Docket #0848 Date Filed: 10/18/2021

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re	:	Chapter 11
ALDRICH PUMP LLC, *et al.*,[1]	:	Case No. 20-30608
Debtors.	:	

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

The Official Committee of Asbestos Personal Injury Claimants (the "Committee"), respectfully submits this motion (the "Motion") pursuant to, *inter alia*, section 1103(c) of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code") for entry of an order granting leave, standing and authority to investigate, commence, prosecute, and authority to settle, causes of action on behalf of the estates of Aldrich Pump, LLC ("Aldrich") and Murray Boiler, LLC ("Murray" and together with Aldrich, collectively, the "Debtors") including, without limitation, claims arising and resulting from the Corporate Restructuring (defined below). In support of this Motion, the Committee states as follows:

PRELIMINARY STATEMENT

1. Forced into bankruptcy a mere 49 days after they came into existence, the Debtors served as vehicles for the Trane organization[2] to (i) isolate their asbestos liabilities from their other operations and liabilities, and (ii) use the bankruptcy process to resolve those asbestos

[1] The Debtors are the following entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): Aldrich Pump LLC (2290) and Murray Boiler LLC (0679). The Debtors' address is 800-E Beaty Street, Davidson, North Carolina 28036.

[2] The "Trane organization" refers to the Trane plc (formerly known as Ingersoll-Rand plc) and their subsidiaries and affiliates including Ingersoll Rand, Old Trane, and the Debtors, as defined herein.

liabilities. On behalf of the Debtors' estates and their creditors, the Committee seeks standing with respect to potential causes of action related to the corporate transactions that created the Debtors along with two new entities—TTC and New Trane—which received virtually all the assets and liabilities, except for asbestos liabilities, from the Debtors' predecessors, and which resulted in the eventual bankruptcy filing for the Debtors (the "Corporate Restructuring").[3]

2. The Motion should be granted for at least the following reasons:

- First, there are viable claims with respect to the Corporate Restructuring. *See, e.g., 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 and Denying in Part the Motion to Compel,* Adv. Proc. 20-03041, ECF No. 308 (the "Findings and Conclusions") ¶ 176 ("[A]t the moment, it appears that the Divisional Mergers had a material, negative effect on the asbestos claimants' ability to recover on their claims. Thus, an action to contest the mergers and the exclusive allocation of all asbestos claims to Aldrich and Murray appears to be a viable cause.").

- Second, the Debtors and their professionals are irrevocably conflicted with respect to the Corporate Restructuring. The Debtors, their professionals, and affiliates actively participated in the Corporate Restructuring. *See, e.g.,* Findings and Conclusions ¶ 155 ("[G]iven their close relationships to New TTC and New Trane," Aldrich and Murray cannot be expected to pursue a fraudulent transfer action against them).

- Third, to date, the Debtors and their affiliates have engaged in only a selective disclosure of documents and information, and they have opposed any attempts to discover additional potentially actionable documents and information with respect to the Corporate Restructuring. Only a party with standing on behalf of the Debtors and their estates can effectively determine which causes of action should be timely commenced.

- Fourth, it has been more than a year since the Debtors filed for bankruptcy and neither the Debtors nor any of their affiliates have even attempted to investigate themselves with respect to the Corporate Restructuring. The deadline for (i) commencing certain causes of action under the Bankruptcy Code and (ii) the expiration of the two-year toll of certain non-bankruptcy

[3] To be clear, the Committee believes that the ultimate filings of this bankruptcy case for Debtors, Aldrich and Murray, involved many steps in the overall Corporate Restructuring, and thus consider the contemplation and ultimate decision to seek bankruptcy relief to be all part of the same overarching transactions for purposes of this Motion.

causes of action, is June 18, 2022, less than nine months away.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this Court under 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

4. The relief sought is authorized by the Bankruptcy Code including sections 105(a), 1103(c) and 1109(b), and the Federal Rules of Bankruptcy Procedure, including Rule 9016.

BACKGROUND

5. The following facts are asserted based on the Committee's investigation to date.[4]

A. Source of Asbestos Liabilities

6. The primary source of the asbestos liability dates back to 1905, when Ingersoll-Rand Company and its affiliates (collectively "Ingersoll-Rand"), a global provider of industrial equipment and technology, produced pumps and compressors using asbestos-containing products such as gaskets and packing bought from suppliers.[5]

7. Another source of asbestos liabilities comes from Trane U.S. Inc. and its affiliates (collectively, "Old Trane"), which Ingersoll-Rand plc acquired in 2008.[6] Old Trane supplied heating ventilation and air conditioning ("HVAC") equipment, including asbestos-containing boilers and HVAC components.

8. Ingersoll-Rand and Old Trane have been the subject of roughly 100,000 lawsuits filed throughout the United States, seeking compensation for asbestos-induced personal injury or

[4] The Committee obtained certain discovery relevant to the Corporate Restructuring in connection with the *Debtors' Motion for an Order (I) Preliminarily Enjoining Certain Actions Against Non-Debtors, or (II) in the Alternative, Declaring that the Automatic Stay Applies to Such Actions and (III) Granting a Temporary Restraining Order Pending a Final Hearing on the Merits* (Adv. Proc. 20-03004, ECF No. 2) (the "PI Motion").
[5] *See Informational Brief of Aldrich Pump LLC & Murray Boiler LLC* [D.I. No. 5] ("Information Br."), at 9.
[6] *Id.* at 11.

wrongful death. In addition, because asbestos has a long latency period, those exposed may not show symptoms of disease, such as mesothelioma, for a period of 40 years or longer.

9. While defending against and settling asbestos lawsuits, Ingersoll-Rand and Old Trane used insurance proceeds, including those received under settlements or certain "coverage-in-place" agreements, to fund or offset the defense and indemnity costs of their asbestos liabilities.[7] Having tracked the net annual "earnings" and "losses" related to asbestos liabilities by totaling the asbestos insurance receivables in a given year and subtracting the amounts it paid in asbestos defense and indemnity costs, the Trane organization suffered net losses related to resolving asbestos claims of $11.9 million in 2017 and $56.5 million in 2018.[8] But, in 2019, settlements were reached with several insurance carriers related to asbestos claims, and as a result the enterprise actually saw net *earnings* of over $68 million related to asbestos liabilities.[9]

10. Despite this cash infusion and paying all of its liabilities as they became due, the Trane organization knew there would be continuing asbestos liabilities. Trying to avoid paying current and future asbestos claimants, Ingersoll-Rand and Old Trane and their professionals, including the attorneys that currently represent the Debtors, devised a plan to "restructure" their liabilities to not only eliminate their asbestos liabilities but also to "increase shareholder value."[10]

B. The RMT Transaction

11. Immediately prior to the Corporate Restructuring, on February 29, 2020, Ingersoll-Rand plc spun off its industrial division to Gardner Denver Inc. ("Gardner Denver") through a tax-free transfer of assets known as a "Reverse Morris Trust" transaction (the "RMT

[7] Trane 2019 Form 10-K, at F-46.
[8] *Id*. at F-46 and F-47.
[9] *Id*.
[10] R. Daudelin Dep. 85:13-17, Mar. 9, 2021.

Transaction").[11] Gardner Denver provided $1.9 billion in cash and $6.9 billion in Gardner Denver stock to Ingersoll-Rand in exchange for the industrial division.[12]

12. As the Debtors' chief legal officer put it at his deposition, Ingersoll-Rand ended up with "a big pot of cash," although he could not specify where in the overall corporate structure the money ultimately went.[13] As part of the RMT Transaction, Ingersoll-Rand transferred to Gardner Denver two businesses with legacy asbestos liabilities, "materials handling" and "power tools," but retained the asbestos liabilities arising from those businesses.[14]

13. Upon the closing of the RMT Transaction, Ingersoll-Rand distributed the Gardner Denver stock to its ultimate parent, Ingersoll-Rand plc. The effect was to separate businesses that resulted in nearly $7 billion of cash from the asbestos liabilities that were related to those businesses.[15] Ingersoll-Rand plc and its shareholders ended up owning 50.1% of Gardner Denver while the former shareholders of Gardner Denver kept the remaining 49.9% of shares in Gardner Denver.[16]

14. On March 1, 2020, Gardner Denver changed its name to Ingersoll Rand Inc., and Ingersoll-Rand plc changed its name to Trane Technologies plc ("Trane plc").

C. Project Omega

15. The Corporate Restructuring involved the divisional mergers of Ingersoll-Rand and Old Trane, dividing those entities into (i) the entities with virtually all assets and all non-asbestos liabilities, Trane Technologies Company LLC ("TTC"), and Trane U.S. Inc. ("New

[11] The Committee has received limited discovery and information pertaining to the RMT Transaction. Accordingly, the Committee reserves the right to further investigate, consider the implications and relationship of the RMT Transaction to the Corporate Restructuring, and thus, the propriety of such transaction.
[12] Trane Technologies plc 10-K for Fiscal Year Ending Dec. 31, 2020, at 19, Feb. 9, 2021 ("Trane plc 2020 Form 10-K"); Expert Report of Matthew Diaz, Feb. 12, 2021, at 7 n.4 ("Diaz Report").
[13] Tananbaum Dep. 350:12-20, Mar. 22, 2021 (hereinafter "Tananbaum Dep.").
[14] *Id*. at 358:12-359:16.
[15] Trane plc 2020 Form 10-K at 19; Diaz Report at 7 n.4.
[16] Trane plc 2020 Form 10-K at 19.

Trane," together, with TTC, collectively, the "Non-Debtor Affiliates"), and (ii) the entities with all of the asbestos liabilities, Aldrich and Murray.

16. The Corporate Restructuring was referred to internally at Ingersoll-Rand and Old Trane as "Project Omega" to signify the "end" of uncertain asbestos liabilities.[17] Indeed, the Debtor entities "were structured to solely concern themselves with asbestos" so that officers and board members could "focus almost exclusively on what to do" and, specifically, how to isolate and resolve asbestos liabilities.[18] With that in mind, and with the advice of Debtors' bankruptcy counsel, Ingersoll Rand and Old Trane, along with input from their parent and affiliates, ultimately decided that isolating their asbestos liabilities and filing a bankruptcy was the solution to their problems. In fact, as the Debtors' Chief Legal Officer, Alan Tananbaum testified, "I went into the restructuring convinced that the bankruptcy was probably the right path to take." [19]

17. Project Omega was hatched in secret in or around June of 2019.[20] It was not openly discussed or otherwise disclosed by the company. The vast majority of employees within the Trane organization were not even aware of the Corporate Restructuring until it had already occurred.[21] Although a small number of employees and third-party consultants were privy to the work that was being done in connection with Project Omega, they were required to first sign nondisclosure agreements to ensure that the project was kept confidential.[22] This veil of secrecy was intended to prevent attorneys for asbestos claimants from thwarting the company's plan of

[17] Roeder Dep. 40:16-41:7, Mar. 16, 2021.
[18] Tananbaum 30(b)(6) Dep. 38:10-39:7, Apr. 12, 2021 (hereinafter "Tananbaum 30(b)(6) Dep.").
[19] Tananbaum 30(b)(6) Dep. 308:19-309:4.
[20] Tananbaum Dep. 139:2-8; Tananbaum Dep. 140:18-141:11; Pittard Dep. 39:21-40:12; *see also* Findings and Conclusions ¶ 45 ("Project Omega was also a secret endeavor.").
[21] Tananbaum 30(b)(6) Dep. 214: 3-25 (testifying that Project Omega was not disclosed to employees prior to the Corporate Restructuring taking place).
[22] Tananbaum Dep. 161:13-162:8; Majocha Dep. 39:16-21, Mar. 18, 2021; Daudelin Dep. 138:4-7; Roeder Dep. 63:20-23.

action as they were perceived as "the most at-risk group" to threaten the execution of Project Omega.[23]

18. The Debtors' Schedules indicate that there are (i) 5,176 instances of a "confidential settlement amount" entered into by Ingersoll-Rand that were transferred to Aldrich and 2,791 instances of a "confidential settlement amount" entered into by Old Trane that were transferred to Murray as part of the Corporate Restructuring.[24] According to the Schedules, this extraordinary number of settlements were pending but as yet unpaid at the time of the Debtors' bankruptcy, and potentially indicates that Ingersoll-Rand and Old Trane were settling a whole slew of cases during the time that Project Omega was underway so as to cut off expenses associated with these claims, but that they never intended to pay those settlements.

19. By late 2019, meetings among Project Omega team members occurred with increasing frequency and included weekly "all hands" team meetings chaired by then-Ingersoll-Rand plc's general counsel, Evan Turtz (now, Trane plc's general counsel).[25] In connection with the planning and implementation of the Corporate Restructuring, Project Omega team members were instructed to pay careful attention to prior divisional merger cases commenced by the Debtors' bankruptcy counsel, the *Bestwall*, *Garlock*, and *DBMP* bankruptcy cases.[26] Indeed, as early as October 2019—months before the Debtors were formed—employees within the Trane organization referred to Aldrich and Murray as "debtors."[27]

20. To effectuate the bankruptcy, a key component of Project Omega was to strategically position Ingersoll-Rand and Old Trane to carry out a divisional merger under Texas

[23] Tananbaum Dep. Ex. 190 (TRANE_00014949) at 1.
[24] *See* Case No. 20-30608, ECF No. 207, Schedule E/F, Part 2; *see also* Case No. 20-30609, ECF No. 19, Schedule E/F, Part 2.
[25] Tananbaum Dep. 149:7-151:6.
[26] Tananbaum Dep. 163:17-164:6, 164:11-165:6, 165:9-166:10, 168:7-25; Roeder Dep. 72:7-73:8, 73:19-74:8, 74:9-75:2; Zafari Dep. 24:10-25:12, Mar. 2, 2021; Pittard Dep. Ex. 148 (TRANE_00001852); Howlett Dep. Ex. 6 (TRANE_00004495).
[27] *See, e.g.,* Roeder Dep. Ex. 130; Kuehn Dep. Ex. 182.

law.[28] As set forth below, the divisional merger was required "to do clean allocation of assets and liabilities."[29]

D. The Aldrich Divisional Merger

21. After months of planning the Corporate Restructuring, on March 26, 2020, Ingersoll-Rand reserved the name Aldrich Pump LLC in North Carolina.[30] On April 30, 2020, the direct parent company of Ingersoll-Rand incorporated Trane Technologies HoldCo Inc. ("TT HoldCo") in Delaware and contributed its stock in Ingersoll-Rand to TT HoldCo.[31] TT HoldCo, in turn, formed TTC as a Texas limited liability company.[32] The next day, Ingersoll-Rand, the holder of substantial asbestos liabilities, merged into TTC, leaving TTC as the surviving entity.[33] TTC became the successor by merger to Ingersoll-Rand.[34] That same day, TTC effected a divisional merger under Texas law, resulting in the dissolution of "old" TTC and the formation of "new" TTC and Aldrich as Texas limited liability companies wholly owned by TT HoldCo.[35]

22. Under the TTC Plan of Divisional Merger, "new" TTC received **99%** of "old" TTC's assets, while the remaining **1%** of the assets were allocated to Aldrich.[36] Aldrich received $26.2 million in cash, all equity interests in 200 Park, Inc. ("200 Park"), and rights to

[28] Tananbaum Dep. 140:18-141:11; Pittard Dep. 39:21-40:12, Mar. 17, 2021.
[29] Tananbaum 30(b)(6) Dep. 342:6–343:10.
[30] N.C. Application to Reserve a Business Entity Name for Aldrich Pump LLC, *available at* https://www.sosnc.gov/online_services/search/Business_Registration_Results (Mar. 28, 2021).
[31] Del. Certificate of Incorporation of Trane Technologies HoldCo Inc. (Del.), at DEBTORS_00002488; Subscription Agreement dated April 30, 2020, at DEBTORS_00003158; Supplemental Declaration of Allan Tananbaum in Support of Debtors' Complaint for Injunctive and Declaratory Relief ¶ 8, Adv. P. 20-03041, ECF No. 91 ("Tananbaum Supp. Decl.").
[32] Tananbaum Supp. Decl. ¶ 8.
[33] *Id.*; Tex. Certificate of Merger of Ingersoll-Rand Company (N.J.) into Trane Technologies Co. LLC. (Tex.), at DEBTORS_00001708.
[34] Tananbaum Supp. Decl. ¶ 8.
[35] Valdes Dep. Ex. 25 (DEBTORS_00002145) ("TTC Plan of Divisional Merger"), Mar. 1, 2021; Tananbaum Supp. Decl. ¶ 9; Tex. Certificate of Merger of Trane Technologies Co. LLC (Tex.) into Aldrich Pump LLC (Tex.) and Trane Technologies Co. LLC (Tex.), at DEBTORS_00002410.
[36] Diaz Report ¶ 16.

Ingersoll-Rand's asbestos-related insurance coverage.[37] Apart from its 200 Park subsidiary, Aldrich received no operating business.[38] The TTC Plan of Divisional Merger purported to allocate all of Ingersoll-Rand's asbestos liabilities to Aldrich and also purported to obligate Aldrich to indemnify TTC and all other nondebtor affiliates against, and hold them harmless from, "all Losses" related to those liabilities.[39] Later that same day, May 1, 2020, TTC converted to a Delaware limited liability company,[40] and Aldrich converted to a North Carolina limited liability company.[41]

23. All told, TTC and Aldrich were Texas entities for less than 24 hours.[42] After the Corporate Restructuring, TTC continued with the business operations once held by Ingersoll-Rand and is paying its (non-asbestos) creditors in the ordinary course of business.[43]

E. The Murray Divisional Merger

24. Following nearly the same process and timeline as the Aldrich divisional merger outlined above, Old Trane also effectuated a divisional merger. On April 30, 2020, Old Trane formed ClimateLabs LLC ("ClimateLabs") as a North Carolina limited liability company and Murray Boiler Holdings LLC ("Murray Holdings") as a Delaware limited liability company.[44]

[37] Pittard Decl. ¶ 16.
[38] *Id.*; Roeder Dep. 45:16-19.
[39] TTC Plan of Divisional Merger ¶¶ 5, 9(b); Tananbaum Supp. Decl. ¶ 15.
[40] Tex. Certificate of Conversion of Trane Technologies Company LLC (Tex.) to Trane Technologies Company LLC (Del.), at DEBTORS_00003133; Del. Certificate of Conversion of Trane Technologies Company LLC (Tex.) to Trane Technologies Company LLC (Del.), at DEBTORS_00003137.
[41] Tex. Certificate of Conversion of Aldrich Pump LLC (Tex.) to Aldrich Pump LLC (N.C.), at DEBTORS_00002969; N.C. Articles of Organization Including Certificate of Conversion of Aldrich Pump LLC (Tex.) to Aldrich Pump LLC (N.C.), at DEBTORS_00002973.
[42] Zafari Dep. Ex. 38 (DEBTORS_00050587) at 3-7, Mar. 2, 2021 (showing the times for incorporating and reincorporating the entities in the Corporate Restructuring); Tananbaum Supp. Decl. ¶ 10.
[43] Diaz Report ¶ 48.
[44] N.C. Articles of Organization of ClimateLabs LLC (N.C.), at DEBTORS_00003407; Del. Certificate of Incorporation of Murray Boiler Holdings LC (Del.), at DEBTORS_00000261.

Old Trane's direct parent, Trane Inc., also formed TUI Holdings Inc. ("TUI Holdings") as a Delaware corporation and contributed its stock in Old Trane to TUI Holdings.[45]

25. The next day, Old Trane converted from a Delaware corporation to a Texas corporation.[46] Old Trane then effected a divisional merger under Texas law, resulting in the dissolution of Old Trane and the formation of New Trane as a Texas corporation and Murray as a Texas limited liability company.[47] As a result, Murray became a wholly-owned subsidiary of Murray Holdings, which in turn is wholly owned by New Trane—a wholly-owned subsidiary of TUI Holdings.[48]

26. Under the Trane Plan of Divisional Merger, New Trane received **98%** of Old Trane's assets, while the remaining **2%** of the assets were allocated to Murray.[49] Specifically, Murray received $16.1 million in cash, all equity interests in ClimateLabs, and rights to Trane's asbestos-related insurance coverage.[50] Apart from its ClimateLabs subsidiary, Murray received no operating business.[51] The Trane Plan of Divisional Merger purported to allocate all of Trane's asbestos liabilities to Murray and also purported to obligate Murray to indemnify New Trane and all other nondebtor affiliates against, and hold them harmless from, "all Losses" related to those liabilities.[52] Later that same day, "new" Trane converted to a Delaware corporation,[53] and Murray converted to a North Carolina limited liability company.[54]

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[45] Del. Certificate of Formation of TUI Holdings, Inc. (Del.), at DEBTORS_00000211; Stock Power dated April 30, 2020, at DEBTORS_00000220; Tananbaum Supp. Decl. ¶ 11.
[46] Tex. Certificate of Conversion of Trane U.S. Inc. (Del.) to Trane U.S. Inc. (Tex.), at DEBTORS_00000411; Del. Certificate of Conversion of Trane U.S. Inc. (Del.) to Trane U.S. Inc. (Tex.), at DEBTORS_00000419.
[47] Valdes Dep. Ex. 26 (DEBTORS_00000654) ("Trane Plan of Divisional Merger"); Tex. Certificate of Merger of Trane U.S. Inc. (Tex.) into Trane U.S. Inc. (Tex.) and Murray Boiler LLC (Tex.), at DEBTORS_00000887; Tananbaum Supp. Decl. ¶ 12.
[48] Bowen Dep. Ex. 59 (TRANE_00000088) at 1, Mar. 5, 2021.
[49] Diaz Report ¶ 17.
[50] Pittard Decl. ¶ 16.
[51] Tananbaum Dep. 237:23-239:9.
[52] Trane Plan of Divisional Merger ¶¶ 5, 9(b); Tananbaum Supp. Decl. ¶ 15.
[53] Tex. Certificate of Conversion of Trane U.S. Inc. (Tex.) to Trane U.S. Inc. (Del.), at DEBTORS_00001493; Del. Certificate of Conversion of Trane U.S. Inc. (Tex.) to Trane U.S. Inc. (Del.), at DEBTORS_00001497.

27. Here, too, New Trane and Murray were Texas entities for less than 24 hours.[55] After the Corporate Restructuring, New Trane continued with the business operations once held by Old Trane and is paying its (non-asbestos) creditors in the ordinary course of business.[56]

F. Intercompany Agreements

28. In connection with the Corporate Restructuring, the Debtors and certain of their affiliates entered into numerous agreements that were dated "as of" May 1, 2020, the day of the Texas divisional mergers. Such agreements include the Funding Agreements, the Support Agreements, and the Secondment Agreements—all of which are discussed in detail in the *Opposition of the Official Committee of Asbestos Personal Injury Claimants to the Debtors' Motion for Preliminary Injunction or Declaratory Relief*, dated April 2, 2021 (Adv. Pro. ECF No. 151).

29. Allan Tananbaum (Chief Legal Officer and Secretary for the Debtors) testified that there was no arm's length negotiation between the affiliated entities,[57] while others who authorized the execution of or signed the agreements, testified that they had no understanding at the time of what they were signing.[58]

30. In addition, this Court determined that "[t]hese Agreements are not 'arm's length' contracts. They were 'negotiated' after the first step of the Corporate Restructuring by the

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[54] Tex. Certificate of Conversion of Murray Boiler LLC (Tex.) to Murray Boiler LLC (N.C.), at DEBTORS_00001340; N.C. Articles of Organization Including Certificate of Conversion of Murray Boiler LLC (N.C.), at DEBTORS_00001344.

[55] Project Omega Steps to Effect Restructuring of Trane U.S. Inc. (DEBTORS_00050595) at 3-9 (showing the times of incorporation and reincorporation of entities involved in the Corporate Restructuring); Tananbaum Supp. Decl. ¶ 13.

[56] Diaz Report ¶ 48.

[57] Tananbaum Individual Dep. 209:16-24; *see also* Daudelin Dep. 253:18-21.

[58] *See* Daudelin Dep. 190:19-191:7; 234:11-237:3; 238:19-246:15; 248:19-251:21; 251:22-254:2; *see also* Kuehn Individual Dep. 223:4-13 (failing to recall authorizing, as a board member, the execution of a secondment agreement and a services agreement).

predecessors to the Debtors and their parents, for application to four companies that did not, at that moment, exist." Findings and Conclusions ¶ 66.

G. The Role of the Debtors' Professionals

31. The agreements involving Aldrich and Murray were drafted by outside counsel to the Trane organization (and now counsel to the Debtors) prior to the corporate formation of the Debtors.[59]

32. Bankruptcy counsel for the Debtors was first retained by the Trane organization in connection with this matter in the Spring of 2019.[60] Debtors' counsel previously represented the Trane organization with respect to the Corporate Restructuring.[61] In addition, the Debtors' bankruptcy counsel continues to represent the Trane organization in matters unrelated to these Chapter 11 Cases.[62]

H. Aldrich and Murray File for Bankruptcy

33. Following the completion of the two divisional mergers, the Debtors' officers and board of managers ensured that Aldrich and Murray completed the scheme and "file for bankruptcy."[63] As with the Project Omega meetings prior to the Corporate Restructuring,

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[59] *See* Howlett Dep. 79:6-13 (explaining that Jones Day "worked very closely" with Trane organization attorneys regarding "the details of the potential for the reorganization plan and what that would look like."); Bowen Dep. 103:17-22 (Evan Turtz, inside counsel for the Trane organization, generally lead Project Omega meetings); Regnery Dep. 118:21-119:9 (noting that the idea of for Project Omega originated with Evan Turtz with the help of outside lawyers); Roeder Dep. 59:4-7 (explaining that she never attended a meeting about the Aldrich and Murray bankruptcies without lawyers present); Pittard Dep. 39:21-40:12 (noting his first involvement in Project Omega was when Evan Turtz and Jones Day "brought the idea to a small group."); Kuehn Dep. I 123:7-11 (explaining that Evan Turtz ran Project Omega); Tananbaum Dep. 140:9-141:11 (explaining that Turtz retained Jones Day early on in connection with Project Omega); Brown Dep. 62:6-9 (noting that she does not recall a time when Jones Day was not involved in Project Omega); Turtz Dep. 54:22-55:7 (expressing that Jones Day was contacted in the Spring of 2019 with relation to the project).

[60] Turtz Dep. 54:22-55:7 (First communications with Jones Day were in "April, May, June of [20]19").

[61] *See Ex Parte Application of the Debtors for an Order Authorizing them to Retain and Employ Jones Day as Counsel as of the Petition Date* (ECF No. 20) at ¶21, n. 7 (June 18, 2020) ("Jones Day Retention Application"); *see also Declaration of Brad B. Erens* (ECF No. 20) at ¶¶ 16(c) & 17 ("Erens Declaration").

[62] *See* Jones Day Retention Application at ¶21, n. 7; *see also* Erens Declaration at ¶¶ 16(d) & 20.

[63] Comm. Dep. Ex. 149 (Objective Plan for Ray Pittard submitted prior to the 2020 Corporate Restructuring with a goal to "complete divisional merger" and "complete filing for bankruptcy").

lawyers attended and drove the deliberations of each Debtor's board of managers. Mr. Tananbaum, the Debtors' chief legal officer, chaired all board meetings even though he was not formally a member of either board.[64] Mr. Turtz (counsel for Trane plc), along with the in-house lawyer, Sara Brown, also participated in every meeting held by the Debtors' boards acting as "resource[s] in the room."[65] Suffice to say, bankruptcy was a foregone conclusion.

34. To ensure that the scheme was completed, former and current executives and employees within the Trane organization were hand-selected and strategically positioned by Trane plc's senior leadership (including Mr. Turtz and CEO Mike Lamach)[66] to hold board and officer positions with the Debtors, while maintaining their high-level positions within the Trane organization. These very same individuals were also intimately involved with Project Omega and continued to attend Project Omega meetings notwithstanding their appointed roles with the Debtors. These individuals include Ms. Roeder (manager for both Debtors), Mr. Valdes (manager for both Debtors), Mr. Tananbaum (Chief Legal Officer for both Debtors), and Mr. Pittard (Chief Restructuring Officer for both Debtors).

35. Ms. Roeder, for example, was involved in and "very knowledgeable" about Project Omega, "[i]f not from day one, very early on." [67] She was selected by Trane leadership, including Mr. Turtz, Mr. Kuehn, and Mr. Lamach, to serve on the boards of both Debtors as well as their subsidiaries, 200 Park Inc. and Climate Labs LLC.[68] Ms. Roeder continues to serve as the Finance Director of Information, Technology and Legal at both TTC and New Trane and has been identified as having attended Project Omega meetings since July 2019.[69]

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[64] Tananbaum Dep. 271:5-22, 49:10-50:2; Roeder Dep. 46:21-25.
[65] Tananbaum 30(b)(6) Dep. 252:13-21.
[66] Tananbaum 30(b)(6) Dep. 58:9-60:2.
[67] Turtz Dep. 164:16-166:19, Apr. 5, 2021.
[68] *Id*.
[69] Roeder Dep. 65:21-66:13; Kuehn Dep. 137:5-22.

36. Similarly, Mr. Valdes, another manager for both Aldrich and Murray, was actively involved with Project Omega and received confidential project updates as early as December 2019.[70] He also continue to maintain his position as Vice President of Production Management for Trane Commercial HVAC at TTC. According to Mr. Valdez, he was selected to work for the Debtors because of his "high position" within the Trane organization.[71]

37. Mr. Tananbaum was selected as Chief Legal Officer and Secretary for both Debtors despite his involvement in Project Omega meetings and project planning as early as July 2019 and serving as Deputy General Counsel for TTC.[72] Mr. Pittard can also be traced to early Project Omega planning and maintains his high-level position as transformation office leader for Trane plc.[73] Yet, he too was given leadership positions as the Vice President and Chief Restructuring Officer at both Debtors.

38. Given their involvement in Project Omega and close affiliation with senior leadership who strategically positioned the Debtors for the very purpose of forcing them into bankruptcy as a way to get rid of the asbestos claims, none of these individuals were viewed as independent decision-makers—a fact which Mr. Turtz readily concedes. Indeed, as he put it as his deposition, he thought it would be "good" to have at least one "independent" board member if the Debtors filed for bankruptcy.[74] Still, in their search for an independent board member, Messrs. Turtz and Lamach considered *only* individuals who previously worked within the Trane organization.[75] Indeed, Robert Zafari and Marc Dufour, two former executives, were selected to serve on the boards of Aldrich and Murray, respectively.

[70] Valdes Dep. Ex. 18 (TRANE_00006711).
[71] Turtz Dep. 167:3-168:15.
[72] Tananbaum Dep. Ex. 188 (TRANE_00004154).
[73] Pittard Dep. Ex. 143 (TRANE-DEBTORS_00001457)
[74] Turtz Dep. 153:11-15
[75] *Id.* at 156:15-19.

39. Putting aside the illusory deliberations by the Debtors' boards, bankruptcy was a foregone conclusion. And those involved in Project Omega knew it. Indeed, Rolf Paeper, a Project Omega member, asked in late May 2020 why the bankruptcy filings had been delayed since the original plan was to "push[] [them] to do that in less than 30 days.[]"[76] In response, Eric Hankins, another active Project Omega member, wrote: "[W]e can't push, it has to be an independent [Board] decision."[77] Mr. Paeper replied, expressing his skepticism of each board's independence by putting the word "independant" [*sic*] in scare quotes.[78] This says it all.

PROCEDURAL BACKGROUND

40. On June 18, 2020 (the "Petition Date"), 49 days after the Corporate Restructuring was implemented, the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code and commenced the adversary proceeding captioned *Aldrich Pump LLC and Murray Boiler LLC v. Those Parties to Actions Listed on Appendix A to Complaint and John and Jane Does 1-1000,* Adv. Pro. No. 20-03041 (the "Adversary Proceeding"). In the Adversary Proceeding, the Debtors concurrently filed the PI Motion, which primarily sought a preliminary injunction of asbestos lawsuits nationwide against the Debtors' more than 200 non-debtor affiliates, including Trane plc, TTC, and New Trane, and their distributors.

41. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the Debtors have continued as debtors-in-possession since the Petition Date. No trustee or examiner has been appointed in these Chapter 11 Cases.

42. On June 30, 2020, the Bankruptcy Administrator filed the *Motion to Appoint Official Committee of Asbestos Claimants* [Docket No. 126], which the Court granted as modified in its Order dated July 7, 2020 [ECF No. 147].

[76] Tananbaum Dep. Ex. 191 at 2 (TRANE_00007527); *see also* Findings and Conclusions ¶ 118.
[77] Tananbaum Dep. Ex. 191 at 2 (TRANE_00007527).
[78] *Id.*

43. On August 21, 2020, the Debtors filed a motion to appoint Joseph W. Grier, III, as legal representative for future asbestos victims [ECF No. 276], which the Court granted on October 14, 2021 [ECF No. 389].

44. On August 23, 2021, the Court issued the Findings and Conclusions, and determined in relevant part that "[d]ue to the apparent negative effects of the Divisional Merger (and these ensuing bankruptcy filings) on the legal rights of Asbestos Claimants, that Merger and its allocations *may* constitute avoidable fraudulent transfers and/or be subject to attack under remedial creditor doctrines like alter ego and successor liability." Findings and Conclusions at p. 6 (emphasis in original).

45. The Court further observed that "at the moment, it appears that the Divisional Mergers had a material, negative effect on the asbestos claimants' ability to recover on their claims. Thus, an action to contest the mergers and the exclusive allocation of all asbestos claims to Aldrich and Murray appears to be a viable cause." Findings and Conclusions ¶ 176.

RELIEF REQUESTED

46. The Committee respectfully requests the entry of an order granting the Committee standing to investigate, commence, prosecute, and authority to settle an action or actions on behalf of the Debtors' estate.

BASIS FOR RELIEF

47. The Committee should be permitted to investigate and, if appropriate, prosecute claims on behalf of the Debtors' estates. Congress specifically authorized official committees to "investigate the acts, conduct, assets, liabilities and financial condition of the debtor, the operation of the debtor's business and the desirability of the continuance of such business, and any other matter relevant to the case or to the formulation of a plan." 11 U.S.C. § 1103(c)(2).

Indeed, section 1103(c)(5) provides that a committee may perform such other services as are in the interest of those represented and section 1109(b) provides that a party-in-interest (explicitly referencing a creditors' committee) may raise and may appear and be heard on any issue in a case under chapter 11. 11 U.S.C. §§ 1109(b) and 1103(c)(5). These powers were provided to official creditors' committees to aid the exercise of their fiduciary duty to maximize recoveries for unsecured creditors. *Off. Comm. of Unsecured Creditors of Cybergenics Corp. ex rel. Cybergenics Corp. v. Chinery (In re Cybergenics Corp.),* 330 F.3d 548, 562, 564 (3d Cir. 2003) (*en banc*) (authorizing committee standing to commence estate actions because statutory language "evinces Congress's intent for creditors' committees to play a vibrant and central role in Chapter 11 adversarial proceedings") (hereafter, "*Cybergenics*").

48. After all, "derivative standing for creditors' committees was common in the pre-Code days," and "it would be odd to conclude that Congress abolished derivative standing at the same time as it broadened committees' adversarial role through [Sections 1103 and 1109]." *Cybergenics* 330 F.3d at 562-63 (§ 1109(b) and § 1103(c)(5) suggest that "Congress intended for creditors' committees to perform services on behalf of the estate, and that Congress consciously built a measure of flexibility into the scope of those services").[79] In fact, before the Bankruptcy Code's enactment, the Fourth Circuit recognized the practice of conferring derivative jurisdiction on a creditor. *See Rooke v. Reliable Home Equip. Co.*, 195 F.2d 667, 668 (4th Cir. 1952).

49. In this Circuit, as in other Circuits, it is the exception, rather than the rule, that other estate fiduciaries and their professionals should be granted standing in lieu of the debtor

[79] Section 503(b)(3)(B) also provides for an award of actual and necessary expenses incurred by a "creditor that recovers, after the court's approval, for the benefit of the estate any property transferred or concealed by the debtor." 11 U.S.C. § 503(b)(3)(B). The Third Circuit observed that "the most natural reading of § 503(b)(3)(B) is that it recognizes and rewards monetarily the practice of permitting creditors' committees, with court authorization, to pursue derivative actions." *Cybergenics*, 330 F.3d at 564. Absent a judicial power to authorize derivative suits by creditors, it would make "no sense to speak of rewarding a creditor who sues, with court permission, to recover property for the benefit of the estate." *Id*. at 566.

and its professionals. *In re Baltimore Emergency Servs. II*, 432 F.3d at 560. Here, however, it is the exception to the rule that applies. Where a debtor has standing but refuses to assert estate causes of action, there is no trustee, and the debtor's managers are "inherently conflicted," courts have granted standing to an official committee. *Committee v. Pacific Premier Bank (In re Platinum Corral, LLC)*, Case No. 21-00833-5-JNC, 2021 WL 4695327, * 3 (Bankr. E.D.N. C. Oct. 7, 2021) (noting that committee is allowed in the Fourth Circuit but denying standing where no motion was made by the committee prior to filing an adversary proceeding on behalf of the estate).

50. Although a debtor has standing to prosecute claims on behalf of its estate (*see* 11 U.S.C. §§ 323, 1107, 544), the concept of derivative standing comes into play when the Bankruptcy Code's "envisioned scheme breaks down" and a bankruptcy court must use its equitable power "to craft a remedy." *Cybergenics,* 330 F.3d at 559, 568 ("the ability to confer derivative standing upon creditors' committees is a straightforward application of bankruptcy courts' equitable powers"); *see also Merritt v. Cheshire Land Pres. Tr. (In re Merritt)*, 711 F. App'x 83, 86 (3d Cir. 2017) (same). Courts routinely recognize that the grant of derivative standing to a creditors' committee "provides a critical safeguard against lax pursuit of avoidance [and fraudulent transfer] actions." *Cybergenics*, 330 F.3d at 573. Numerous federal courts of appeals have approved of derivative standing for creditor committees and other parties where the debtor is conflicted, unable or unwilling to pursue estate causes of action.[80] In other asbestos

[80] *See, e.g.,* **Second Circuit:** *Smart World Techs., LLC v. Juno Online Servs. (In re Smart World Techs., LLC),* 423 F.3d 166, 176 (2d Cir. 2005); *Commodore Int'l v. Gould* (*In re Commodore Int'l, Ltd.)*, 262 F.3d 96, 100 (2d Cir. 2001); *In re STN Enters.,* 779 F.2d 901 (2d Cir.1985). **Third Circuit:** *Cybergenics*, 330 F.3d 548. **Fifth Circuit**: *Wooley v. Haynes & Boone, L.L.P. (In re SI Restructuring Inc.)*, 714 F.3d 860, 863 (5th Cir. 2013); *La. World Exposition v. Fed. Ins. Co.,* 858 F.2d 233, 247-48 (5th Cir. 1988). **Sixth Circuit**: *Canadian Pac. Forest Prods. v. J.D. Irving, Ltd. (In re Gibson Grp.),* 66 F.3d 1436, 1440-41 (6th Cir.1995); *Hyundai Translead, Inc. v. Jackson Truck & Trailer Repair, Inc. (In re Trailer Source, Inc.)*, 555 F.3d 231, 240 (6th Cir. 2009). **Seventh Circuit**: *Enodis Corp. v. Emplrs. Ins. (In re Consol. Indus. Corp.)*, 360 F.3d 712, 716-17 (7th Cir. 2004); *Fogel v. Zell,* 221 F.3d 955, 965 (7th Cir. 2000). **Eighth Circuit**: *PW Enters. v. N.D. Racing Comm'n (In re Racing Servs.)*, 540 F.3d

bankruptcy cases, courts have granted official committees of asbestos personal injury claimants and future claimants' representatives standing to prosecute claims related to prepetition conduct and restructuring transactions.[81]

51. In addition to the statutory provisions authorizing standing, courts have found equitable grounds in favor of granting derivative standing. While Congress has vested a trustee or debtor-in-possession with "both the power to bring an avoidance action and the duty to bring one if it would likely benefit the estate," Congress "clearly envisioned that the trustee or debtor would avoid fraudulent transfers, thus maximizing the value of the estate and allowing creditors to recover their claims from that estate." *Cybergenics*, 330 F.3d at 568. But as courts have acknowledged, the Bankruptcy Code is susceptible to breaking down, which requires a bankruptcy court to use its equitable power authorized by federal law to avoid an unfair and unjust result.[82] *Id*. at 568-69. And that is particularly the case here where the debtor-in-possession's management not only controls the estate, but such control has led to divided

892, 898-900 (8th Cir. 2008). **Ninth Circuit**: *Jones v. Schlosberg (In re Jones)*, 178 Fed. App'x 662, 664 (9th Cir. 2006). **Tenth Circuit**: *In re Roman Catholic Church of Archdiocese of Santa Fe*, 621 B.R. 502, 508 (Bankr. D.N.M. 2020). *See also Scott v. Nat'l Century Fin. Enters. (In re Balt. Emergency Servs. II),* 432 F.3d 557, 560 (4th Cir. 2005) ("Our sister circuits that acknowledge the doctrine have allowed a bankruptcy court to grant derivative standing to a creditor or creditors' committee in two limited circumstances," and noting that "several circuits have recognized such standing when the trustee or debtor-in-possession unreasonably refuses to bring suit on its own."); *McInnis v. Phillips (In re Phillips)*, 573 B.R. 626, 640–41 (Bankr. E.D.N.C. 2017) (acknowledging the possibility of derivative standing but dismissing complaint on other grounds); 7 Collier on Bankruptcy ¶ 1109.05 (16th 2021).

[81] *See, e.g., In re Specialty Prods. Holding Corp.*, Order Granting the Renewed Motion of the Official Committee of Asbestos Personal Injury Claimants and the Future Claimants' Representative for Entry of an Order Granting Leave, Standing and Authority to Prosecute Claims on Behalf of the Estate of Debtor Specialty Products Holding Corp., Case No. 10-11780 (PJW) (Bankr. D. Del. Nov. 19, 2013) (ECF No. 4318).

[82] *See*, *e.g.*, *In re Merritt*, 711 F. App'x 83, 86, 88 (3d Cir. 2017) (noting that derivative standing is an "application of the bankruptcy court's equitable powers" and courts have "previously recognized that a bankruptcy court may, in certain situations, authorize an action based on derivative standing under the court's equitable powers when the Bankruptcy Code's envisioned scheme breaks down.") (internal quotation marks omitted); *In re Trailer Source, Inc.*, 555 F.3d 231, 242-43 (6th Cir. 2009) ("[W]hen the trustee unjustifiably refuses to bring an avoidance action . . ., the system breaks down. It is in precisely this situation that bankruptcy courts' equitable powers are most valuable, for the courts are able to craft flexible remedies that, while not expressly authorized by the Code, effect the result the Code was designed to obtain.") (internal quotation marks omitted); *In re Racing Servs., Inc.*, 540 F.3d 892, 901 (8th Cir. 2008) ("Ultimately, the bankruptcy court's decision whether to grant a creditor derivative standing will be reviewed for an abuse of discretion. This standard of review reflects the understanding that the decision of whether to permit a creditor to assert claims the Bankruptcy Code expressly reserves for the trustee (or debtor-in-possession) is a quintessential exercise of the bankruptcy court's equitable powers.") (internal citations omitted).

loyalties and conflicts of interest. It is this type of situation that "gives rise to the proverbial problem of the fox guarding the henhouse . . . . One suspects that if managers can devise any opportunity to avoid bringing a claim that would amount to reputational self-immolation, they will seize it." *Id*. at 573 (citations omitted). Therefore, as this Court has determined, the Debtors cannot "be expected to [file a fraudulent conveyance action] given their close relationships to [] TTC and New Trane." Findings and Conclusions ¶ 151.

52. One of the primary authors of the Texas divisional merger statute, Curtis Huff, has further explained that "all laws protecting the rights of creditors with respect to fraudulent conveyances, preferences and insolvency will remain in force and apply" in the context of a divisional merger such as the one at issue here. Curtis Huff, *The New Texas Business Corporation Act Merger Provisions*, 21 ST. MARY'S L.J. 109, 125 (1989); *see also* Findings and Conclusions ¶¶ 165-68.

53. Moreover, Huff's analysis accounts for the present situation arising from the Corporate Restructuring, and Huff notes that "if in a merger with multiple survivors, the parties allocate a creditor's claim to an inadequately capitalized or insolvent corporation, that creditor will have the right to challenge the merger as a fraudulent transfer." *Id*. at 133; *see also* Findings and Conclusions ¶ 171 ("Thus, if a corporation uses a divisional merger to dump its liabilities into a newly created 'bad' company which lacks the ability to pay creditors while its 'good' twin corporation walks away with the enterprise's assets, a fraudulent transfer avoidance action lies.").

54. Relevant here, derivative standing typically requires (i) a colorable claim; (ii) that the debtor unjustifiably refused to pursue the claim (or a showing that a demand upon the debtor would be futile); and (iii) the permission of the bankruptcy court to initiate the action. *See e.g.*, 7

Alan N. Resnick & Henry J. Sommer, Collier on Bankruptcy ¶ 1103.05[6][a], at 1103-31 (16th ed. 2009); *Infinity Investors Ltd ex rel. Yes! Entm't Corp. v. Kingsborough (In re Yes! Ent'mt Corp.)*, 316 B.R. 141, 143 (D. Del. 2004); *see also In re Tara Retail Grp.*, LLC, 595 B.R. 215, 226 n. 6 (Bankr. N.D. W.Va. 2018) ("Under certain circumstances, a creditor may be granted derivative standing to pursue a cause of action that is property of the Debtor's estate if it can show the estate's refusal to bring a colorable claim and it obtains leave to sue from the bankruptcy court."). As set forth below, the Committee satisfies each of these requirements.

A. The Committee Has Asserted that Colorable Claims Exist

55. The first element requires a court to determine whether a party seeking derivative standing has asserted a colorable claim or claims for relief that on appropriate proof would support a recovery. Courts have eschewed line-by-line or claim-by-claim analysis of proposed complaints in favor of a more general "plausibility" analysis of the claims alleged. *See, e.g.*, *Adelphia Commc'ns Corp. v. Bank of America (In re Adelphia Commc'ns Corp.)*, 330 B.R. 364, 376 (Bankr. S.D.N.Y. 2005) (noting that the burden of showing a colorable claim is a "relatively easy one").[83] Here, while there may be others, the Committee's prospective avoidance action claims, at a minimum, surpass the plausibility requirement. *See, e.g.*, Findings and Conclusions ¶ 172 ("[A]t the moment, it appears that the Divisional Mergers had a material, negative effect on the asbestos claimants' ability to recover on their claims. Thus, an action to contest the merger and its exclusive allocation of all asbestos claims to Aldrich and Murray appears to be a viable cause"); *id*. at 6 ("Due to the apparent negative effects of the Divisional Merger (and these

[83] *See also, e.g.*, Transcript of Proceedings, *In re Distributed Energy Systems, Corp*., No. 08-11101 (KG), ECF No. 315, at 6, 44 (Bankr. D. Del. July 30, 2008) (noting that the colorability standard is less than a Rule 12(b)(6) standard and requires only plausibility and that the claims be not "without merit"); Transcript of Proceedings, *In re Fedders North America, Inc.*, No. 07-11176 (BLS), ECF No. 933, at 97 (Bankr. D. Del. Apr. 3, 2008) (noting that "the sufficiency of the allegations simply cannot be [held] to a Rule 12(b)(6) standard, because we haven't even filed the complaint yet").

ensuing bankruptcy filings) on the legal rights of Asbestos Claimants, that Merger and its allocations *may* constitute an avoidable fraudulent transfer and/or be subject to attack under remedial doctrines like alter ego and successor liability.") (emphasis in original).[84]

56. Section 548 of the Bankruptcy Code allows for avoidance of actual fraudulent transfers made on or within two years before the bankruptcy petition date. 11 U.S.C. § 548. Actual fraud under the Bankruptcy Code requires a movant to show that the transfer or obligation was made "with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted." *Id*. at § 548(a)(1)(A); *see also Ivey v. First Citizens Bank & Tr. Co. (In re Whitley)*, 848 F.3d 205, 208 (4th Cir. 2017).

57. Section 544(b)(1) of the Bankruptcy Code also allows for avoidance of fraudulent transfers that are "voidable under applicable law," including state law. 11 U.S.C. § 544(b)(1).

58. Substantively, proving actual fraud under the relevant Uniform Fraudulent Transfer Act (or Uniform Voidable Transactions Act) in Texas, North Carolina or Delaware (as applicable, the "UFTA"), does not vary substantially from proving actual fraud under 11 U.S.C. § 548. *See* Tex. Bus. & Com. Code Ann. § 24.005(a); N.C. Gen. Stat. Ann. § 39-23.4(a); Del. Code Ann. tit 6, § 1304(a). With limited variation, the badges of fraud employed under state and federal law are substantially similar.[85] A showing of intent to defraud need not include every

[84] *See also* Findings and Conclusions ¶ 61 ("Undertaking such Corporate Restructurings followed almost immediately by two of the four newly created entities filing bankruptcy is an unorthodox strategy. Other than a few recently filed asbestos bankruptcies (of which four are presently pending in this District), we are unaware of any precedent or business reason for such a transaction."); and ¶ 173 ("Under the TBOC, the proper question is, 'Were the rights of creditors, here asbestos claimants and holders of future demands, materially affected by the Divisional Merger and its asset and liability allocations? The preliminary answer to that question would have to be, 'Yes.'").

[85] A non-exhaustive list of the badges of fraud include whether: the transfer or obligation was to an insider; the debtor retained possession or control of the property transferred after the transfer; the transfer or obligation was disclosed or concealed; before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit; the transfer was of substantially all the debtor's assets; the debtor absconded; the debtor removed or concealed assets; the value of the consideration received by the debtor was reasonably equivalent to the

badge of fraud (or any particular number of them); rather, the Court will use the badges to guide its determination regarding fraudulent intent, considering the facts and circumstances of each case. *See, e.g., Jones v. Tauber & Balser, P.C.,* 503 B.R. 162, 184 (N.D. Ga. 2013) ("To establish a *prima facie* case of intentional fraud, the plaintiff need not present evidence on each factor.").

59. As set forth herein, in the Opposition to the Preliminary Injunction, incorporated herein by reference, the Committee presents more than colorable grounds to support potential claims under both the Bankruptcy Code and UFTA for actual fraudulent conveyance, among other claims. Such claims are based on allegations that, among other things, (i) prior to the Corporate Restructuring, the Debtors had been sued or threatened with asbestos-related lawsuits; (ii) beginning in mid-2019 and through 2020, the Debtors and their affiliates secretly planned a "corporate restructuring" for the very purpose of avoiding existing and future creditors; (iii) the Corporate Restructuring was purposefully concealed from people both outside and within the organization, (iv) the Debtors knowingly and willfully engaged in the Corporate Restructuring to evade their asbestos liabilities and, as a result, potentially hundreds of millions of dollars, if not billions, were placed beyond the reach of asbestos claimants;[86] (v) the Corporate Restructuring

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value of the asset transferred or the amount of the obligation incurred; the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred; the transfer occurred shortly before or shortly after a substantial debt was incurred; and the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor. *See* 11 U.S.C. §548(a)(1)(A); *see also Allman v. Wappler (In re Cansorb Indus. Corp.)*, Nos. 07-50041, 07-6072, 2009 WL 4062220, at *8 (Bankr. M.D.N.C. Nov. 20, 2009) (utilizing six badges of fraud in analysis of actual fraudulent transfer under section 548 of the Bankruptcy Code); 11 U.S.C. §544(b); 6 Del. C. § 1304(b); N.C. Gen. Stat. Ann. § 39-23.4(b); Tex. Bus. & Com. Code Ann. § 24.005(b).

[86] The Debtors rely on the existence of funding agreements to claim that asbestos claimants have a source of recovery. However, as explained by the Committee in prior hearings before this Court, providing a contractual right—a promise to pay—does not provide the same right and access to assets as a direct claim against the operating entity responsible for the liabilities incurred and, thus, asbestos claimants are further harmed as a result. In addition, the Court has determined that "the Funding Agreements are not unconditional promises by New Trane and [] TTC to pay all the Aldrich/Murray Asbestos Claims") Findings and Conclusions ¶ 72; *see also id*. ¶ 73 (concluding that "the funding commitment is made by [] TTC to Aldrich and by New Trane to Murray, not to asbestos creditors. Only the Debtors can enforce these agreements. And practically, no one can enforce them absent the consent of [] TTC/New Trane. As Aldrich and [] TTC are owned by the same corporate parent and Murray is owned by New Trane, each is

allocated substantially all of Ingersoll-Rand's assets to TTC and Old Trane's assets to New Trane, leaving all of the asbestos liabilities with Debtors; and (vi) the Corporate Restructuring was effectuated by and benefitted insiders, *i.e.*, affiliates within the Trane organization. In sum, this Court determined that "Aldrich and Murray were simply inert vessels designed to carry their predecessors' asbestos liabilities into bankruptcy." Findings and Conclusions ¶ 87.

60. In addition, the Corporate Restructuring represents a single integrated scheme among insiders. Such facts establish cause to collapse the transactions and avoid the Corporate Restructuring. Moreover, the Corporate Restructuring can be addressed under remedial theories, including alter ego, successor liability and substantive consolidation, to remedy the materially prejudicial effects of the Corporate Restructuring on the rights and claims of Asbestos Claimants.

61. Further, the Debtors' estates may bring claims against their managers and officers for breaches of fiduciary duties, as well as claims against their parent companies for aiding and abetting these breaches. An actionable breach of fiduciary duty claim under state law generally consists of (1) the existence of a fiduciary relationship, (2) a duty arising out of that fiduciary relationship, (3) a breach of the duty, and (4) damages proximately caused by the breach of duty. *See Farndale Co., LLC v. Gibellini*, 628 S.E.2d 15, 20 (N.C. App. 2006). It is well settled that managers and officers owe fiduciary duties to their company. *RCJJ, LLC v. RCWIL Enters., LLC*, 2016 WL 3850403, at *7 (N.C. Super. Ct. June 20, 2016). Here, the managers and officers of the Debtors may have abdicated their roles as corporate fiduciaries and instead acted in the

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subject to the dictates of the parent of sister company against whom enforcement must be sought. Since the Debtors have no employees of their own and are consigned to borrow staff from [] TTC, under the Funding Agreements, the people who would have to enforce the agreement against [] TTC and/or New Trane are in fact officers and employees of [] TTC."); *id*. ¶ 174 ("As a result of the 2020 Corporate Restructuring, those assets were placed beyond the reach of asbestos creditors, and recovery was made dependent on the Debtors' willingness to press their rights under these Funding Agreements. As discussed above, the Funding Agreements are unsecured, conditional, and can be enforced only by the given Debtor acting through seconded employees of New Trane, not by the asbestos claimants. The willingness of Aldrich or Murray to seek funding and the willingness of [] TTC or New Trane [] to pay asbestos claimants cannot be assumed. Without monies obtained under the Funding Agreements, each Debtor lacks the ability to pay its current asbestos claims and future demands.").

interests of their affiliates and parent companies. This is evidenced in part by the fact that the Debtors' self-interested managers and officers held dual roles at other entities within the Trane organization and were personally involved in Project Omega since its inception. Indeed, the very agreements that the Debtors entered into in connection with the Corporate Restructuring were between insiders, lacked any meaningful negotiation, and were driven by upper management of the Debtors' parent companies. The Court has determined that:

> These Agreements are not "arm's length" contracts. They were "negotiated" after the first step of the Corporate Restructuring by the predecessors to the Debtors and their parents, for application to four companies that did not, at that moment, exist. The parent companies entered into the following agreements for Aldrich and [] TTC, and Murray and New Trane. The agreements were then assumed, revised, and ratified by Aldrich and [] TTC, and Murray and New Trane, through signatories who held positions with both entities and/or their parent.

Findings and Conclusions ¶ 66. The Debtors' managers and officers not only lacked independence but may have acted in bad faith and in breach of the duty of loyalty when they entered into the Corporate Restructuring and related intercompany agreements and authorized the bankruptcies to the detriment of the Debtors and the benefit of TTC, New Trane, and their affiliates.

62. The benefit to the estates clearly outweighs the cost of the investigation and pursuit of the action. Although the Committee has not completed their investigation, these contemplated claims, as well as possible other claims, would have a profound effect on the availability and distribution of property of the Debtors' estates and yield substantial recoveries to creditors, including asbestos creditors otherwise shut out of the process. This tips the scale further in favor of granting the motion. *See, e.g.*, Transcript of Proceedings at 45, *In re Distributed Energy Sys., Corp.* No. 08-11101 (KG) (Bankr. D. Del. July 30, 2008) (where

unsecured creditors' recovery is uncertain, the showing concerning "potential recovery versus the cost" is "reduced").

B. Not Only Is the Committee the Proper Parties to Investigate and Bring the Claims, but Demand Upon the Debtors Would Be Futile

63. A debtor and its professionals are charged with the mission of maximizing a debtor's estate for the benefit of a debtor's creditors. Prior to confirmation, a debtor and its professionals, as fiduciaries of a debtor's estate for the benefit of a debtor's creditors, are ordinarily charged with investigating, prosecuting, and settling causes of action on behalf of a debtor's estate. In this Circuit, as is the case in other Circuits, it is the exception, rather than the rule, that a committee and its professionals should be granted standing in lieu of the debtor and its professionals. *In re Balt. Emergency Servs. II*, 432 F.3d 557 (4th Cir. 2005).

64. Here, however, the Debtors and their professionals are conflicted, as they actively participated in the Corporate Restructuring on behalf of their predecessors. The Debtors' officers also wear multiple hats, simultaneously holding other positions with other entities within the Trane organization including TTC, New Trane, and Trane plc. *See* Findings and Conclusions ¶ 155 (concluding that "the debtors in possession (which hold the powers and duties of a bankruptcy trustee in chapter 11)," cannot "be expected to [challenge the Corporate Restructuring as a fraudulent transfer or otherwise] given its close relationship to [] TTC and New Trane"). In addition, rather than investigating the Corporate Restructuring on behalf of the Debtors' estates to maximize their value for the benefit of creditors, the Debtors and their professionals have commenced the Adversary Proceeding and the PI Motion to enjoin causes of actions being commenced against TTC, New Trane, and Trane plc. Accordingly, this is a case where the exception squarely applies.

65. In addition, the Debtors' bankruptcy counsel is clearly conflicted and, indeed,

would be precluded by the North Carolina Rules of Professional Conduct from having standing to assert causes of action against the Trane organization with respect to the Corporate Restructuring.[87] As noted earlier, Debtors' bankruptcy counsel (i) was retained by the Trane organization specifically to effectuate the Corporate Restructuring, (ii) has commenced an adversary proceeding seeking a preliminary and permanent injunction to prevent actions against the Trane organization, and (iii) continues to represent the Trane organization in unrelated matters.[88]

66. The rationale underlying a committee's standing to bring estate causes of action "comes into play when a debtor-in-possession has a conflict of interest in pursuing an action." *Reed v. Cooper (In re Cooper)*, 405 B.R. 801, 809 (Bankr. N.D. Tex. 2009). Where, as here, claims are colorable and would maximize the value of the estate, but the debtor is unjustifiably "unable or unwilling to fulfill its obligations" it is appropriate for a creditor's committee to be granted standing to investigate and pursue such claims. *See Cybergenics*, 33 F.3d at 568; *see also In re Hydrogen L.L.C.*, 2009 WL 2913448, at *2 (Bankr. S.D.N.Y. May 7, 2009) ("The suit by the Committee is necessary because Debtor is conflicted from bringing the suit itself . . . and is beneficial because if the Committee did not have standing to sue, potentially valuable estate causes of action would be wasted.") (citation omitted).

67. A committee is not required to demand formally that a debtor take action where it is "plain from the record that no action on the part of the debtor would have been forthcoming." *See Off. Comm. of Unsecured Creditors v. Clark (In re Nat'l Forge Co.)*, 326 B.R. 532, 545 (W.D. Pa. 2005) (finding formal request of debtor to bring action would have been futile as

[87] *See, e.g.,* North Carolina Rules of Professional Conduct 1.7 (prohibiting concurrent representation of one client that will be directly adverse to another client), 1.9 (prohibiting representation adverse to a client that was previously represented in a substantially related matter).
[88] *See, supra,* ¶ 32.

debtor could not have "seriously entertained the idea"); *see also, e.g., La. World Exposition, Inc. v. Fed. Ins. Co. (In re La. World Exposition, Inc.)*, 832 F.2d 1391, 1397-98 (5th Cir. 1987) (court would not remand so that committee could make formal demand upon debtor where conflicts would likely prevent the debtor from pursuing litigation adverse to itself and its officers).

68. Moreover, a demand by the Committee for the Debtors to investigate and prosecute the contemplated claims would nonetheless be futile here for two additional reasons.

a. First, the Debtors' board of managers and officers are conflicted with respect to the claims contemplated herein. The crux of the Committee's position is that Ingersoll-Rand and Old Trane created the Debtors as shell entities to avoid paying their asbestos-related liabilities, with all decisions made by or at the direction of those still in control of those entities that wholly own the Debtors, directly or indirectly, and to whom the Debtors' management answers. The Debtors cannot reasonably be expected to investigate and prosecute estate claims for acts conducted by their own officers, board, counsel, affiliates, and/or parents. After all, nearly all the managers and officers were personally involved in the planning and implementation of the Corporate Restructuring even prior to the formation of the Debtors. Nor can their outside professionals independently investigate and assert claims on behalf of the Debtors as they enacted and effectuated the Corporate Restructuring. This inescapable conflict and the resulting conclusion that the Debtors cannot be expected to pursue claims related to the Corporate Restructuring motivated the Court to invite the Committee to file this Motion.

b. Second, the same day that the Debtors filed for bankruptcy, they commenced the Adversary Proceeding and filed a motion for a preliminary injunction seeking to protect and insulate the Debtors' affiliates and parent companies from any liability resulting from the asbestos liabilities as well as the Corporate Restructuring, including some of the very same

parties the Committee wishes to investigate.

69. As a result of management and outside counsel's involvement in the Corporate Restructuring, paired with the current protection by the Debtors of their affiliates and parent companies, the Committee is the only estate fiduciaries that can pursue the claims contemplated herein on behalf of the Debtors' estates. *See Glinka v. Fed. Plastics Mfg. (In re Housecraft Industries USA, Inc.)*, 310 F.3d 64, 71-72 (2d Cir. 2002) (finding creditor derivative standing appropriate because otherwise fraudulent transfers would not be recovered).

D. The Debtor Has Not Brought Estate Claims

70. The deadline to bring avoidance action claims on behalf of the Debtors' estates is less than a year away. The Debtors filed for bankruptcy on June 18, 2020, and the deadline to prosecute claims on behalf of the Debtors' estate is June 18, 2022. *See* 11 U.S.C. § 546(a). To date, the Debtors have taken no steps to investigate the claims related to the Corporate Restructuring. In order for the Committee to thoroughly investigate and timely pursue estate claims the Debtors have no apparent intention to (and cannot) bring, the Committee seeks the relief sought in this Motion as soon as is practicable.

71. Accordingly, the Committee seeks permission from this Court to investigate and pursue estate claims arising from, related to, and resulting from the Corporate Restructuring. Since these contemplated claims are colorable based on the Committee's limited investigation to date, a formal demand upon the Debtors would be futile, and the deadline to prosecute such claims is less than a year away, the Court should grant standing to the Committee to investigate and, if appropriate, prosecute claims on behalf of the Debtors.

NOTICE

72. Consistent with the *Order Establishing Certain Notice, Case Management, and Administrative Procedures* [ECF No. 123] (the "Case Management Order"), notice of this

Motion has been provided to: (a) the Office of the United States Bankruptcy Administrator for the Western District of North Carolina; (b) counsel to the Debtors; (c) counsel to the Non-Debtor Affiliates, Trane Technologies Company LLC, and Trane U.S. Inc.; (d) counsel to the Future Claimants Representative; and (e) the other parties on the Service List established by the Case Management Order. The Committee submits that, in light of the nature of the relief requested, no other or further notice need be provided.

PRIOR REQUEST

73. No prior request for the relief sought herein has been made to this Court or any other court.

CONCLUSION

74. Wherefore, the Committee respectfully requests that this Court enter an order granting the relief requested herein, and granting the Committee such other relief as the Court deems just and proper.

Respectfully submitted,

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

Dated: October 18, 2021

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re	:	Chapter 11
ALDRICH PUMP LLC, *et al.*,[1]	:	Case No. 20-30608 (JCW)
Debtors.	:	

NOTICE OF HEARING

PLEASE TAKE NOTICE that on October 18, 2021 the Official Committee of Asbestos Personal Injury Claimants filed a *Motion for Entry of an Order Granting Leave, Standing, and Authority to Investigate, Commence, Prosecute, and to Settle Certain Causes of Action* (the "Motion") in this case.

PLEASE TAKE FURTHER NOTICE that your rights may be affected by the Motion. You should read the Motion carefully and discuss them with your attorney. If you do not have an attorney, you may wish to consult with one.

PLEASE TAKE FURTHER NOTICE that, pursuant to Fed. R. Bankr. P. 9006 and the Case Management Order, written responses, if any, must be filed on or before **November 1, 2021** (the "Response Deadline"), in order to be considered. If you do not want the Court to grant the relief requested in the Motion, or if you oppose it in any way, you MUST:

1. File a formal, written response with the Bankruptcy Court at:

   Clerk, United States Bankruptcy Court
   Charles Jonas Federal Building
   401 West Trade Street
   Charlotte, North Carolina 28202

2. Serve a copy of your response on all parties in interest, including:

   a) U.S. Bankruptcy Administrator
   402 West Trade Street
   Charlotte, NC 28202

[1] The Debtors are the following entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): Aldrich Pump LLC (2290) and Murray Boiler LLC (0679). The Debtors' address is 800-E Beaty Street, Davidson, North Carolina 28036.

b) HAMILTON STEPHENS STEELE + MARTIN, PLLC
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PLEASE TAKE FURTHER NOTICE that a **status** hearing on the Motion will be held on **November 17, 2021 at 1:00 p.m. (ET)** before the Honorable J. Craig Whitley at the United States Bankruptcy Court, Charles Jonas Federal Building, Courtroom 2B, 401 West Trade Street, Charlotte, North Carolina 28202.

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

[Signatures appear on the following page]

Dated: October 18, 2021
Charlotte, North Carolina

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