Docket #1428 Date Filed: 11/23/2022

ALDRICH PUMP LLC and MURRAY BOILER LLC, by and through their undersigned counsel, defendants.

TRANE TECHNOLOGIES PLC, TRANE TECHNOLOGIES GLOBAL HOLDING COMPANY LIMITED, TRANE TECHNOLOGIES HOLDCO INC., TRANE TECHNOLOGIES COMPANY LLC, TRANE INC., TUI HOLDINGS INC., TRANE U.S. INC., and MURRAY BOILER HOLDINGS LLC, by and through their undersigned counsel, defendants.

SARA BROWN, RICHARD DAUDELIN, MARC DUFOUR, HEATHER HOWLETT, CHRISTOPHER KUEHN, MICHAEL LAMACH, RAY PITTARD, DAVID REGNERY, AMY ROEDER, ALLAN TANANBAUM, EVAN TURTZ, MANLIO VALDES, and ROBERT ZAFARI, by and through their undersigned counsel, defendants.

November 23, 2022

VIA ECF AND EMAIL

Hon. J. Craig Whitley, U.S.B.J.
United States Bankruptcy Court
for the Western District of North Carolina
401 W. Trade Street, Suite 2401
Charlotte, NC 28202

Re: *In re Aldrich Pump LLC*, Case No. 20-30608 (the "Bankruptcy Case"); Adv. Pro. No. 21-03029 (the "SubCon Proceeding"); Adv. Pro. No. 22-03028 (the "Fraudulent Transfer Proceeding"); Adv. Pro. No. 22-03029 (the "Fiduciary Duty Proceeding," and together with the SubCon Proceeding and the Fraudulent Transfer Proceeding, the "Adversary Proceedings")

Dear Judge Whitley:

This letter is submitted to the Court by the defendants to the above-captioned Adversary Proceedings (collectively, "**Defendants**") in accordance with the Court's directive at the November 16, 2022 hearing in *In re DBMP*, Case No. 20-30080.[1]

[1] Defendants are comprised of Aldrich Pump LLC ("**Aldrich**"), Murray Boiler LLC ("**Murray**," and together with Aldrich, the "**Debtors**"), Trane Technologies plc, Trane Technologies Company

As previously noted, Defendants have been working with the Committee on the terms of a case management order for the Adversary Proceedings (the "**A/M CMO**") since August 2022. The initial form of the A/M CMO was based on the CMO entered in the *DBMP* proceedings [*In re DBMP LLC*, Case No. 20-30080, Dkt. No. 1439].

Upon learning of three CMO and discovery-related disputes in *DBMP*, as set forth in an October 25, 2022 joint letter to the Court in that case [Adv. Pro. No. 22-03001, Dkt. No. 95], Defendants requested—and the Court agreed—to defer ruling in *DBMP* until Defendants in the Adversary Proceedings could be heard with respect to those issues. The three issues are as follows:

(1) whether the Fiduciary Duty Proceeding should be stayed in its entirety, including discovery in that proceeding, pending entry of final orders in the SubCon and Fraudulent Transfer Proceedings;

(2) whether the parties should be precluded from engaging in document, written, and deposition discovery already conducted in connection with the prior preliminary injunction proceeding; and

(3) whether the Committee can expand discovery to electronically-stored information on mobile devices, including cell phones or tablets.

Defendants submit this letter now in accordance with the Court's directions at the November 16 hearing in *DBMP*. *See* Nov. 16, 2022 Hr'g Tr. at 17-19.

Subsequent to the November 16 hearing, Defendants and the Committee held a meet and confer on November 21, 2022. As anticipated, the parties did not resolve any of the foregoing issues, with the Committee (1) adopting the same position as the Committee in *DBMP* on the first issue, and (2) contending that, as to this case, the second and third issues were premature. The Committee further argued that Defendants' submission of this letter to the Court, notwithstanding the Court's directions to the parties at the November 16 hearing in *DBMP*, was inconsistent with the operative case management order in these proceedings. Defendants believe the Court has already considered and ruled on the timing and appropriateness of Defendants' submission of this letter and determined that these issues are ripe for the Court's consideration in this case, as well as

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LLC, Trane U.S. Inc., Trane Technologies Global Holding Company Limited, Trane Technologies HoldCo Inc., Trane Inc., TUI Holdings Inc., Murray Boiler Holdings LLC and the following 13 individual defendants to the Fiduciary Duty Proceeding: Sara Brown, Richard Daudelin, Marc Dufour, Heather Howlett, Christopher Kuehn, Michael Lamach, Ray Pittard, David Regnery, Amy Roeder, Allan Tananbaum, Evan Turtz, Manlio Valdes, and Robert Zafari.

in *DBMP*. Accordingly, as this Court has recognized, Defendants believe it is appropriate that they be heard on these issues now.

A copy of Defendants' proposed A/M CMO is attached hereto as **Exhibit A** ("**Defendants' CMO**").[2]

ISSUE ONE: The Fiduciary Duty Proceeding should be stayed in its entirety, including all discovery in that proceeding, pending entry of Final orders in the SubCon Proceeding and the Fraudulent Transfer Proceeding. (Defendants' CMO, ¶ B.3.ii.)

Defendants understand the Committee's position on this issue to be that (1) a contemplated future discovery plan should include the Fiduciary Duty Proceeding, (2) all Defendants should be considered "parties" for present discovery purposes, and (3) discovery for the Fiduciary Duty Proceeding should proceed at this time. For the reasons set forth below, Defendants disagree with the Committee.

Defendants first make clear where the parties do not have disagreement. Defendants and the Committee have agreed, consistent with the *DBMP* Case Management Order (the "**DBMP CMO**"), that any prior discovery taken in connection with the preliminary injunction proceeding shall be deemed to have been conducted in all three of the Adversary Proceedings. Likewise, Defendants and the Committee have agreed that any discovery taken after the entry of a CMO (the "**Post-CMO Discovery**") shall be deemed to have been taken in all three of the Adversary Proceedings, regardless of whether a Defendant participates in that discovery.

Notwithstanding these areas of agreement, the Committee's position is contrary to a number of other agreed-upon concepts in the draft A/M CMO, inconsistent with the Court's prior comments on case management and discovery issues, and ultimately premature, unnecessary, disruptive, and wasteful.

First, the parties in this case—and in *DBMP*—have agreed that the Fiduciary Duty Proceeding is and should be ***stayed***. In *DBMP*, the parties entered into a stipulation that the fiduciary duty proceeding in that case would be "stayed in its entirety" [*See DBMP*, Adv. Pro. 21-03023, Dkt. No. 94, Exhibit C, *Stipulation and Order Regarding Stay (Fiduciary Duty Adversary Proceeding*), ¶ 1] (the "**DBMP Stipulation**"). The parties so agreed because, as stated in the DBMP Stipulation, the "Court held that the [*DBMP*] Fiduciary Duty Proceeding should be stayed in its entirety pending resolution of the Fraudulent Transfer Proceeding and Substantive

[2] Capitalized terms not defined in this letter have the meanings ascribed to them in Defendants' CMO.

Consolidation Proceeding . . . ." *Id.*, ¶ F. When a proceeding is stayed, that means discovery is stayed—particularly when the proceeding is "stayed in its entirety."

Second, like the DBMP CMO, the draft A/M CMO includes a provision whereby all parties to the three Adversary Proceedings shall have the right, but not the obligation, to participate in the Post-CMO Discovery. Permitting any and all discovery pertinent to the Fiduciary Duty Proceeding to proceed now, notwithstanding the complete stay of that action, undercuts those defendants' right to choose whether to participate because it effectively compels them to participate in discovery now.

Third, it appears to Defendants that the Court has already rejected the Committee's position that discovery pertinent to the Fiduciary Duty Proceeding should generally proceed at the same time as the SubCon Proceeding and the Fraudulent Transfer Proceeding. In *DBMP*, the Committee and the FCR opposed staying any of the adversary proceedings in that case and argued strenuously for conducting all discovery pertinent to all three of the proceedings simultaneously—while at the same time avoiding having to respond to motions to dismiss from multiple individual defendants in the fiduciary duty proceeding. *See DBMP* Apr. 7, 2022 Hr'g Tr., 61 (ACC counsel: "We tried to find a way where we could essentially proceed with discovery with all parties and hold in abeyance the motions to dismiss that would come in the fiduciary duty proceedings . . . . I wanted to have joint discovery proceedings, have everybody participate as parties, hold off on the motion to dismiss for the fiduciary duty proceeding . . . ."). The Court's comments at the hearing expressed reservation with that approach. *See, e.g.*, *id.*, 99-100 (noting burden of "adding 20 or 30 extra defendants"). Ultimately, the Court and the parties agreed the *DBMP* fiduciary duty proceeding should be "stayed in its entirety."

Finally, the Committee's approach is inefficient and potentially wasteful, both for the parties and the Court. It is possible that discovery in the Fiduciary Duty Proceeding ***may never be necessary*** depending on, *inter alia*, the outcome of the Fraudulent Transfer Proceeding and the Court's rulings on any potential motions to dismiss the Fiduciary Duty Proceeding. Nevertheless, Defendants recognize certain discovery may overlap in the three Adversary Proceedings. Defendants agree that any such discovery, to the extent it is non-duplicative, relevant, proportional to the needs of the SubCon Proceeding and Fraudulent Transfer Proceeding, and not otherwise protected, may proceed notwithstanding the stay of the Fiduciary Duty Proceeding. Defendants intend to take a practical approach in responding to such discovery.

That said, as the Court recognized during the April 7 hearing in *DBMP*, the Fiduciary Duty Proceeding involves a host of defendant-specific issues for which discovery is unique and relevant and proportional only to that proceeding. *See DBMP* Apr. 7, 2022 Hr'g Tr., 103 (noting issues on whether "did you in your capacity breach a duty there" related to a "second tier" of litigation, referring to the later fiduciary duty proceeding). The Complaint in the Fiduciary Duty Proceeding makes clear that these issues will arise in that proceeding. *See, e.g.*, Compl., ¶ 169 (alleging individual defendants failed to acquire and carefully and critically consider information relevant

to their decisions); *id.*, ¶ 171 (alleging individual defendants acted intentionally with a purpose other than to advance the best interests of the Debtors and asbestos claimants); *id.*, ¶ 177 (alleging individual defendants "not only lacked independence but acted with gross negligence, with malice, with reckless indifference, and/or in bad faith, and thus engaged in willful and wanton conduct"); *id.*, ¶ 179 (alleging individual defendants "consciously and/or recklessly disregarded that they were acting in a matter adverse to the interests of Aldrich's and Murray's creditors"). These allegations would require defendant-specific proof requiring independent depositions and discovery separate and apart from discovery related to the Committee's fraudulent transfer and substantive consolidation claims.

Indeed, given the extent of the discovery already taken on the May 2020 corporate restructuring and bankruptcy filings, it is possible—perhaps likely—that the bulk of any new, Post-CMO Discovery will be focused on these "second tier," individualized issues. As both this Court and the parties have already recognized, however, none of this discovery will ever be necessary if the threshold fraudulent transfer claims are unsuccessful on the merits or any motion to dismiss the fiduciary duty claims is granted. No compelling reason exists to permit this discovery now.

For the foregoing reasons, Defendants believe (1) the Fiduciary Duty Proceeding should not be included in the caption to any discovery plan entered in this case, (2) those Defendants who are not parties to the SubCon and Fraudulent Transfer Proceedings should not be considered "parties" for present discovery purposes, and (3) discovery that is relevant to, and proportional to the needs of, only the Fiduciary Duty Proceeding should not proceed at this time.

ISSUE TWO: Defendants' CMO prevents duplicative discovery.

The parties' meet and confer solidified Defendants' concern that the Committee intends to engage in unfettered, duplicative discovery and highlighted the need for the Court to provide guidance on this critical issue now. During the meet and confer, the Committee argued that it has no obligation to avoid issuing identical discovery demands or asking duplicative deposition questions of the same deponents; rather, the Committee believes it is Defendants' burden to object to any duplicative discovery and to seek protective orders from the Court as necessary.[3]

As discussed below, the Committee's position ignores the significant document, written, and deposition discovery conducted to date, well-settled law, this Court's admonition to avoid duplicative discovery, and common sense.

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[3] Indeed, it appears the Committee expects counsel to have memorized the transcripts of the 22 prior depositions taken in the preliminary injunction proceeding and be prepared to identify locations in those transcripts where witnesses have already answered duplicative questions.

The Committee has already obtained substantial, voluminous discovery in connection with the preliminary injunction proceeding on the same core issue in the Adversary Proceedings—the propriety of Project Omega and the May 2020 corporate restructuring. Focused on that core issue, the Committee engaged in exhaustive, comprehensive discovery over an ***approximately eight (8) month period***, including the following:

- the Committee conducted ***twenty-two (22) depositions*** consisting of more than 100 hours and 5,000 deposition transcript pages of testimony (including five Rule 30(b)(6) witnesses on dozens of deposition topics); and

- the Debtors, Trane Technologies Company LLC, and Trane U.S. Inc. produced over ***90,000 pages of documents*** and privilege and redaction logs containing in excess of 4,000 entries.

As is evident from the Committee's prior discovery requests, objection to the preliminary injunction, derivative standing motion, and complaints in the Adversary Proceedings, the Committee's primary focus of discovery in the preliminary injunction proceeding was the investigation of potential claims challenging the propriety of Project Omega and the May 2020 corporate restructuring, including the purposes and goals of those transactions.[4]

Defendants' proposed paragraph C.2.ii in Defendants' CMO makes clear that Post-CMO Discovery cannot duplicate the extensive document, written, and deposition discovery already performed in the preliminary injunction proceeding.

The Committee's opposition to this non-controversial provision is meritless. In fact, Federal Rule of Civil Procedure 26 provides that duplicative discovery should be avoided. *See* Fed. R. Civ. P. 26(b)(2)(i)–(ii) ("On motion or on its own, the court must limit the frequency or extent of discovery otherwise allowed by these rules or by local rule if it determines that . . . the

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[4] *See, e.g.*, 3/5/21 Cathy Bowen Dep. Tr., 154:18-22 (asking whether the purpose of Project Omega was to evaluate options for asbestos liabilities); 3/9/21 Richard Daudelin Dep. Tr., 134:7-9 ("And what was your understanding as to why the Trane enterprise engaged in Project Omega?"); 3/3/21 Marc Dufour Dep. Tr., 125:5-10 (inquiring about the purpose of creating Murray Boiler LLC through the May 2020 corporate restructuring); 4/1/21 Sara Brown Dep. Tr., 52:14-16 ("And what is your understanding as to the purpose of Project Omega?"). 3/19/21 Chris Kuehn Dep. Tr., 121:21-122:12 (discussing Chris Kuehn's understanding of the purpose of Project Omega); 4/5/21 Evan Turtz Dep. Tr., 281:2-8 ("Q. Now, you said before, and other members of your team have said, that the purpose of the corporate restructuring is to address the Trane family of companies' asbestos liabilities in one forum, correct? A. That's correct.").

discovery sought is unreasonably cumulative or duplicative . . . [or] the party seeking discovery has had ample opportunity to obtain the information by discovery in the action . . . .").

Furthermore, the Federal Rules of Civil Procedure place the burden on the Committee—not Defendants—to avoid duplicative discovery. Federal Rule 26 makes clear that the attorney signing any discovery request certifies, among other things, that such request is "not interposed for any improper purpose, such as to harass, ***cause unnecessary delay***, or ***needlessly increase the cost of litigation***" and "***neither unreasonable nor unduly burdensome or expensive***, considering the needs of the case, ***prior discovery in the case***, the amount in controversy, and the importance of the issues at stake in the action." Fed. R. Civ. P. 26(g)(1)(B)(ii)-(iii) (emphasis added). In other words, contrary to the Committee's position, a party may not blindly conduct discovery without regard to whether it duplicates prior discovery. *See Huggins v. N.C. Dep't of Admin.*, 2012 WL 5303702, at *3 (E.D.N.C. Oct. 25, 2012) ("The certification requirement in Rule 26(g) thus obliges each attorney to stop and think about the legitimacy of a discovery request, a response thereto, or an objection." (citation and internal quotation marks omitted)); *Kinetic Concepts, Inc. v. ConvaTec Inc.*, 268 F.R.D. 226, 242 (M.D.N.C. 2010) ("Rule 26(g) imposes an affirmative obligation to engage in pretrial discovery in a responsible manner that is consistent with the spirit and purposes of Rules 26 through 37." (citation and internal quotation marks omitted)).

Echoing Federal Rule 26's prohibition against duplicative discovery, courts have made clear that parties may not engage in duplicative discovery across multiple adversary proceedings. *See, e.g.*, *In re Seven Cntys. Servs., Inc.*, 2013 WL 5965754, at *4 (Bankr. W.D. Ky. Nov. 8, 2013) (noting the court issued a "directive to proceed in [a specified] manner . . . to streamline the litigation and promote uniformity and prevent duplication of discovery between" adversary proceedings and the main bankruptcy case).[5] Indeed, this Court has held in this Bankruptcy Case and other pending asbestos-related bankruptcy cases that, for the sake of efficiency, no duplicative discovery would be permitted. For instance, when permitting special litigation counsel in *DBMP*

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[5] As a general proposition, "courts are generally encouraged to exercise their discretion to limit the cost and duration of discovery and avoid duplicative discovery." *Rowe v. Heritage Auto. Grp., Inc.*, 2018 WL 3458356, at *1 (D. Vt. July 18, 2018); *see also Aldridge v. Goodyear Tire & Rubber Co.*, 30 F. App'x 184, 186–87 (4th Cir. 2002) (affirming the district court's determination that the plaintiffs were not entitled to "duplicative" discovery that had been obtained in other prior similar cases); *Martinac v. I-Flow Corp.*, 2009 WL 10678562, at *1 (D. Minn. Apr. 22, 2009) (noting that "substantial discovery has already taken place in related cases with similar claims and factual issues" and stating "[t]he Court has confidence that Plaintiffs will take efforts to avoid duplicative discovery and that the parties will continue to work to coordinate discovery so as to minimize the costs of litigation"); *Stoddard v. Pliva USA, Inc.*, 2013 WL 9675380, at *2 (E.D.N.C. May 3, 2013) (denying the defendants' motion to re-depose the plaintiffs where the additional depositions would have been "unreasonably cumulative or duplicative" given that the information sought through the depositions was available in documents that would be produced to the defendants).

to participate in and charge the estate for counsel's involvement in the wide-ranging discovery taken in advance of the hearing on the motion for preliminary injunction, this Court did so expressly to avoid duplicative discovery. *See DBMP*, Sept. 21, 2020 Hr'g Tr., 7:14-9:20 (participation permitted to avoid two sets of depositions": "depositions now" in the preliminary injunction proceeding and "2004 exams later" for purposes of investigating potential fraudulent conveyance actions).

Further, as a practical matter, the Committee's assertion that Defendants solely bear the burden to identify duplicative discovery defies both law and reason. While the burden to avoid duplicative discovery should generally rest on all parties, the initial burden necessarily falls on the party seeking additional discovery. *See* Fed. R. Civ. P. 26(g)(1)(B)(ii)-(iii). That party knows what discovery has already occurred and is in the best position to avoid duplicative requests. In this case, for example, the Committee conducted the prior depositions and knows what questions have already been asked and answered. It should prepare for any new depositions accordingly. Defendants should not be required to memorize every deposition transcript in order to object immediately to any duplicative question the Committee may propound.

The Committee's position raises a further practical concern for Defendants as to whether deponents may be instructed not to answer duplicative questions. Generally, deposition deponents may only be instructed not to answer when they would be revealing privileged communications. *See* Fed. R. Civ. P. 30(c)(2) ("A person may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation ordered by the court, or to present a motion under Rule 30(d)(3)."). The Committee was unwilling to agree that Defendants could instruct deponents not to answer duplicative questions and, instead, suggested Defendants would bear the burden of seeking a protective order.

In recognition of the substantial discovery already taken by the Committee, the Federal Rules, this Court's directives, and logic and reason, the Defendants' CMO simply prohibits the Committee and Defendants from engaging in document, written, and deposition discovery already conducted in connection with the preliminary injunction proceeding (Defendants' CMO, ¶ C.2.ii), and in turn, prevents Defendants from being subjected to the unnecessary costs and burdens of duplicative discovery.

ISSUE THREE: The Committee fails to identify any reason why the costs, burdens, and invasiveness of discovery of electronically stored information ("**ESI**") contained on personal mobile devices (smart phones and tablets) is necessary to further develop any facts in these proceedings. In the absence of any such need, and consistent with the parties' prior agreement that such ESI was not reasonably accessible, ESI from these devices should be exempt from the parties' search, inspection, and collection efforts as provided by Defendants' CMO. (Defendants' CMO, ¶ C.3.ii.)

At the recent meet and confer, the Committee refused to engage in any substantive discussion on this issue based on its belief that such discussion was premature in the absence of a discovery plan. However, given the Committee's prior agreement in this case that such ESI was not reasonably accessible, and given the position taken by the Committee in *DBMP*, Defendants believe this issue is ripe for the Court's consideration.

The Committee previously agreed that mobile devices and instant messaging are not reasonably accessible in the parties' *Joint Discovery Plan and Report (ESI Protocol)*, Adv. Pro. No. 20-03041, Dkt. No. 69 (the "**PI Discovery Plan**"). Defendants understand that the Committee will seek to expand discovery and impose new obligations on Defendants' custodians by requiring each one to search for, locate, collect, and produce ESI from their personal mobile devices. To conduct such a search, each custodian would necessarily be forced to submit to a forensic examination and imaging of their mobile devices that, in turn, would be searched for ESI.

Defendants' CMO comports with Federal Rule 26 and Rule 34 by exempting from the parties' ESI collection specific electronic media that are not reasonably accessible. Defendants' CMO also upholds the terms of the mutually agreed-upon PI Discovery Plan. Specifically, Defendants' CMO incorporates Section 2.1.3 of the PI Discovery Plan, which defines not reasonably accessible ESI to include, among other things, "[m]obile devices and ESI or other data stored on mobile devices, including smart phones or tablets" and "Instant/Chat Messaging." (Defendants' CMO, ¶ C.3.ii.) The Committee's approach attempts to override the previously agreed-upon provisions of the PI Discovery Plan without any cause to do so.

As a threshold matter, the Committee has not met the requisite "strong showing" under Federal Rule 34 to justify the "extreme measure" of forensic examination and imaging of the custodians' mobile devices. *Hobby Works, Inc. v. Protus IP Solutions, Inc.,* 2009 WL 10685585, at *1 (D. Md. Oct. 26, 2009) (refusing to permit inspection where "Plaintiff merely conjure[d] that Defendant with[held] information" because "conjecture is insufficient"); *see also Diepenhorst v. City of Battle Creek,* 2006 WL 1851243, at *3-*4 (W.D. Mich. Jun. 30, 2006) (denying motion to compel forensic examination where defendant did not "justify its request for the expensive and intrusive process" nor "identified any category of relevant discovery material that may be uncovered by such a process"). Importantly, Rule 34 "is not meant to create a routine right of direct access" to another's mobile devices. Fed. R. Civ. P. 34 Adv. Comm. Note (2006). Accordingly, "[c]ourts should guard against undue intrusiveness resulting from inspecting or testing" such devices. *Id.*; *see also C.H. v. Sch. Bd. of Okaloosa Cty. Fla.*, 2020 WL 6572430, at *4 (N.D. Fla. Nov. 4, 2020) (granting protective order and motion to quash a third-party subpoena seeking extensive cell phone records because "discovery is not meant to be a fishing expedition, and [the movant] has a personal interest in the privacy of her cell phone records"). Consistent with this instruction, a requesting party's "mere skepticism . . . is not sufficient to warrant drastic electronic discovery measures." *Cross ex rel. Steele v. XPO Express, Inc.,* 2016 WL 11519221, at *6 (D.S.C. May 3, 2016) (quoting *John B. v. Goetz,* 531 F.3d 448, 457 (6th Cir. 2008)); *accord Hespe v. City of Chicago.,* 2016 WL 7240754, at *3-4 (N.D. Ill. Dec. 15, 2016).

Federal Rule 26 requires that discovery be both relevant and proportionate to the needs of the case. Proportionality, in turn, must account for the "importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." Fed. R. Civ. P. 26(b)(1). Significantly, "proportionality is not limited to . . . financial considerations. Courts and commentators have recognized that privacy interests can be a consideration in evaluating proportionality, particularly in the context of a request to inspect personal electronic devices." *Henson v. Turn, Inc.,* 2018 WL 5281629, at *5 (N.D. Cal. Oct. 22, 2018). This is because "***modern cell phones are not just another technological convenience. With all they contain and all they may reveal, they hold for many Americans the privacies of life***." *Id.* at *6 (emphasis added) (quoting *Riley v. California,* 573 U.S. 373, 403 (2014)). Thus, "the utility of permitting a forensic examination of personal cell phones must be weighed against inherent privacy concerns." *John Crane Grp. Corp. v. Energy Devices of Tex., Inc.*, 2015 WL 11112540, at *2 (E.D. Tex. Feb. 2, 2015).[6]

Consequently, courts generally only require an examination of a personal device when such an examination (i) "will reveal information that is relevant to the claims and defenses in the pending matter," and (ii) when "such an examination is proportional to the needs of the case given the cell phone owner's compelling privacy interest in the contents of his or her cell phone." *Hardy v. UPS Ground Freight, Inc.*, 2019 WL 3290346, at *2 (D. Mass. July 22, 2019) (denying motion to compel forensic imaging of plaintiff's cell phone because, while certain text messages might be

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[6] The Committee fails to acknowledge—let alone account for—the significant privacy and confidentiality concerns implicated by the Committee's sweeping proposed discovery measures. Forensic examination, imaging, and searching of the custodians' mobile devices would be exceedingly intrusive given the broad range of personal and private information the search could yield. *See Wisk Aero LLC v. Archer Aviation Inc.*, 2022 WL 6250989, at *2 (N.D. Cal. Aug. 19, 2022) (denying motion to compel employees of defendant to produce electronic devices for examination, reasoning that "the ubiquity, use, and storage capacity of modern personal computing devices raise important privacy concerns" (citing *Riley*, 573 U.S. at 385-91)). Among other things, Defendants' custodians would be required to turnover their devices to a stranger to examine and copy the entirety of their phones' contents to search for and collect responsive ESI that would include things like personal photographs and videos, internet history, notes, music, and text messages with friends and family members. Courts generally recognize the important privacy interests at stake when such information is at risk of disclosure. *See Henson,* 2018 WL 5281629, at *5 (denying motion to produce mobile devices for inspection or forensic examination because, among other reasons, the request "threatens to sweep in documents and information that are not relevant to the issues in this case, such as . . . private text messages, emails, contact lists, and photographs").

relevant, the probative value was outweighed by the plaintiff's privacy interests).[7] The Committee fails to satisfy either factor in this case.

With respect to the first factor (relevance), the Committee does not—and cannot—satisfy its burden of demonstrating that the ESI on the personal devices "are likely to go to the heart of this case." *Hespe,* 2016 WL 7240754, at *5; *see also Hardy,* 2019 WL 3290346, at *3 ("Given the sensitive nature of the contents of . . . cell phones, [] courts have been wary to grant a motion to compel forensic imaging in response to a request for information that has not been shown to be at the heart of a claim or defense in the ongoing litigation."). Indeed, the Committee has not identified any disputed factual issue that justifies the costs, burdens, and invasiveness of ESI discovery from personal mobile devices.

As for the second factor (proportionality), in addition to weighing the significant privacy interests of Defendants' custodians discussed above, proportionality "turns on the likelihood of the forensic examination producing the material" sought by the Committee. *In re 3M Combat Arms Earplug Products Liability Litigation,* 2020 WL 6140469, at *6 (N.D. Fla. Oct. 15, 2020); *accord Hardy,* 2019 WL 3290346, at *3. Here, the Committee has not identified any deficiency in the prior discovery that would now necessitate further discovery into any ESI contained on personal mobile devices. Thus, the costs, burdens, and privacy-related concerns of such discovery vastly outweigh any purported need to conduct such discovery.

The Committee fails to demonstrate any need or justification to deviate from the provisions in the PI Discovery Plan, in which the parties agreed that mobile devices and instant messaging were not reasonably accessible and, thus, not subject to search. It defies logic and common sense that ESI deemed not reasonably accessible in the preliminary injunction proceeding has now become reasonably accessible for purposes of these proceedings. For these reasons, Defendants' CMO incorporates the same (previously agreed-upon) provision from the PI Discovery Plan excluding the collection of ESI from mobile devices and instant messages.

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[7] *See also Tingle v. Hebert,* 2018 WL 1726667, at *7-8 (M.D. La. Apr. 10, 2018) (finding that "Defendants have also made no showing that the requested forensic examination of Plaintiff's personal cell phone and personal email accounts are proportional to the needs of this case"); *Crabtree v. Angie's List, Inc.,* 2017 WL 413242, at *3 (S.D. Ind. Jan. 31, 2017) (denying request to forensically examine plaintiff's personal cell phones and holding that the forensic examination "is not proportional to the needs of the case because any benefit the data might provide is outweighed by Plaintiffs' significant privacy and confidentiality interests"); *Hespe,* 2016 WL 7240754, at *3-4 (affirming order denying request to inspect plaintiff's personal computer and cell phone because, among other things, inspection "is not proportional to the needs of this case because any benefit the inspection might provide is outweighed by the plaintiff's privacy and confidentiality interests.") (internal quotations omitted)).

Accordingly, Defendants respectfully request that the Court rule as follows:

(1) that the Fiduciary Duty Proceeding shall be stayed in its entirety, including discovery in that proceeding, pending entry of final orders in the SubCon and Fraudulent Transfer Proceedings;

(2) that the parties shall be precluded from engaging in discovery that is duplicative of the discovery that has already occurred in connection with the preliminary injunction proceeding; and

(3) that the parties shall not be required to collect ESI from personal mobile devices, including cell phones and tablets, without prejudice to the Committee's right to seek such discovery from a particular individual upon a further showing and Order of the Court.

Respectfully submitted,

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Counsel for the Debtors and Debtors in Possession

Enclosure

Exhibit A

Defendants' CMO

[*documentation for Exhibit follows*]

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

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

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

TECHNOLOGIES HOLDCO INC., TRANE TECHNOLOGIES COMPANY LLC, TRANE INC., TUI HOLDINGS INC., TRANE U.S. INC., and MURRAY BOILER HOLDINGS LLC, Defendants.	
OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS on behalf of the estates of Aldrich Pump LLC and Murray Boiler LLC, Plaintiff, v. TRANE TECHNOLOGIES PLC, INGERSOLL-RAND GLOBAL HOLDING COMPANY LIMITED, TRANE TECHNOLOGIES HOLDCO INC., TRANE TECHNOLOGIES COMPANY LLC, TRANE INC., TUI HOLDINGS INC., TRANE U.S. INC., MURRAY BOILER HOLDINGS LLC, SARA BROWN, RICHARD DAUDELIN, MARC DUFOUR, HEATHER HOWLETT, CHRISTOPHER KUEHN, MICHAEL LAMACH, RAY PITTARD, DAVID REGNERY, AMY ROEDER, ALLAN TANANBAUM, EVAN TURTZ, MANLIO VALDES, and ROBERT ZAFARI Defendants.	Adv. Pro. No. 22-03029

[PROPOSED] CASE MANAGEMENT ORDER

This matter coming before the Court on the *[Joint Motion for Entry of an Order Establishing Certain Case Management Procedures]*[2] (the "**Motion**")[3] in the above-captioned adversary proceedings (collectively, the "**Adversary Proceedings**") and the above-captioned base case (the "**Bankruptcy Case**"); the Court having reviewed the Motion and the other papers filed

[2] *See* Case No. 20-30608, Dkt. No. ___; Adv. Pro. No. 3:21-ap-03029, Dkt. No. __; Adv. Pro. No. 3:22-ap-03028, Dkt. No. ___; Adv. Pro. No. 3:22-ap-03029, Dkt. No. ___.

[3] Capitalized terms used but not otherwise defined herein shall have the meanings given to such terms in the Motion.

related thereto and having considered the statements of counsel related thereto at a hearing before the Court on the Motion (the "**Hearing**"); the Court finding that (a) the Court has jurisdiction for purposes of entering this Order pursuant to 28 U.S.C. §§ 157 and 1334, (b) venue for purposes of entering this Order is proper in this district pursuant to 28 U.S.C. § 1409, (c) notice of the Motion and the Hearing was sufficient under the circumstances, and (d) implementation of the case management procedures described herein in connection with the Adversary Proceedings[4] is (i) fair and reasonable, (ii) consistent with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and the Local Rules, and (iii) appropriate under the circumstances; and the Court having determined that just cause exists for the relief granted herein;

IT IS HEREBY ORDERED THAT:

A. The Motion

1. The Motion is GRANTED, in part, to the extent set forth herein and on the record of the Hearing (which is incorporated herein by reference).

2. Defendants' consent to entry of this Case Management Order and agreement to the provisions set forth herein are not intended to be a waiver of any right to challenge the jurisdiction of the Bankruptcy Court, including, without limitation, the jurisdiction of the Bankruptcy Court to enter final orders in non-core matters, or the waiver of a right to a jury trial, all of which are expressly reserved. Defendants further reserve the right to request the District Court withdraw the reference in any matter subject to mandatory or discretionary withdrawal and reserve all other rights, claims, actions, defenses, setoffs or recoupments to which Defendants are or may be entitled under agreements, in law, in equity, or otherwise, all of which rights, claims, actions, defenses, setoffs and recoupments are expressly reserved. To the extent applicable or not previously waived, the deadline to file a motion pursuant to Local Rule 7007-1(b) will be established in a separate case management order negotiated by the parties and/or ordered by the Court.

B. Adversary Proceedings Deadlines

1. *Substantive Consolidation Proceeding*

   i. Defendants in the Substantive Consolidation Proceeding answered the Complaint in that proceeding. The filing of such answers in the Substantive

[4]Adv. Pro. No. 3:21-ap-03029, Dkt. No. 1, ¶ 11; Adv. Pro. No. 3:22-ap-03028, Dkt. No. 1, ¶ 11; Adv. Pro. No. 3:22-ap-03029, Dkt. No. 1, ¶ 11.

Consolidation Proceeding shall not trigger the entry of any pre-trial orders or deadlines until ordered by the Court.

ii. Without limiting the Discovery Protocol in Section C below, additional deadlines will be established in a separate case management order negotiated by the parties and/or ordered by the Court.

iii. No notice of the Substantive Consolidation Proceeding shall be served on creditors of New TTC and New Trane at this time, and no list of creditors shall be provided by New TTC and New Trane to the Committee, all of which shall be held in abeyance subject to further order of the Court on a motion by one or more of the parties. The timing and content of any such notice, if needed, shall be agreed upon by the parties and/or ordered by the Court after notice and a hearing.

iv. Defendants are not precluded from filing timely dispositive motions (other than motions to dismiss in lieu of an answer pursuant to Fed. R. Civ. P. 12(b)(6), made applicable by Fed. R. Bankr. P. 7012). A briefing schedule for any such dispositive motion(s) shall be negotiated by the parties and/or ordered by the Court.

2. *Fraudulent Transfer Proceeding*

i. All defendants to the Fraudulent Transfer Proceeding have executed consents to acceptance of service and, thus, are deemed duly served.

ii. Defendants to the Fraudulent Transfer Proceeding filed an answer and affirmative defenses on **September 9, 2022**.

iii. Without limiting the Discovery Protocol in Section C below, additional deadlines will be established in a separate case management order negotiated by the parties and/or ordered by the Court.

iv. Defendants are not precluded from filing timely dispositive motions (other than motions to dismiss in lieu of an answer pursuant to Fed. R. Civ. P. 12(b)(6), made applicable by Fed. R. Bankr. P. 7012). A briefing schedule for any such dispositive motion(s) shall be negotiated by the parties and/or ordered by the Court.

3. *Fiduciary Duty Proceeding*

i. All defendants to the Fiduciary Duty Proceeding have executed consents to acceptance of service and, thus, are deemed duly served.

ii. The Fiduciary Duty Proceeding shall be stayed in its entirety, including with respect to all discovery, pending the entry of final orders resolving the Fraudulent Transfer Proceeding and the Substantive Consolidation Proceeding. "**Final**" means, with respect to any order of court, that such order represents a final and binding determination of all issues within its scope and is not subject to further review on appeal or otherwise. Without

limitation, an order becomes "Final" when: (a) no appeal has been filed and the prescribed time for commencing any appeal has expired; or (b) an appeal has been filed and either (i) the appeal has been dismissed and the prescribed time, if any, for commencing any further appeal has expired, or (ii) the order has been affirmed in its entirety and the prescribed time, if any, for commencing any further appeal has expired. For purposes of this Paragraph, an "**appeal**" includes appeals as of right, discretionary appeals, interlocutory appeals, proceedings involving writs of certiorari or mandamus, and any other proceedings seeking review, alteration, amendment or appeal of a court's order.

iii. Each defendant to the Fiduciary Duty Proceeding and the Committee covenants and agrees that (a) any of the findings of fact or conclusions of law set forth in any Final order in the Fraudulent Transfer Proceeding or Substantive Consolidation Proceeding shall be binding as to all Parties in the Fiduciary Duty Proceeding, except with respect to any finding of fact as to any individual Fiduciary Duty Defendant with respect to any action or inaction such individual Fiduciary Duty Defendant took or did not take, and that (b) he, she or it shall not challenge such binding finding of fact or conclusion of law on any basis.

C. Discovery Protocol

1. *Applicability of Discovery*

i. All discovery conducted after the date of this Order as part of the Fraudulent Transfer Proceeding and the Substantive Consolidation Proceeding (collectively, the "**Post-CMO Discovery**") shall be deemed to have occurred in all Adversary Proceedings, including, without limitation, the Fiduciary Duty Proceeding that has been stayed in its entirety pending the entry of Final orders resolving the Fraudulent Transfer Proceeding and the Substantive Consolidation Proceeding.

ii. To avoid duplicative discovery, (a) all parties in the Adversary Proceedings shall have the right to participate in the Post-CMO Discovery; (b) each party that elects to participate in the Post-CMO Discovery consents to the jurisdiction of the Court as a party solely for the purpose of Post-CMO Discovery; and (c) except as set forth herein, each party to the Adversary Proceedings reserves all rights, remedies, defenses and objections with respect to any such Post-CMO Discovery, except with respect to those rights, remedies, defenses and objections that were waived by such party's non-participation in any such Post-CMO Discovery.

2. *Prior Discovery in Preliminary Injunction Proceeding*

i. All discovery (production of documents and deposition testimony) conducted in the adversary proceeding captioned *ALDRICH PUMP LLC and MURRAY BOILER LLC v. Those Parties Listed on Appendix A to Complaint*, Adv. Pro. No. 20-03041 (JCW) and all other discovery that has

occurred in the above-captioned Chapter 11 bankruptcy case (collectively, the "**Prior Discovery**") shall be deemed to have been conducted in connection with the Adversary Proceedings.

ii. The incorporation of the Prior Discovery into the Adversary Proceedings shall not preclude or prejudice any party's (a) ability to seek Post-CMO Discovery that does not duplicate the interrogatories, document requests, depositions, or other discovery requests served, answered or taken in connection with the Prior Discovery, or (b) right to object to any such Post-CMO Discovery on any ground, including that it duplicates any Prior Discovery. For the avoidance of doubt, each party to the Adversary Proceedings that did not participate in the Prior Discovery reserves all rights with respect to any such Prior Discovery.

3. *Discovery Protocol*

i. The parties in the Fraudulent Transfer Proceeding and Substantive Consolidation Proceeding shall conduct an initial meet-and-confer to create a discovery protocol applicable to the Fraudulent Transfer Proceeding and Substantive Consolidation Proceeding, with additional meet and confers as necessary. Should the parties be unable to reach agreement on the terms of a discovery protocol, the parties shall coordinate in providing submissions to the Court and a relevant briefing schedule in advance of filing.

ii. Notwithstanding the foregoing, Section 2.1.3 of the Joint Discovery Plan and Report (ESI Protocol), Adv. Pro. No. 20-03041, Dkt. No. 69 (the "**PI Discovery Plan**"), shall apply to the Fraudulent Transfer Proceeding and the Substantive Consolidation Proceeding and be incorporated fully in the discovery protocol for those Proceedings. No modifications to Section 2.1.3 of the PI Discovery Plan may be made except by agreement of all parties to the Fraudulent Transfer Proceeding and the Substantive Consolidation Proceeding or by order of the Court.

4. *Privilege Logs*

i. The Debtors, New Trane, New TTC, and the Committee shall meet and confer on potential revisions to the privilege logs submitted with the Prior Discovery (the "**Privilege Logs**") in advance of any motion practice thereon. If no agreement is reached in connection with such meet and confer, a briefing schedule for presenting the issues to the Court for a ruling shall be established. The parties reserve all rights regarding the privilege assertions contained in the Privilege Logs and otherwise.

5. *Additional Discovery*

i. The parties to the Fraudulent Transfer Proceeding and the Substantive Consolidation Proceeding shall conduct a conference pursuant to Fed. R. Civ. P. 26(f) (the "**Rule 26(f) Conference**") within **fifteen (15) business days** after entry of this Order.

ii. All parties in the Fraudulent Transfer Proceeding and the Substantive Consolidation Proceeding shall make initial disclosures required by Fed. R. Civ. P. 26(a)(1) within **twenty (20) business days** after the entry of this Order.

iii. Except as set forth in Section B.3.ii and Section C.5.i and subject to Section C.2.ii, the parties to the Fraudulent Transfer Proceeding and Substantive Consolidation Proceeding are not foreclosed from proceeding with Post-CMO Discovery, and all parties' rights to object to any Post-CMO Discovery on any ground are fully preserved.

iv. Disputes related to the provision of Post-CMO Discovery, including privilege disputes with respect to Post-CMO Discovery, shall be resolved among the parties or pursuant to further order of the Court.

D. Miscellaneous

1. Notwithstanding anything to the contrary in this Order, the deadlines specified herein may be extended by consent of the parties, except that leave of Court shall be required to alter, adjourn or extend the date of any hearing before the Court. In addition, upon a showing of good cause by any party and after notice and a hearing, the Court may alter or extend any of the deadlines specified herein. The Court may consider whether the parties have complied with the terms of this Order when considering any request for a change in the deadlines.

2. This Court shall retain exclusive jurisdiction over any and all matters arising from or related to the implementation, interpretation or enforcement of this Order.

This Order has been signed electronically. The Judge's signature and Court's seal appear at the top of the Order.

United States Bankruptcy Court