code enjoins the prosecution or commencement of actions to recover Aldrich/Murray Asbestos Claims against the Protected Parties, which are three sets of entities.

Old TTC, Old Trane, and The Non-Debtor Affiliates

18. The first set of entities is the Non-Debtor Affiliates of the Debtors, including New Trane Technologies and New Trane. It also includes Old TTC and Old Trane, both of which ceased to exist as a result of the 2020 Corporate Restructuring.

The Indemnified Parties

19. The second set of Protected Parties is the Indemnified Parties, which are not affiliated with the Debtors but were indemnified by Old TTC or Old Trane, in connection with various historical transactions, for liability alleged against them on account of the Aldrich/Murray Asbestos Claims, or with respect to which Old TTC or Old Trane otherwise agreed to be responsible for any such alleged liability. Tananbaum Decl. ¶ 27.

20. The majority of historical Aldrich/Murray Asbestos Claims asserted against the Indemnified Parties results from two transactions involving two joint ventures,

Ingersoll-Dresser Pump Company ("IDP") and Dresser-Rand Company ("Dresser-Rand"). These joint ventures were formed in 1992 and 1986, respectively, and were sold by Old TTC in 2000 and 2004, respectively. Tananbaum Decl. ¶ 28.

21. IDP was a partnership formed between Old TTC and Dresser Industries Inc. ("Dresser") in 1992. Each partner retained its respective pre-formation products liabilities for the pump businesses and product lines that each contributed to IDP. In 1999, Old TTC acquired 100% ownership of IDP and, in 2000, it sold IDP to Flowserve Corporation and Flowserve Red Corporation (together, "Flowserve"). As part of that transaction (the "Flowserve Transaction"), Old TTC (and now Aldrich) indemnified Flowserve, its affiliates (including IDP), and various related parties, for any alleged liability on account of Aldrich/Murray Asbestos Claims arising from product lines or businesses of IDP before the closing of the Flowserve Transaction. Tananbaum Decl. ¶ 28.

22. Dresser-Rand was a partnership formed between Old TTC and Dresser in 1986. Both partners contributed operating assets comprised of their reciprocating compressor and turbo-machinery businesses to Dresser-Rand; however, pre-Dresser-Rand formation products liabilities were retained by the entities that had such liabilities. In 1999, Old TTC and its affiliates acquired 100% ownership of Dresser-Rand, and in 2004, they sold Dresser-Rand to FRC Acquisitions LLC ("FRC"). As part of the transaction (the "FRC Transaction"), Old TTC (and now Aldrich) indemnified FRC, its affiliates (including Dresser-Rand), and various related parties, for any alleged liability on account of Aldrich/Murray Asbestos Claims arising from product lines or businesses of Dresser-Rand before the closing of the FRC Transaction. Tananbaum Decl. ¶ 29.

23. In addition to Old TTC's indemnification obligations arising from the Flowserve and FRC Transactions, other contractual indemnities and obligations to other unaffiliated third parties for Aldrich/Murray Asbestos Claims were allocated to Aldrich and Murray in the divisional mergers of Old TTC and Old Trane. Those unaffiliated third parties are listed as Protected Parties on Appendix B to the Complaint. The number of Aldrich/Murray Asbestos Claims historically tendered by such parties to Old TTC and Old Trane, however, is substantially less than such claims tendered as a result of indemnities provided in connection with the Flowserve and FRC Transactions. Tananbaum Decl. ¶ 30.

The Insurers

24. The final set of Protected Parties is the Insurers. The Insurers provide, or have provided, insurance to a Debtor, or to its predecessors, covering Aldrich/Murray Asbestos Claims. As of the Petition Date, Aldrich asserts that its insurance agreements provide approximately $750 million in unexhausted limits for coverage of asbestos claims against Aldrich. As of the Petition Date, Murray asserts that its insurance agreements provide approximately $1.0 billion in unexhausted limits for coverage of asbestos claims against Murray. Murray also asserts that unsettled, high-level excess policies provide Murray with in excess of $750 million in additional unexhausted coverage limits. The Debtors' insurance agreements generally do not provide the Debtors with "dollar-for-dollar" coverage. As a result, for any covered asbestos claim, the applicable Insurer is obligated to reimburse the Debtor only for a portion of the amount of the claim paid. Tananbaum Supp. Decl. ¶ 17.

LEGAL STANDARD

Summary judgment is appropriate under Rule 56 of the Federal Rules of Civil Procedure "when the evidence, viewed in the light most favorable to the party against whom summary judgment is sought, could not lead a rational fact finder to find for the non-moving party, and the opposing party does not produce sufficient evidence to demonstrate a genuine, dispositive issue exists for trial." In re Hilbrant, No. 09-30556, 2012 WL 5248615 at *2 (Bankr. W.D.N.C. Oct. 24, 2012). "[I]n order to survive a motion for summary judgment, '[t]he mere existence of a scintilla of evidence in support of the [non-movant's] position will be insufficient; there must be evidence on which the jury could reasonably find for the [non-movant].'" Catawba Indian Tribe of S.C. v. City of North Myrtle Beach, No. 99-2177, 2000 WL 770141 at *3 (4th Cir. June 15, 2000) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986) (brackets by the Fourth Circuit)).

ARGUMENT

I. ACTIONS AGAINST THE NON-DEBTOR AFFILIATES TO RECOVER ALDRICH/MURRAY ASBESTOS CLAIMS ARE AUTOMATICALLY STAYED

A. The Defendants' Actions Seek Recovery from the Non-Debtor Affiliates Based on Alleged Alter Ego or Successor Liability Claims

None of the Non-Debtor Affiliates produced, distributed, or used any of the asbestos-related products that underlie the Aldrich/Murray Asbestos Claims against the Debtors. Indeed, New Trane Technologies and New Trane did not even exist until they were created by the 2020 Corporate Restructuring. Thus, no Defendant can allege a direct claim against a Non-Debtor Affiliate. See Tronox, Inc. v. Kerr-McGee Corp. (In re Tronox Inc.), 855 F.3d 84, 104 (2d Cir. 2017) (toxic tort claimants could not assert direct liability claims

against third parties that acquired debtors' operations that gave rise to such tort claims since those third parties did not exist at the time of the alleged tortious actions, but instead were created later to acquire such assets).[4]

Instead, holders of the Aldrich/Murray Asbestos Claims can allege the ability to recover from a Non-Debtor Affiliate based solely "on so-called 'derivative claims'—*i.e.*, claims 'based on rights "derivative" of, or "derived" from'" a Debtor (or its predecessors). Tronox, 855 F.3d at 99 (citation omitted). The liability of a Non-Debtor Affiliate would allegedly arise "not from [the affiliate's] own conduct, but from its alleged existence as the alter ego and successor to the liabilities of the . . . actual alleged tortfeasor . . . ." Id. at 106. As Judge Bernstein observed in granting a similar request for a declaratory judgment that 1,600 lawsuits by asbestos claimants against non-debtor affiliates and their principals were automatically stayed by section 362(a), the asbestos claimants:

> seek to disregard the corporate separateness among [the debtor] and [the other defendants in the claimants' lawsuits] based upon various common law theories, primarily, piercing the corporate veil and successor tort liability. These claims do not seek to recover fraudulently transferred property, nor, if successful, limit recovery to the transferred property or its value. Instead, these remedies would subject all of the assets of these non-debtor defendants to the claims of [the debtor's] creditors.

Keene Corp. v. Coleman (In re Keene Corp.), 164 B.R. 844, 850 (Bankr. S.D.N.Y. 1994).

[4] Old TTC and Old Trane no longer exist, and their liabilities for the Aldrich/Murray Asbestos Claims were allocated to the Debtors in the 2020 Corporate Restructuring. Thus, at this point, the commencement or continuation of an action against Old TTC or Old Trane to recover Aldrich/Murray Asbestos Claims has only one purpose: the recovery of claims against a Debtor. Any such action against Old TTC or Old Trane is therefore stayed by section 362(a)(1). 11 U.S.C. § 362(a)(1); see In re Heating Oil Partners, No. 3:08-CV-1976 CSH, 2009 WL 5110838 at *6-*7 (D. Conn. Dec. 17, 2009) (holding that a default judgment entered post-petition against a predecessor entity of the debtor was void *ab initio* because action in which default judgment was entered was automatically stayed upon the successor entity's chapter 11 filing), aff'd sub nom. In re Heating Oil Partners, LP, 422 F. App'x 15 (2d Cir. 2011).

Here, some Defendants seek to recover their asbestos claims from a Non-Debtor Affiliate by challenging the 2020 Corporate Restructuring. They claim that as a result of some alleged unfairness, equity requires the corporate veil between a Debtor and its affiliate to be pierced so as to treat the affiliate as the "alter ego" of the Debtor (or its predecessor) and hold it responsible for the Debtor's obligations. See Tananbaum Supp. Decl. ¶ 18 and Exhibits 5-6. Other Defendants claim that, as a result of the 2020 Corporate Restructuring, a Non-Debtor Affiliate should be deemed the legal successor to the asbestos liability allocated to a Debtor, based on one or more state law successor liability theories. Id. ¶ 18 and Exhibits 7-9.

The Debtors dispute that the 2020 Corporate Restructuring was unfair in any way or that there are any facts that would support an alter ego or successor liability claim against any Non-Debtor Affiliate. That dispute, however, is not material with respect to whether the automatic stay applies to any action in which a Defendant alleges such claims. Instead, as detailed below, what is material here is that, *if* such claims existed, they would be property of the Debtors' estates to be pursued, if at all, on behalf of the estates for the benefit of *all* who are entitled to share therefrom, including those with "future demands for payment" against the Debtors arising from asbestos exposure. 11 U.S.C. § 524(g)(2)(B)(ii)(I). See generally Alvarez v. Ward, No. 1:11CV03, 2011 WL 7025906 at *4 (W.D.N.C. Oct. 17, 2011) ("All the creditors, not just Plaintiffs, have an interest in exposing the transactions if they were in fact unlawful," holding that the "proper remedy" in such a case is "for the bankruptcy trustee to bring" the claims on behalf of the estate).

B. Any Alter Ego and Successor Liability Claims Alleged by the Defendants Are Stayed by Section 362(a)(3) Because They Seek To Exercise Control over Claims that Are Property of the Debtors' Estates

Section 541 of the Bankruptcy Code establishes that the filing of a bankruptcy case creates an "estate." 11 U.S.C. § 541(a). That estate includes "all legal or equitable interests of the debtor in property as of the commencement of the case," wherever located and by whomever held. Id. § 541(a)(1). Thus, the estate "includes legal causes of action the debtor had against others at the commencement of the bankruptcy case." Baillie Lumber Co. v. Thompson (In re Icarus Holding, LLC), 391 F.3d 1315, 1319 (11th Cir. 2004). See Steyr-Daimler-Puch of Am. Corp. v. Pappas, 852 F.2d 132, 135 (4th Cir. 1988) (creditor's alter ego claim against debtor's principal and affiliate was cause of action that debtor could assert under state law and thus was "'property of the estate' within the meaning of § 541(a)(1)").

Section 362(a) of the Bankruptcy Code states that the filing of a bankruptcy petition "operates as a stay, applicable to all entities, of . . . (3) any act . . . to exercise control over property of the estate; . . ." 11 U.S.C. § 362(a). Accordingly, when claims against a non-debtor "are property of the estate under section 541(a), any similar extraneous lawsuits brought by individual creditors will be subject to the automatic stay provision of 11 U.S.C. § 362(a)(3)." Baillie Lumber, 391 F.3d at 1319. As the Fourth Circuit explained in Steyr:

> Since the alter ego claim against Pappas and Hawk U.S.A. is "property of the estate" within the meaning of § 541(a)(1), certain conclusions follow. First, the automatic stay applies. Moreover, because the claim is property of the estate, the trustee is given full authority over it. Thus, before . . . a creditor may pursue a claim, there must be a judicial determination that the trustee in bankruptcy has abandoned the claim. Without such a determination, a creditor seeking to pursue a claim cannot maintain it.

852 F.2d at 136 (citations omitted). "Thus," as Judge Mullen has observed, "in the Fourth Circuit the rule is settled that Code § 362(a)(3) stays automatically—without a restraining order—a creditor's claim against a third-party that the debtor can assert for the benefit of the estate." Litchfield Co. of S.C. Ltd. P'ship v. Anchor Bank (In re Litchfield Co. of S.C. Ltd. P'ship), 135 B.R. 797, 803 n.4 (W.D.N.C. 1992).

To determine whether a creditor's claim against a non-debtor constitutes an act to exercise control over property of the estate, a court must answer two inquiries: (i) whether "the debtor could have asserted the claim on his own behalf under state law" and (ii) whether the individual creditor's claim against the non-debtor is a "general claim" available to the debtor's other creditors. Harrison v. Soroof Int'l, Inc., 320 F. Supp. 3d 602, 613 (D. Del. 2018); see Baillie Lumber, 391 F.3d at 1321. Those answers here establish that any alter ego and successor liability claims alleged by the Defendants exercise control over property of the Debtors' estates and are thus stayed by section 362(a)(3).

1. The Debtors Had Standing Under State Law To Assert Alter Ego and Successor Liability Claims at the Time They Commenced these Chapter 11 Cases

(a) The Debtors' Standing To Bring Alter Ego and Successor Liability Claims Is Governed by North Carolina Law

Whether a debtor had standing to assert a cause of action against another at the time it filed its bankruptcy case is a question of state law. Mitchell v. Greenberg (In re Creative Entm't, Inc.), No. 00-3114, 2003 Bankr. LEXIS 2468, *6 n.5 (Bankr. W.D.N.C. May 28, 2003); see also Alvarez v. Ward, 2011 WL 7025906 at *3; In re Midstate Mills, Inc., No. 13-50033, 2015 WL 5475295, *6 (Bankr. W.D.N.C. Sept. 15, 2015). As the court observed in Holcomb v. Pilot Freight Carriers, Inc., 120 B.R. 35 (M.D.N.C. 1990), the

Fourth Circuit, along with many other circuits, "has determined that whether a bankruptcy trustee alone has a right to bring alter ego claims, on behalf of unsecured creditors and the debtor corporation, is a matter which ultimately depends on whether the relevant state law provides that such actions belong to the corporation and creditors in general." Id. at 38.

To determine which state law is the "relevant state law" for this inquiry, courts use the choice-of-law rules of the forum state in which the bankruptcy case was filed. See Butler v. Enhanced Equity Fund II, LP (In re Amer. Ambulette & Ambulance Serv. Inc.), 560 B.R. 256, 262 & 269 (Bankr. E.D.N.C. 2016). Accord M-Tek Kiosk, Inc. v. Clayton, No. 1:15CV886, 2016 WL 2997505 at *5 (M.D.N.C. May 23, 2016) (it is settled in the Fourth Circuit "that a bankruptcy court faced with the issue of which substantive law to apply to a claim . . . applies the choice of law rules of the forum state") (citation omitted). Because it is the forum state here, North Carolina's choice-of-law rules determine which state law governs whether the Debtors had standing to assert alter ego and successor liability claims at the time the bankruptcy cases were filed. The choice-of-law rules "vary depending on the character of the claim at hand, i.e., whether the claim relates to torts, contracts, property, etc., or whether it is procedural as opposed to substantive in nature." Butler, 560 B.R. at 262.

With respect to alter ego claims, North Carolina (like most jurisdictions) applies the "internal affairs doctrine," which applies the law of the state in which the debtor is incorporated. See Butler, 560 B.R. at 269-70 (citing Dassault Falcon Jet Corp. v. Oberflex, Inc., 909 F. Supp. 345, 348-49 (M.D.N.C. 1995)). See generally M-Tek, 2016 WL 2997505 at *5 (Delaware law governed debtor's right to bring claim against alter ego because forum state's choice-of-law rules apply "internal affairs doctrine" to such claims and debtor was

Delaware corporation). Here, the Debtors were North Carolina limited liability companies when they commenced their chapter 11 cases. Thus, North Carolina law governs whether they had standing at that time to pierce their own corporate veils to assert alter ego claims.[5]

North Carolina law also governs whether the Debtors had standing to assert successor liability claims against a Non-Debtor Affiliate, as the principal places of business of the Debtors, their predecessors, and the alleged successors are all in North Carolina, giving that state "the most significant relationship to this claim." M-Tek, 2016 WL 2997505 at *8 (in determining whether claim was estate property, North Carolina law governed whether creditor's fraudulent transfer claim could have been brought by any of the debtor's creditors).

(b) **The Debtors Had Standing Under North Carolina Law To Pierce their Corporate Veils and Seek Recovery from an Alter Ego**

All courts that have examined the issue have held that North Carolina law empowers a corporation to seek to pierce its corporate veil to sue an alleged alter ego for the purpose of holding it responsible for the corporation's debts. See Alvarez v. Ward, No. 1:11CV03, 2012

[5] At the time of the 2020 Corporate Restructuring when they were formed, the Debtors were Texas limited liability companies. In addition, during the 2020 Corporate Restructuring, both Old TTC (the successor to Old IRNJ, a New Jersey corporation) and Old Trane (which was formerly a Delaware corporation) became entities formed under Texas law. See Tananbaum Supp. Decl. ¶¶ 8-13. Thus, it is conceivable that a claimant might contend that, under the "internal affairs doctrine," Texas (or even Delaware or New Jersey) law instead governs whether a Debtor had the right to assert the alleged alter ego claim when these bankruptcy cases were commenced, depending on what facts are alleged to support the claim and when the claim allegedly arose. See Keene, 164 B.R. at 847 n.3.

As detailed below, the law of Texas, Delaware, and New Jersey is identical to North Carolina law as to whether a corporation has a right to pierce its own veil to sue an alleged alter ego in order to hold it responsible for the corporation's debts. Accordingly, this Court does not need to resolve that particular choice-of-law question to determine whether a Defendant's assertion of such an alter ego claim is barred by the automatic stay. See Tronox, 855 F.3d at 104 & n.25 ("we need not resolve the parties' dispute concerning which state's law governs" because, under either Pennsylvania or Delaware law, alter ego claims were estate property "to the extent the claims qualify as 'general'"). In re Emoral Inc., 740 F.3d 875, 879 n.2 (3d Cir. 2014) (whether debtor had right to bring successor liability claim was governed by either New Jersey or New York law, and "the two states' relevant applicable legal standards are identical, rendering a choice-of-law analysis unnecessary"); Sterne Agee Grp., Inc. v. Robinson (In re Anderson & Strudwick, Inc.), No. 14-03175, 2015 WL 1651146, *6 n.4 (Bankr. E.D. Va. April 8, 2015) (same for New York and Virginia successor liability law, which are "'essentially the same'").

WL 113567, *4 n.5 (W.D.N.C. Jan. 13, 2012); Alvarez v. Ward, 2011 WL 7025906 at *3; Holcomb, 120 B.R. at 41-42; Midstate Mills, 2015 WL 5475295 at *7; Mitchell, 2003 Bankr. LEXIS 2468 at *26-*28. Those decisions all followed the Fourth Circuit's decision in Steyr.

In Steyr, the Fourth Circuit held that a debtor corporation had the right under Virginia law to bring an alter ego claim against its principal and an affiliate, and that the claim became property of the estate when the corporation filed its chapter 7 case. 852 F.2d at 136. The court reasoned that "[u]nder Virginia law, a corporation has an equitable interest in the assets of an alter ego because the corporation and the alter ego are 'one and the same.'" Id. (quoting Pepper v. Dixie Splint Coal Co., 165 Va. 179, 181 S.E. 406 (1935)). The Fourth Circuit in Steyr held that section 541(a) "brings the right of [the debtor corporation] to proceed against its alter ego and claim its equitable interest in assets of the alter ego into the bankruptcy estate," id., endorsing the Fifth Circuit's analysis of the same question under Texas law in S.I. Acquisition, Inc. v. Eastway Delivery Serv., Inc. (In re S.I. Acquisition, Inc.), 817 F.2d 1142, 1152-53 (5th Cir. 1987).

In analyzing Texas law on this issue, the Fifth Circuit in S.I. Acquisition concluded:

> Not surprisingly, we have found no Texas law suggesting that a corporation could or could not itself bring an alter ego claim. Even so, we note that the predominate policy of Texas alter ego law is that the control entity that has misused the corporate form will be held accountable for the corporation's obligations. [Citation omitted]; see also Valdes [v. Leisure Resource Group, Inc., 810 F.2d 1345, 1353 (5th Cir. 1987)] (alter ego doctrine applies to hold dominant entity responsible for subservient company's debt since dominant entity was responsible for creating the debts). Since the corporation has an independent existence at law, we do not believe it is inconsistent in light of the above policy to say that a corporation may pierce its own corporate veil and hold accountable those who have misused the corporation in order to meet its corporate obligations.

817 F.2d at 1152. In reaching that conclusion, the Fifth Circuit found persuasive Judge Jones' explanation in In re Western World Funding, Inc., 52 B.R. 743 (Bankr. D. Nev. 1985), that "[t]he corporation may be thought of as a separate legal entity which 'has an interest of its own in assuring that it can meet its responsibility to its creditors,' [citation omitted] while at the same time allowing it to argue that it should be deemed to be identical to its alleged alter ego for purposes of paying those creditors." Id. at 784. Judge Jones reasoned "[t]here is only a practical—not a legal or logical—difficulty in a corporation's bringing an alter ego action in its own name: The defendants who so completely dominate the corporation as to constitute its alter egos are not likely to institute an action to determine their own liability for corporate debts." Id. He concluded: "Therefore, it is not surprising that the parties can produce no such case. The corporation needs an independent voice, such as a trustee in bankruptcy, in order to act to protect its creditors." Id.

In Holcomb, Judge Bullock adopted Magistrate Judge Eliason's extensive review of North Carolina law governing alter ego claims. 120 B.R. at 38-42. Based on that review, Magistrate Judge Eliason rejected the argument that North Carolina law was "radically different" from the Nevada law applied by Judge Jones in Western World Funding and the Virginia law applied by the Fourth Circuit in Steyr. 120 B.R. at 39-40. Instead, he found:

> Having completed this examination of North Carolina law, the Court finds it to be entirely consistent with the Fourth Circuit's requirement in Steyr that a corporation may be said to have an equitable interest in the assets of an alter ego when they are one and the same. Steyr, 852 F.2d at 136. Thus, in North Carolina, alter ego claims, which are based on factors which establish that the controlled corporation and the alter ego have the same identity, belong to the bankruptcy estate and must be prosecuted by the trustee.

Id. at 41-42. Magistrate Judge Howell reached the very same conclusion in Alvarez:

> North Carolina law, like Virginia law, treats a corporation and its alter-ego as "one and the same . . . ." Fischer Inv. Capital, Inc. v. Catawba Dev., Corp., 689 S.E.2d 143, 147 (N.C. Ct. App. 2009) (quoting Strategic Outsourcing, Inc. v. Stacks, 625 S.E.2d 800, 804 (N.C. Ct. App. 2006)). Consistent with the Fourth Circuit's holding in [Steyr], a corporation has an interest in the assets of its alter ego, and, thus, an alter ego claim is the property of the estate for purposes of Section 541(a)(1).

2011 WL 7025906 at *3 (citing Steyr, 852 F.2d at 136, and Holcomb, 120 B.R. at 41-42). Relying on Holcomb and Alvarez, the bankruptcy court in this District has repeatedly held that a corporation has the right to sue an alleged alter ego under North Carolina law and that such claim becomes property of the estate when the corporation files a bankruptcy case. Midstate Mills, 2015 WL 5475295 at *7; Mitchell, 2003 Bankr. LEXIS 2468 at *26-*28.

To the extent that a party might assert instead that Texas, Delaware, or New Jersey law governs whether the Debtors have standing to bring an alter ego claim against a Non-Debtor Affiliate (see note 5, supra), courts applying the law from each of those states have reached the same conclusion. See Tronox, 855 F.3d at 104 (citing In re Alper Holdings USA, Inc., 398 B.R. 736, 759 (S.D.N.Y. 2008) ("[U]nder Delaware law, a trustee possesses standing to bring—and by logical extension, settle and release—an alter ego claim on behalf of a creditor of the debtor, as long as the claim qualifies as a 'general' claim.")); S.I. Acquisition, 817 F.2d at 1153 (corporation had right under Texas law to bring alter ego claim, which became property of estate when corporation filed bankruptcy case); Harrison, 320 F. Supp. 3d at 614-17 (noting "a number of federal district courts" have all concluded "that the Delaware Supreme Court would allow a subsidiary to self-pierce its corporate veil

to reach its parent" in holding that debtor could have "asserted an alter ego claim on its own behalf under Delaware state law"); M-Tek, 2016 WL 2997505 at *6 (same); Tsai v. Bldgs. by Jamie, Inc. (In re Bldgs. by Jamie, Inc.), 230 B.R. 36, 43 (Bankr. D.N.J. 1998) (corporation can sue alter ego under New Jersey law, noting "majority of courts in other jurisdictions that have addressed the issue of authority to pursue an alter ego action on behalf of a corporate debtor have also held that the trustee has standing" to assert such claim).

(c) The Debtors Also Had Standing under North Carolina Law To Bring Successor Liability Claims

As is the case in most states, the general rule in North Carolina is, "'where one company sells or otherwise transfers all its assets to another company, the latter is not liable for the debts and liabilities of the transferor.' City of Richmond v. Madison Mgmt. Grp., Inc., 918 F.2d 438, 450 (4th Cir. 1990) (quoting 15 W. Fletcher, Cyclopedia of the Law of Private Corporations, § 7122, at 188 (rev. perm. ed. 1983))." Leonard v. Bed, Bath & Beyond, Inc., No.5:15-CV-00284, 2016 WL 158587, *2 (E.D.N.C. Jan. 8, 2016). And like most other states, North Carolina recognizes four exceptions to the general rule:

> (1) where there is an express or implied agreement by the purchasing corporation to assume the debt or liability; (2) where the transfer amounts to a de facto merger of the two corporations; (3) where the transfer of assets was done for the purpose of defrauding the corporation's creditors; or (4) where the purchasing corporation is a "mere continuation" of the selling corporation in that the purchasing corporation has some of the same shareholders, directors, and officers.

Leonard, 2016 WL 158587 at *3 (citing G.P. Publ'ns, Inc. v. Quebecor Printing-St. Paul, Inc., 481 S.E.2d 674, 679 (N.C. Ct. App. 1997) (citing Budd Tire Corp. v. Pierce Tire Co., 370 S.E.2d 267, 269 (N.C. Ct. App. 1988))).

In Mitchell, this Court noted that whether state law allows a corporation (or its receiver) to recover on a claim against an alleged successor under one of these exceptions "is apparently a question of first impression under North Carolina law." 2003 Bankr. LEXIS 2468 at *28-*29. Finding that "[s]uch a claim is substantially similar to an alter ego claim because it seeks to recover assets of a corporation and to make these available to satisfy creditor claims," the Court held that the debtor could assert a successor liability claim under North Carolina law and that the claim became property of the estate under section 541(a) when the corporation's chapter 7 case was commenced. Id. (citing Keene, 164 B.R. at 853).

As was this Court's reasoning in Mitchell, Judge Bernstein's reasoning in Keene was based on the finding that "[t]he principles relating to successor tort liability, and the results which they are designed to achieve, are similar to piercing the corporate veil." 164 B.R. at 852. Applying New York law on successor liability that was the same as the North Carolina law detailed in Leonard, id., Judge Bernstein declared that the automatic stay barred the asbestos claimants from pursuing their actions against the debtor's affiliates on successor liability claims, explaining that "the remedy against a successor corporation for the tort liability of the predecessor is, like the piercing remedy, an equitable means of expanding the assets available to satisfy creditor claims" and that, for "the same reasons stated with respect to the piercing claims, claims based upon successor liability should be asserted by the trustee on behalf of all creditors." Id. at 853.

The Third Circuit reached the same conclusion in In re Emoral Inc., 740 F.3d 875 (3d Cir. 2014). In that case, the debtor manufactured a chemical used in food flavoring that gave rise to personal injury claims. After it sold operating assets to a transferee, the debtor

filed its bankruptcy case, and the trustee for the debtor's estate entered into a settlement with the transferee in which the trustee released it from claims that "are property of the" debtor's estate. The personal injury claimants then sued the transferee in state court, alleging that the transferee was a "mere continuation" of the debtor and thus subject to their successor liability claims.

When the bankruptcy court denied the transferee's motion to enforce the order approving its settlement with the trustee, the district court reversed and the Third Circuit affirmed the district court's reversal. The Third Circuit, relying on Keene and cases finding that a corporation had standing under state law to assert alter ego claims, held that the personal injury claimants' successor liability claims against the transferee were property of the estate under the state law of both New York and New Jersey and were thus settled and released by the trustee. 740 F.3d at 880-82 and n.3. The court noted that, while that result might seem odd at first, it nonetheless makes perfect sense:

> As we observed in *Phar–Mor*, so, too, here it "may seem strange" to hold that a cause of action for successor liability against Aaroma is property of Emoral's bankruptcy estate. As a practical matter, it is difficult to imagine a factual scenario in which a solvent Emoral, outside of the bankruptcy context, would or could bring a claim for successor liability against Aaroma. [Citation omitted.] Just as the purpose behind piercing the corporate veil, however, the purpose of successor liability is to promote equity and avoid unfairness, and it is not incompatible with that purpose for a trustee, on behalf of a debtor corporation, to pursue that claim.

Id. at 881.

The Second Circuit, in Tronox, reached the same conclusion as this Court in Mitchell and the courts in Keene and Emoral, holding that the alter ego and the successor liability claims of 4,300 toxic tort claimants against a non-debtor transferee were property of the

debtor's estate under both Pennsylvania and Delaware law. 855 F.3d at 104 (citing Rosener v. Majestic Mgmt., Inc. (In re OODC, LLC), 321 B.R. 128, 136-37 (Bankr. D. Del. 2005) (allowing trustee to bring successor liability and alter ego claims under Delaware law)); see also Sterne Agee Grp., Inc. v. Robinson (In re Anderson & Strudwick, Inc.), No. 14-32679-KLP, 2015 WL 1651146, *5 (Bankr. E.D. Va. Apr. 8, 2015) (holding Virginia law allows corporation to recover against its alleged successor based on both Steyr and the "weight of authority outside this Circuit" that "supports the conclusion that a successor liability claim constitutes property of the bankruptcy estate under Bankruptcy Code § 541(a)(1)").

2. The Defendants' Alleged Alter Ego and Successor Liability Claims Are Based on Facts and Legal Theories that Are Generally Available to Other Creditors of the Debtors

State law affords an individual creditor the right in some circumstances to recover a claim against an entity from a third party based on alter ego and successor liability theories. But once that entity files for bankruptcy, the creditor's pursuit of the claim against the third party is automatically stayed by section 362(a)(3) if it constitutes an act "to exercise control over" the same or similar claim that state law affords to the debtor to assert generally on behalf of its creditors. When the individual creditor's claim against the third party is based on facts and legal theories "generally available" to the debtor's other creditors, the stay applies because the individual creditor's pursuit of the claim interferes with, and thus constitutes an act "to exercise control over," the same or similar claim that is property of the estate. Accordingly, to avoid the automatic stay, the individual creditor's claim against the third party must be based on facts and legal theories of liability that are "personal" and "unique" to that creditor. Emoral, 740 F.3d at 880; Baillie Lumber, 391 F.3d at 1321.

In undertaking this inquiry, the Court "should be focused on [the creditor]'s alter ego claim itself—not [the creditor]'s underlying claim" against the debtor. Harrison, 320 F. Supp. 3d at 619. "The case law demonstrates that an alter ego or successorship claim is personal, and thus can be asserted by an individual creditor, only if the conduct that supports the claim is the same conduct that directly harmed the creditor in the underlying cause of action." Labarbera v. United Crane & Rigging Servs, Inc., No 08-CV-3274, 2011 WL 1303146 at *7 (E.D.N.Y. March 2, 2011). The court's analysis in Retired Partners of Coudert Brothers Trust v. Baker & McKenzie (In re Coudert Bros. LLP), No. 11-2785 (CM), 2012 WL 1267827 (S.D.N.Y. Apr. 12, 2012), is illustrative. In that case, a creditor trust for the debtor's retired partners asserted successor liability claims against law firms that hired some of the debtor firm's former lawyers. The court held the claims were general and thus interfered with property of the debtor's estate:

> Here, the Trust argues that the Firms are liable for retirement payments to the Trust's members because the Firms should be regarded as successor firms under New York law. But without even asking whether the Trust is right under the law, the Court observes that every single creditor could recover on its claims against Coudert, the debtor, under the Trust's theory. A successor firm becomes liable for *all* the obligations of its predecessor, not just some. If the Firms are successors under New York law, anyone with any claim against Coudert could move directly against the Firms on the same successor theory that the Trust alleges.

2012 WL 1267827 at *5 (emphasis by the court).

Any alter ego or successor liability claims that the Defendants attempt to assert against the Non-Debtor Affiliates are "general," not "personal," because the facts and legal theories on which the alleged liability of the affiliate is based have nothing to do with the

conduct that gave rise to the claimants' underlying asbestos claim against the Debtors. Here, as in Emoral, all creditors would benefit if the successor liability claims were successful:

> To determine whether the Diacetyl Plaintiffs' cause of action against Aaroma constitutes property of Emoral's bankruptcy estate, we must examine the nature of the cause of action itself. While the Diacetyl Plaintiffs focus on the individualized nature of their personal injury claims against *Emoral*, we cannot ignore the fact, and fact it be, the their only theory of liability as against *Aaroma*, a third party that is not alleged to have caused any direct injury to the Diacetyl Plaintiffs, is that, as a matter of state law, Aaroma constitutes a "mere continuation" of Emoral such that it has also succeeded to all of Emoral's liabilities. . . .
>
> The Diacetyl Plaintiffs fail to demonstrate how any of the factual allegations that would establish their cause of action based on successor liability are unique to them as compared to other creditors of Emoral. Likewise, they fail to demonstrate how recovery on their successor liability cause of action would not benefit all creditors of Emoral given that Aaroma, as a mere continuation of Emoral, would succeed to all of Emoral's liabilities. . . .
>
> . . . Therefore, the District Court appropriately classified the cause of action as a generalized claim constituting property of the estate.

740 F.3d at 879-81 (emphasis by the court). Accord Tronox, 855 F.3d at 103 (agreeing with Emoral holding that personal injury claimants' successor liability claim was "general" rather than "individualized," observing: "That the plaintiffs in Emoral had an underlying harm specific to them did not put the claims automatically outside the estate. Indeed, every creditor in bankruptcy has an individual claim (set forth in a proof of claim) against the debtor, whether it be in tort (as here), contract, or otherwise.").

The Second Circuit's analysis of the issue in Tronox is instructive here. In that case, the court emphasized the "critical distinction between the underlying tort claim against" the

debtors and the alter ego and successor liability claims against the newly-created transferee that received assets from the debtors' predecessors. 855 F.3d at 107. In holding that the court below had "correctly classified the [tort claimants'] claims as generalized, derivative claims comprising estate property," the Second Circuit explained that

> establishing the former [the underlying tort claim] would benefit only [the tort claimants] as individual creditors, whereas the latter—that New Kerr-McGee is the alter ego of the relevant Tronox debtors and should therefore be charged with all its liabilities—would benefit all creditors of the Tronox debtors generally. See Emoral, 740 F.3d at 880. The facts necessary to prove that the Tronox debtors committed the underlying torts may be particular to the [tort claimants], but the facts necessary to impute that liability to New Kerr-McGee "would be . . . generally available to any creditor, and recovery would serve to increase the pool of assets available to all creditors."

Tronox, 855 F.3d at 107 (quoting Emoral, 740 F.3d at 881).

The court in Tronox emphasized that, "[i]n distinguishing derivative claims from particularized claims exclusive to individual creditors, labels are not conclusive, since plaintiffs often try, but are not permitted, to plead around a bankruptcy." 855 F.3d at 100. "In other words," the court explained, "we are wary of putting form over substance. Thus, we 'inquire into the factual origins of the injury and, more importantly, into the nature of the legal claims asserted.'" Id. (citations omitted).

Judge Mullen made the same point almost thirty years ago, in Litchfield Co. of S.C. Ltd. P'ship v. Anchor Bank (In re Litchfield Co. of S.C. Ltd. P'ship), 135 B.R. 797 (W.D.N.C. 1992). In that case, a creditor bank filed a state court action against the general partners of a debtor limited partnership, based on state law that permitted creditors to hold general partners liable for the partnership's debts. In the bankruptcy court, Judge Wooten,

applying the Fourth Circuit's decision in Steyr, held that the bank's continued prosecution of its state court action violated the automatic stay imposed by section 362(a)(3) because, "under South Carolina law, the debtor was empowered to compel its general partners to pay the debts of the debtor partnership and that, under Code § 541(a), this power became property of the estate upon the filing of the debtor's bankruptcy case." Id. at 802. In affirming Judge Wooten's holding on appeal, Judge Mullen rejected the bank's argument "that its right[] to proceed against" the general partners "is separate and legally distinct from the right of the debtor to compel its general partners to pay the debts of the debtor partnership." Id. at 804. Judge Mullen explained:

> While it is true that the appellant's right to proceed against the general partners is not identical to the debtor's rights under South Carolina law, *nevertheless, proceeding against the general partners would necessarily impair the debtor's exercise of its right to compel its general partners to pay its debts, thus interfering with property of the estate*. . . . The bankruptcy court's application of the rule set forth by the Fourth Circuit in [Steyr] to the defendant's action against the Partners is not only consistent with, but necessary to promote, the fundamental bankruptcy principle of preserving property of the estate to ensure a ratable distribution to creditors.

Id. (emphasis added).

Seven years later, the Fourth Circuit, in Nat'l Am. Ins. Co. v. Ruppert Landscaping Co., Inc., 187 F.3d 439 (4th Cir. 1999), relied on Judge Mullen's decision in Litchfield in making this same fundamental point. In that case, sureties filed an involuntary petition against the debtor. After the case became a chapter 7 proceeding and a trustee was appointed, the sureties sued a transferee of some of the debtor's assets in district court, alleging successor liability and conspiracy counts. The court affirmed judgment against the

sureties for lack of standing, finding their claims to be "similar in object and purpose" to claims the trustee should bring on behalf of all creditors:

> The bankruptcy court noted that the trustee has a potential fraudulent conveyance action to challenge the legality of the transaction between [the debtor and the transferee]. See 11 U.S.C. § 548. All of the Sureties' claims have this same focus. To make out their successor liability claim the Sureties rely heavily on exposing the [debtor/transferee] transaction to be fraudulent in fact. . . . Although the Sureties' claims and the trustee's fraudulent conveyance claim do not contain identical elements, they all share this same underlying focus. [Citing Litchfield.] *The Sureties' causes of action are thus so similar in object and purpose to claims the trustee could bring in bankruptcy court that the Sureties lack standing to pursue these claims in district court*. . . .
>
> It is clear that the trustee should have the first crack at challenging the [debtor/transferee] transaction—the trustee's role is to bring suits such as these on behalf of all creditors. [Citing Steyr.]

187 F.3d at 441 (emphasis added). Accord Alvarez, 2012 WL 113567 at *5 (applying National American. Insurance in holding that creditors' alter ego and breach of fiduciary duty claims were automatically stayed by section 362(a)(3)); Sterne Agee Group, 2015 WL 1651146 at *7 (applying National American Insurance in holding that creditors' successor liability claims were property of debtor's estate to be pursued by trustee).

As the Fourth Circuit emphasized in National American Insurance, "[t]o allow selected creditors to artfully plead their way out of bankruptcy court would unravel the bankruptcy process and undermine an ordered distribution of the bankruptcy estate." 187 F.3d at 142 (citing Litchfield). Enforcing the automatic stay to prevent individual creditors from pursuing liability claims against non-debtors based on alter ego or successor liability theories is essential to provide the estate with control over the res available for

distribution to all claimants. As the Second Circuit pointed out in Tronox, preserving the estate's control over such claims not only ensures a fair distribution of the res, but also promotes the efficient resolution of those causes of action, which are part of the res:

> The whole point of channeling claims through bankruptcy is to avoid creditors getting ahead of others in line of preference and to promote an equitable distribution of debtor assets. [Citation omitted.] That is why, after a company files for bankruptcy, creditors lack standing to assert claims that are estate property. Instead, the trustee is conferred the right to recover for derivative, generalized claims; only the estate is charged with ensuring equitable distribution of estate assets and preventing individual creditors from pursuing their own interests and thus diminishing the res available to the rest of the creditors. Even more, it encourages, as it did here, orderly settlement—an interest not taken lightly.

855 F.3d at 106.

In this regard, it is noteworthy that, in several prior asbestos-related bankruptcy cases—including two in this Court—an official committee of creditors requested a bankruptcy court order affording it standing to bring—*as the representative of the estate and on behalf and for the benefit of that estate*—similar claims to impose liability, based on alter ego and successor liability theories, on non-debtor entities that were involved in pre-petition corporate transactions with the debtor.[6]

[6]In In re Garlock Sealing Technologies, LLC, No. 10-31607 (Bankr. W.D.N.C. 2010), the asbestos claimants' committee sought "Leave to Control and Prosecute Certain Claims as Estate Representatives" in order to challenge certain pre-bankruptcy restructuring transactions between one of the debtors and its affiliates. (Dkt. 2150) (attached as Exhibit 1 to the Declaration of John R. Miller, Jr. in Support of Debtors' Complaint for Injunctive and Declaratory Relief and Related Motions, filed contemporaneously herewith (the "Miller Declaration")). The committee's proposed complaint on behalf of the estate included (in addition to counts for breach of fiduciary duty, conspiracy and fraudulent conveyances) a count XVII ("Successor Liability") and a count XVIII ("Piercing the Corporate Veil"). Id. The debtors moved for authorization to enter into tolling agreements preserving such claims but delaying their prosecution. (Dkt. 2194); see Miller Decl. ¶ 4. After a hearing on both motions, the court approved the debor's entry into the proposed tolling agreements (Dkt. 2281) and denied the committee's motion. (Dkt. 2292); see Miller Decl. ¶ 4.

In In re Kaiser Gypsum Company, Inc., No. 16-31602, (Bankr. W.D.N.C. 2016), the unsecured creditors' committee moved for standing to prosecute, on behalf of the estates, certain claims against non-debtor

The bottom line is that the Defendants here are in the same position as were the individual creditors in S.I. Acquisition, Steyr, and M-Tek, the bank in Litchfield, the former employees in Holcomb, the sureties in National American Insurance, the purchasers of empty lots in Alvarez, the retired partners in Coudert, the asbestos claimants in Keene, the diacetyl claimants in Emoral, and the toxic tort claimants in Tronox. Their successor liability and alter ego claims against the Non-Debtor Affiliates are based on facts and theories generally available to the Debtors' other creditors and are therefore automatically stayed by section 362(a)(3) because they are acts to exercise control over property of the Debtors' estates.[7]

II. ANY ACTIONS AGAINST THE INDEMNIFIED PARTIES ARE AUTOMATICALLY STAYED FOR THE SAME REASONS

The claims against the Indemnified Parties arise out of prior corporate transactions in which, in connection with the sale by a Debtor's predecessor of its ownership interest in a joint venture or other business entity, the Debtor's predecessor undertook a contractual obligation to the buyer to indemnify it (or otherwise assume legal responsibility) for

(continued…)

affiliates, including those for fraudulent conveyance, alter ego and successor liability. (Dkt. 1009) (attached as Exhibit 2 to Miller Decl.); see Miller Decl. ¶ 5. At a hearing, the court denied the standing motion and instead granted the debtors authority to enter into tolling agreements to preserve the alleged claims. (Dkt. 1154); see Miller Decl. ¶ 5.

In In re Specialty Prods. Holding Corp., Case No. 10-11780 (Bankr. D. Del. 2010), the asbestos claimants' committee sought standing to prosecute, on behalf of the estates, claims against non-debtor affiliates—including alter ego and fraudulent conveyance claims—related to the debtors' pre-petition reorganization. (Dkt. 1799) (relevant part attached as Exhibit 3 to Miller Decl.). While the court granted the committee standing to sue on behalf of the estates (Dkt. 4318), the committee never actually filed a complaint against the debtors' affiliates. Miller Decl. ¶ 6.

[7]Many of the complaints filed by the Defendants also assert a claim against a Non-Debtor Affiliate for fraudulent conveyance in connection with the 2020 Corporate Restructuring. Any such claim is automatically stayed under section 362(a)(3) because it too seeks to exercise control over a claim that is property of the Debtors' estates and can only be pursued by an estate representative. See Nat'l Am. Ins., 187 F.3d at 441-42; M-Tek, 2016 WL 2997505 at *8; Litchfield, 135 B.R. at 803 n.4; Midstate Mills, 2015 WL 5475295 at *7. In addition, the Defendants' pursuit of such claims constitutes an "action . . . to recover a claim against the debtor" that is automatically stayed by section 362(a)(1). 11 U.S.C. § 362(a)(1); see FDIC v. Hirsch (In re Colonial Realty Co.), 980 F.2d 125, 131-32 (2d Cir. 1992); Keene, 164 B.R. at 850.

Aldrich/Murray Asbestos Claims related to the purchased assets. Because any assertion of Aldrich/Murray Asbestos Claims against an Indemnified Party is necessarily based on a successor liability theory, it is now stayed by section 362(a)(3) for the same reason that assertion of such claims against the Non-Debtor Affiliates is stayed—it is an act to exercise control over causes of action that became property of the Debtors' estates when these bankruptcy cases were commenced.

In addition, the pursuit of Aldrich/Murray Asbestos Claims against the Indemnified Parties is automatically stayed by section 362(a)(1), which stays the commencement or prosecution of any "action . . . against the debtor" that could have been commenced before these bankruptcy cases were filed. 11 U.S.C. § 362(a)(1). The actions against the Indemnified Parties are stayed by this provision because, given a Debtor's contractual obligation to indemnify or otherwise assume responsibility for the claim asserted against the Indemnified Party, "there is such identity" with the Debtor that it "may be said to be the real party defendant." A.H. Robins Co. v. Piccinin, 788 F.2d 994, 999-1000 (4th Cir.1986). See also McCartney v. Integra Nat'l Bank N., 106 F.3d 506, 510-11 (3d Cir. 1997) (automatic stay enjoins an action against non-debtor where debtor "was, in essence, the real party in interest" in the pursuit of a deficiency judgment against the non-debtor); In re Brier Creek Corp. Ctr. Assoc. Ltd. P'ship, 486 B.R. 681, 689-92 (Bankr. E.D.N.C. 2013).

The Fourth Circuit in Robins identified a debtor's indemnity obligation to a third-party defendant as a situation that creates such an identity of interests: "An illustration of such a situation would be a suit against a third-party who is entitled to absolute indemnity by the debtor on account of any judgment that might result against them in the case. To

refuse application of the statutory stay in that case would defeat the very purpose and intent of the statute." 788 F.2d at 999; see id. (quoting In re Metal Ctr., 31 B.R. 458, 462 (D. Conn. 1983) ("Clearly the debtor's protection must be extended to enjoin litigation against others if the result would be binding upon the debtor's estate.")); Edwards v. McElliotts Trucking, LLC, No. 3:16-1879, 2017 WL 5559921 at *3 (S.D. W. Va. Nov. 17, 2017) (finding that indemnification agreement between the debtor and non-debtor defendants made action against non-debtor defendants subject to the automatic stay imposed by section 362(a)(1)); In re W.R. Grace & Co., Case No. 01-01139 (JKF), 2004 WL 954772, *4 (Bankr. D. Del. Apr. 29, 2004) (applying automatic stay to litigation between two non-debtor parties where one of the parties was entitled to contractual indemnity from the debtor on account of such claims and amending preliminary injunction order to include such action).

Here, in the actions against them alleging Aldrich/Murray Asbestos Claims, the Indemnified Parties share such an identity of interests with a Debtor that the Debtor, in effect, is the real party defendant. Litigating the Aldrich/Murray Asbestos Claims against the Indemnified Parties would effectively liquidate claims against a Debtor, including by triggering existing indemnification rights. Such litigation further creates risks of binding the Debtor through res judicata and collateral estoppel, and creating an evidentiary record that otherwise prejudices the Debtor. Because the Debtor is the real party defendant in any suit seeking to liquidate and recover on account of an Aldrich/Murray Asbestos Claim, section 362(a)(1) applies to stay such actions.

For the same reason, any assertion of Aldrich/Murray Asbestos Claims against a Non-Debtor Affiliate is also automatically stayed by section 362(a)(1), because, in

connection with the 2020 Corporate Restructuring, the Debtors have fully indemnified each of the Non-Debtor Affiliates with respect to such claims. See Tananbaum Supp. Decl. ¶ 15.

III. ANY ACTIONS AGAINST THE INSURERS ARE STAYED BECAUSE THE INSURANCE POLICIES ARE PROPERTY OF THE DEBTORS' ESTATES

Finally, section 362(a)(3) bars the Defendants from bringing actions against the Debtors' Insurers on account of Aldrich/Murray Asbestos Claims because the insurance coverage is property of the Debtors' estates. Robins, 788 F.2d at 1001 (agreeing with "the weight of authority" that insurance contracts are property of the estate and that "[a]ccordingly actions 'related to' the bankruptcy proceedings against the insurer . . . are to be stayed under section 362(a)(3)"); In re Davis, 730 F.2d 176, 184 (5th Cir. 1984) (agreeing with New York district court that the debtor's insurance policies were property of the estate and that the "bankruptcy court therefore has authority to issue a stay order intended to shield the [debtor's] insurers"); In re Johns-Manville Corp., 40 B.R. 219, 231 (S.D.N.Y. 1984) ("determin[ing] that Manville's insurance is property of the estate under the Code and that actions by third parties against the bankrupt's insurers are automatically stayed upon the filing of the petition").

CONCLUSION

For all of the foregoing reasons, the Debtors respectfully request that this Court grant partial summary judgment in favor of the Debtors on Count II of the Complaint and enter a declaratory judgment that section 362(a) of the Bankruptcy Code automatically stays all actions by any Defendant against a Protected Party to recover Aldrich/Murray Asbestos Claims.

Dated: January 25, 2021
Charlotte, North Carolina

Respectfully submitted,

/s/ John R. Miller, Jr.

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ATTORNEYS FOR DEBTORS AND
DEBTORS IN POSSESSION

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re ALDRICH PUMP LLC, *et al.*, Debtors,	Chapter 11 Case No. 20-30608 (JCW) (Jointly Administered)
ALDRICH PUMP LLC and MURRAY BOILER LLC, Plaintiffs, v. THOSE PARTIES TO ACTIONS LISTED ON APPENDIX A TO COMPLAINT and JOHN AND JANE DOES 1-1000. Defendants.	Adversary Proceeding No. 20-03041 (JCW)

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that Aldrich Pump LLC., et al., Debtors in the above-captioned cases, have filed the 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 (the "Motion").

If a copy of the Motion is not included with this Notice, a copy may be viewed at the Court's website, *www.ncwb.uscourts.gov* under Debtor Aldrich Pump LLC's name and case number, you may obtain a copy of the Motion from the Debtors' claims and noticing agent at www.kccllc.net/aldrich, or you may request in writing a copy from the undersigned counsel to the Debtors.

YOUR RIGHTS MAY BE AFFECTED. YOU SHOULD READ THESE PAPERS CAREFULLY AND DISCUSS THEM WITH YOUR ATTORNEY, IF YOU HAVE ONE IN THESE BANKRUPTCY CASES. (IF YOU DO NOT HAVE AN ATTORNEY, YOU MAY WISH TO CONSULT ONE.)

IF YOU DO NOT WANT THE COURT TO GRANT THE RELIEF REQUESTED IN THE MOTION, OR IF YOU WANT THE COURT TO CONSIDER YOUR VIEWS ON THE MOTION, THEN ON OR BEFORE MONDAY, FEBRUARY 22, 2021 YOU MUST:

(1) A. File with the Bankruptcy Court a written objection at:

Clerk, United States Bankruptcy Court
401 W. Trade Street
Charlotte, North Carolina 28202

B. If you have your attorney file a written objection then the objection should be filed with the Bankruptcy Court by electronic means through the Court's website, *www.ncwb.uscourts.gov* under the jointly administered name and case number shown above.

(2) Serve the objection pursuant to the procedures set forth in the Order Establishing Certain Notice, Case Management, and Administrative Procedures (Docket No. 123).

(3) Attend the hearing scheduled for March 25, 2021 at 9:30 a.m. EDT or as soon thereafter as the matter can be heard in the Bankruptcy Courtroom 1-4, 401 West Trade Street, Charlotte, North Carolina. You should attend this hearing if you file an objection.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought and may enter an Order granting the relief requested. No further notice of that hearing will be given.

This the 25th day of January, 2021.

RAYBURN COOPER & DURHAM, P.A.

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