Docket #1431 Date Filed: 11/28/2022

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 TECHNOLOGIES HOLDCO INC., TRANE TECHNOLOGIES COMPANY LLC, TRANE INC., TUI HOLDINGS INC., TRANE U.S. INC., and MURRAY BOILER HOLDINGS LLC, Defendants.	Adv. Pro. No. 22-03028

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

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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

PLAINTIFF'S MOTION FOR ENTRY OF A CASE MANAGEMENT ORDER

The Official Committee of Asbestos Personal Injury Claimants ("Plaintiff") respectfully moves (the "Motion") for entry of a case management order, substantially in the form attached hereto as **Exhibit A** (the "Plaintiff's Proposed CMO"),[2] to govern the above-captioned adversary proceedings (collectively, the "Adversary Proceedings").[3] In support of the Motion, the Plaintiff

[2] Attached hereto as **Exhibit B**, for ease of reference, is a redline comparison of the Plaintiff's Proposed CMO to the version filed by Defendants (defined below) on November 23, 2022, Case No. 20-bk-30608, ECF No. 1428, Ex. A; Adv. Pro. No. 3:21-ap-03029, ECF No. 107, Ex. A; Adv. Pro. No. 3:22-ap-03028, ECF No. 25, Ex. A; Adv. Pro. No. 3:22-ap-03029, ECF No. 21, Ex. A (the "Defendants' Proposed CMO").

[3] Adv. Pro. No. 3:21-ap-03029 (JCW) (the "SubCon Proceeding"); Adv. Pro. No. 3:22-ap-03028 (JCW) (the "Fraudulent Transfer Proceeding,"); and Adv. Pro. No. 3:22-ap-03029 (JCW) (the "Fiduciary Duty Proceeding" and, together with the SubCon Proceeding and the Fraudulent Transfer Proceeding, the "Adversary Proceedings").

incorporates by reference arguments made by plaintiffs in *DBMP* as to these issues,[4] as well as those made in the Plaintiff's letter, filed simultaneously herewith, and respectfully represents as follows:

PRELIMINARY STATEMENT

1. Plaintiff and the above-captioned Debtors, the corporate non-debtor defendants in the Adversary Proceedings (the "Corporate Non-Debtor Defendants"), and the individual defendants in the Adversary Proceedings (the "Individual Defendants," together with the Debtors and the Corporate Non-Debtor Defendants, collectively, the "Defendants")[5] exchanged a series of drafts of the proposed case management order for the Adversary Proceedings (the "CMO") and met and conferred over a period of almost four months, beginning in August 2022.

2. As the parties nearly reached an agreement on the CMO, on November 9, 2022, the Defendants raised three issues for the first time "[u]pon learning" of certain "discovery-related disputes in *DBMP*."[6] Those issues are summarized by the Plaintiff as follows:

(1) whether there should be streamlined discovery among the Adversary Proceedings including, where possible, the Fiduciary Duty Proceeding, or should all Fiduciary Duty Proceeding discovery be stayed;

(2) the extent to which the "non-duplication" of discovery should be addressed in the CMO; and

(3) whether the Plaintiff is preemptively prohibited from seeking from any Defendant

[4] *See In re DBMP LLC*, Case No. 3:20-bk-30080, Adv. Pro. No. 3:21-ap-03023, ECF Nos. 146 (parties' joint letter) & 155 (transcript of Oct. 31, 2022 hearing), Adv. Pro. No. 3:22-ap-03000, ECF Nos. 120 (parties' joint letter) & 129 (transcript of Oct. 31, 2022 hearing), Adv. Pro. No. 3:22-ap-03001, ECF Nos. 95 (parties' joint letter) & 108 (transcript of Oct. 31, 2022 hearing).

[5] The Defendants are comprised of Aldrich Pump LLC, Trane Technologies Company LLC, Murray Boiler LLC, Trane U.S. Inc., Ingersoll-Rand Global Holding Company Limited, Trane Technologies HoldCo Inc., Trane Inc., TUI Holdings Inc., Murray Boiler Holdings LLC, and Trane Technologies plc, as well as 13 individual defendants to the Fiduciary Duty Proceeding. The Individual Defendants to the Fiduciary Duty Proceeding are Sara Brown, Richard Daudelin, Marc Dufour, Heather Howlett, Christopher Kuehn, Michael Lamach, Ray Pittard, David Regnery, Amy Roeder, Allan Tananbaum, Evan Turtz, Manilo Valdes, and Robert Zafari.

[6] *See* Case No. 3:20-bk-30608, ECF No. 1428; Adv. Pro. No. 3:21-ap-03029, ECF No. 107; Adv. Pro. No. 3:22-ap-03028, ECF No. 25; Adv. Pro. No. 3:22-ap-03029, ECF No. 21.

electronically stored information on personal mobile devices.[7]

3. The parties thereafter met and conferred on November 21, 2022, to discuss the Defendants' newly identified issues. During that meet and confer, the Plaintiff proposed that the limited remaining disputes concerning the CMO be briefed for and presented at the December 14, 2022 omnibus hearing—one day before the December 15, 2022 omnibus hearing in the DBMP case—to permit the parties an opportunity to narrow the scope of their disputes, provide sufficient time for each side to brief the issues, and afford the Court an opportunity to efficiently resolve all disputes concerning the CMO in a single, streamlined manner. The Defendants, however, rejected the Plaintiff's proposal, declined to further confer with the Plaintiff to narrow the scope of the disputes, and filed a 12-page single-spaced letter on the eve of Thanksgiving, Case No. 3:20-bk-30608, ECF No. 1428; Adv. Pro. No. 3:21-ap-03029, ECF No. 107; Adv. Pro. No. 3:22-ap-03028, ECF No. 25; Adv. Pro. No. 3:22-ap-03029, ECF No. 21 (the "Defendants' Letter"), appending Defendants' Proposed CMO. Thus, as of the date of this Motion, the parties have been unable to reach an agreement on the CMO.

4. Regardless, the Plaintiff's Proposed CMO provides a framework for moving forward with the Adversary Proceedings with processes for resolving the three discovery issues in an efficient and streamlined fashion at this juncture. By contrast, and as evident from the comparison to the Defendants' Proposed CMO set forth in Exhibit B, the Defendants (i) request a discovery stay in the Fiduciary Duty Proceeding pending complete resolution of the SubCon Proceeding and Fraudulent Transfer Proceeding irrespective of the fact that the proceedings all arise from the same set of facts, and (ii) prematurely seek relief from additional discovery-related

[7] As described more fully herein, Defendants narrow this third issue to the search of certain electronically stored information in personal devices, but the language Defendants propose in their draft CMO incorporates a much broader prohibition on ten categories of information. Plaintiff, of course, opposes such a broad prohibition, and reserves its rights with respect to any arguments related to the other nine (9) categories not addressed by Defendants' Letter.

issues prior to the parties even exchanging initial disclosures, participating in a discovery conference, or serving discovery requests.

5. As contemplated by the Defendants' Proposed CMO, the Defendants seek to engage in piecemeal litigation without regard to the convenience of the parties, witnesses, and their respective counsel, notwithstanding the fact that those very same parties and witnesses and their counsel are parties to and otherwise involved in all the Adversary Proceedings. After all, each and every Adversary Proceeding derives from the corporate restructurings and the Debtors' subsequent filing of bankruptcy. Notwithstanding the overlapping factual issues (including documents and witnesses), the Defendants ask this Court to stay discovery in the Fiduciary Duty Proceeding, which does nothing to promote efficiency, conserve resources of the parties, the counsel, and the judiciary, or prevent inconsistent or repetitive discovery-related rulings.

6. Additionally, while both Plaintiff and Defendants seek to exchange initial disclosures, participate in a Rule 26(f)[8] conference, and exchange discovery requests, the Defendants ask that the two remaining discovery-related issues be resolved in the abstract prior to the occurrence of any of these events. In particular, the Defendants request that the Plaintiff be generally barred from pursuing any discovery that was conducted in connection with the prior preliminary injunction proceeding. The problem for Defendants is that the discovery sought in connection with the preliminary injunction proceeding was limited in scope, recipients, and conducted in an expeditious manner given the nature of the proceeding. While the Plaintiff has no intention of seeking duplicative discovery, the Defendants fail to articulate as to what "duplicative" means in this context. For example, would a deposition of a Debtor's employee that was conducted

[8] References made herein to "Rule" shall refer to the relevant Federal Rule of Civil Procedure as and to the extent made applicable by certain Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules" and each a "Bankruptcy Rule"). References herein made to "Federal Rules" shall refer to the applicable Federal Rule of Civil Procedure and/or Bankruptcy Rule.

for a limited purpose in connection with the Committee's preliminary injunction bar the Plaintiff from deposing that same employee in the Adversary Proceedings? According to Defendants, the answer is "yes." What's more, the Plaintiff has not yet served its discovery requests on the Defendants; as such, any ruling on duplication is premature and contradicts the procedure contemplated in the Federal Rules, which squarely places the burden of objecting to discovery requests with specificity on the producing party.

7. Imposing an affirmative obligation on the Plaintiff to not engage in duplicative discovery flips the discovery rules on their head. It is quite common in bankruptcy and other proceedings for there to be more than one document request and for witnesses to be deposed more than once on different motions and in different proceedings. Indeed, preliminary injunction motions are a common example of where there are likely to be multiple discovery requests and depositions. Despite repeated requests, Defendants have failed to articulate any reason why normal discovery rules should not apply here, where Defendants can object to any request or question they believe is duplicative, and, if the parties cannot resolve the issue, the Court (or discovery referee) can rule on the objection.

8. Similarly, despite agreement to negotiate the terms of a discovery protocol after entry of the CMO (*see* Ex. A, C.3.i), Defendants ask this Court for an order stating that the Defendants need not produce any potentially discoverable information that **only certain** of the Defendants and the Plaintiff—in an expedited preliminary injunction proceeding—previously agreed to deem "not reasonably accessible" for purposes of determining whether the Court should issue the preliminary injunction. Such information includes, without limitation, information stored on mobile devices, text and instant messages and the like. Putting aside that the Defendants have not made a showing that such information is within their possession, custody, or control or that

that the information is somehow too burdensome to produce, this specific issue is again contemplated by Rule 26(f). In an attempt to avoid this topic in a Rule 26(f) conference, the Defendants request that the Court resolve this issue now. Again, the Defendants attempt at a "gotcha," to shift the burden to the Plaintiff to demonstrate whether such information even exists, let alone is burdensome, is inappropriate and should be denied.

9. The Plaintiff's Proposed CMO will maximize the efficiency and orderly administration of the Adversary Proceedings, while also ensuring that the parties properly satisfy their discovery obligations as contemplated by the Federal Rules. Accordingly, the Plaintiff's Proposed CMO should be approved.

BACKGROUND

10. On June 18, 2020 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Western District of North Carolina. *See In re Aldrich Pump LLC*, No. 3:20-bk-30608 (JCW) (Bankr. W.D.N.C.); *In re Murray Boiler LLC*, No. 20-30609 (JCW) (Bankr. W.D.N.C.) (the "Bankruptcy Cases").[9]

11. On June 30, 2020, the Bankruptcy Administrator filed a motion to appoint an official committee of asbestos personal injury claimants (ECF No. 126), which the Court granted as modified in an order dated July 7, 2020 (ECF No. 147).

12. On October 18, 2021, the Plaintiff commenced the SubCon Proceeding by filing a Complaint and related *Motion for Substantive Consolidation of Debtors' Estates with Certain*

[9] References herein to "ECF No.," unless otherwise stated, shall refer to filings in the case *See In re Aldrich Pump LLC*, No. 3:20-bk-30608 (JCW) (Bankr. W.D.N.C.).

Nondebtor Affiliates or, Alternatively, to Reallocate Debtors' Asbestos Liabilities to Those Affiliates. Adv. Pro. No. 3:21-ap-03029, ECF Nos. 1 & 2.

13. On December 20, 2021, the defendants[10] to the SubCon Proceeding filed motions to dismiss. Adv. Pro. No. 21-03029, ECF Nos. 17 & 18. On April 14, 2022, the Court entered its *Order Denying in Part and Granting in Part the Motions of the Debtors and Non-Debtor Affiliates to Dismiss the Adversary Complaint*. Adv. Pro. No. 3:21-ap-03029, ECF No. 71.

14. On April 14, 2022, the Court granted the Plaintiff, among other things, standing and authority to investigate, commence, and prosecute action or actions on behalf of the Debtors' estates, with respect to, arising from or otherwise related to the Corporate Restructuring (as defined in the motion granted) including, without limitation, the subsequent filing of the Bankruptcy Cases (ECF No. 1121).

15. On June 18, 2022, the Plaintiff commenced the Fraudulent Transfer Proceeding by filing a complaint asserting causes of action including, without limitation, actual and constructive fraudulent transfer (Adv. Pro. No. 3:22-ap-03028, ECF No. 1) against the above-captioned defendants.[11]

16. Also on June 18, 2022, the Plaintiff commenced the Fiduciary Duty Proceeding by filing a complaint asserting causes of action including, without limitation, breach of fiduciary duty, aiding and abetting a breach of fiduciary duty, and civil conspiracy (Adv. Pro. No. 3:22-ap-03029, ECF No. 1) against the above-captioned defendants.[12]

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[10] The defendants in the SubCon Proceeding are Aldrich Pump LLC, Trane Technologies Company LLC, Murray Boiler LLC, and Trane U.S. Inc.

[11] The defendants in the Fraudulent Transfer Proceeding are Ingersoll-Rand Global Holding Company Limited, Trane Technologies HoldCo Inc., Trane Technologies Company LLC, Trane Inc., TUI Holdings Inc., Trane U.S. Inc., and Murray Boiler Holdings LLC.

[12] The defendants in the Fiduciary Duty Proceeding are 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,

17. On September 9, 2022, defendants to the Fraudulent Transfer Proceeding filed an answer and affirmative defenses in response to the complaint filed therein (Adv. Pro. No. 3:22-ap-03028, ECF No. 11).

18. Pursuant to agreement by the parties to the Fiduciary Duty Proceeding, the deadline for the defendants to answer or otherwise respond to the Fiduciary Duty Proceeding is currently stayed pending the entry of a case management order (*i.e.*, the Proposed CMO), which the parties anticipated would provide for further treatment of that proceeding.

19. In early August 2022, the Plaintiff sent an initial draft of the Proposed CMO to the Debtors and Corporate Non-Debtor Defendants and have since been negotiating the terms of the CMO with all Defendants.

20. As the Plaintiff and Defendants nearly reached an agreement on the CMO, on Wednesday evening, November 9, 2022, Defendants introduced three discovery-related issues for the very first time. That same evening, the Plaintiff confirmed that it would review the comments, confer with Plaintiff's client, and revert with availability to meet and confer on these new issues.

21. On Friday evening, November 11, 2022, having not yet met and conferred regarding these new issues, the Defendants informed the Plaintiff that they would file a letter on Monday, November 14, 2022, seeking to be heard by the Court in the *DBMP* case at the *DBMP* omnibus hearing scheduled for November 16, 2022. The Plaintiff informed the Defendants that they did not consent to any expedited briefing before the Court, but were amenable instead to discussing a briefing schedule to be heard at the December omnibus hearing, and provided availability for a meet and confer on the issues.

Christopher Kuehn, Michael Lamach, Ray Pittard, David Regnery, Amy Roeder, Allan Tananbaum, Evan Turtz, Manilo Valdes, and Robert Zafari.

22. On November 14, 2022, the Defendants filed a letter requesting they be heard in the *DBMP* case on these issues on November 16, 2022, prior to the Court issuing a ruling in the *DBMP* matter. Case No. 3:20-bk-30608, ECF No. 1415.

23. During the *DBMP* November 16, 2022 hearing, the Court permitted the Defendants to address the three discovery-related issues, while noting that he is "able to make a ruling because [he is] already prepared in *DBMP*, unless [the Defendants] throw [the Court] some real curves in the *Aldrich/Murray* case[.]" *In re DBMP LLC*, Case No. 3:21-ap-03023, ECF No. 165, Nov. 16, 2022, Hr'g Tr. at 17:21-23. *See also id.* at 19:8-9 ("It would be useful to me if there's anything **new** to know ahead of time.")(emphasis added).

24. On November 21, 2022, the Plaintiff and Defendants met and conferred on the three issues recently raised by the Defendants along with certain miscellaneous issues concerning the CMO. While the Plaintiff and the Defendants were able to resolve certain miscellaneous issues related to the CMO,[13] they were unable to reach agreement as to the three issues set forth herein. In addition, during that meet and confer, the Plaintiff proposed that, given the upcoming holiday, all disputes concerning the CMO should be presented at the December 14, 2022 omnibus hearing, which would permit the parties to further narrow the scope of the disputes, provide sufficient time to brief the issues, and afford the Court with the opportunity to efficiently resolve all disputes concerning the CMO in a streamlined manner prior to the December 15, 2022 omnibus hearing in *DBMP*.[14] The Defendants, however, rejected the Plaintiff's proposal, declined to further confer

[13] As is set forth in Exhibit B to this Motion, certain additional changes exist between the Plaintiff's Proposed CMO and the Defendants' Proposed CMO. Plaintiff submits that either those changes were, in fact, agreed to at the November 21, 2022 meet and confer between the parties, or are otherwise non-substantive. In any case, Plaintiff is confident that the remaining minor outstanding differences can be resolved once the three issues briefed in this Motion are addressed.

[14] *See In re DBMP LLC*, Case No. 3:21-ap-03023, ECF No. 165, Nov. 16, 2022 Hr'g Tr. at 18:9-12 ("But effectively, I'll give you a decision as soon as possible on DBMP and if it's necessary to hold any longer than that, we can do it on the 15th of December.").

with the Plaintiff to narrow the scope of the disputes, and filed a 12-page single-spaced letter on the eve of Thanksgiving.

25. Should the Court be willing to entertain these three discovery issues in a CMO, the proper procedure in which to resolve these issues before the Court is by motion. *See* Fed. R. Bankr. P. 7007 (making Fed. R. Civ. P. 7 applicable, requiring, among other things, that "[a] request for a court order must be made by motion"). Therefore, the Plaintiff, by this Motion, submits the appended Plaintiff's Proposed CMO to the Court for consideration.

JURISDICTION

26. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. Plaintiff asserts that this is a core proceeding pursuant to 28 U.S.C. § 157(b),[15] and Defendants dispute same. Venue for this matter is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

RELIEF REQUESTED

27. Pursuant to section 105(a) of title 11 of the United States Code (the "Bankruptcy Code"), and Bankruptcy Rule 7026, the Plaintiff hereby seeks the entry of the Plaintiff's Proposed CMO, substantially in the form attached hereto as Exhibit A.

28. The Plaintiff's Proposed CMO generally establishes (i) dates for responses to the complaints in the Adversary Proceedings (to the extent not already passed), (ii) requirements for identifying potential creditors for noticing purposes with respect to the SubCon Proceeding; (iii) procedures for further dispositive motion practice in the SubCon Proceeding and the Fraudulent Transfer Proceeding, and (iv) procedures for furthering of discovery in the Adversary Proceedings. Among other things, the Proposed CMO contemplates that, subject to the Discovery Protocol

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

defined and described therein, the Fiduciary Duty Proceeding is stayed pending the entry of final orders resolving the Fraudulent Transfer Proceeding and the SubCon Proceeding.

29. With the exception of three specific issues (as set forth below), the Defendants are seemingly in agreement with the Plaintiff's Proposed CMO.[16]

I. ISSUE ONE: Whether there should be streamlined discovery among the Adversary Proceedings including, where possible, the Fiduciary Duty Proceeding, or should all Fiduciary Duty Proceeding discovery be stayed, *see* Ex. A at § B.3.ii.

30. The Plaintiff's Proposed CMO seeks to streamline and coordinate various deadlines and consolidate discovery proceedings going forward including the Fiduciary Duty Proceeding. While the Plaintiff has agreed to stay the Fiduciary Duty Proceeding from a briefing and other procedural perspective, to the extent discovery overlaps the Fraudulent Transfer Proceeding and the SubCon Proceeding, such discovery should proceed.

31. The reality is that all three Adversary Proceedings arise from the very same set of facts. In particular, the various corporate restructurings and related transactions that led the Debtors to file for bankruptcy is the crux of each Adversary Proceeding, including the Fiduciary Duty Proceeding. Consequently, all three Adversary Proceedings share overlapping issues of fact (including documents and witnesses) that are critical to each proceeding and difficult to entangle. Consistent with the Court's sentiments in favor of proceeding efficiently with discovery and avoiding duplication,[17] resolution of these overlapping issues should be streamlined.

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[16] With respect to certain additional changes that exist between the Plaintiff's Proposed CMO and the Defendants' Proposed CMO, *see*, *supra*, n.13.

[17] *See In re DBMP LLC*, 3:20-bk-30080, ECF No. 1285, Jan. 6, 2022 Hr'g Tr. at 23:22-24:4 (noting the Court's reluctance to "try[] to take discovery three times on, effectively, the same topics, particularly since you've already done it once to a certain extent, to the extent privilege wasn't claimed"); 33:15-21 ("And what I don't want to do is balkanize this where we end up having discovery in one adversary that some people are a part of and maybe not others and where the issues are more limited in one context than the other and then we have to go do it all over again in the runup to a confirmation hearing, or whatever else. I want to do it once."); 36:17-18 (noting that the Court would "like to do this [discovery process] once.").

32. If the Plaintiff were barred from pursuing discovery in the Fiduciary Duty Proceeding, it also raises the likelihood of duplicative discovery. In fact, many of the individual defendants in the Fiduciary Duty Proceeding are key witnesses in the SubCon and Fraudulent Transfer Proceedings. Absent streamlined discovery, these witnesses will thus need to be deposed multiple times, incurring unnecessary cost and burden on the witnesses, counsel, and the Court. Permitting tiered and potentially repetitive discovery, as the Defendants contemplate here, effectively subjects the parties as well as this Court to inconsistent or repetitive pretrial rulings and piecemeal litigation.

33. In addition, nearly all of the Corporate Non-Debtor Defendants who are parties to the SubCon and Fraudulent Transfer Proceeding are also defendants to the Fiduciary Duty Proceeding. The individual defendants to the Fiduciary Duty Proceeding are the officers and directors of the defendants to the SubCon and Fraudulent Transfer Proceedings. The Committee likely will take discovery from those individual defendants related to the SubCon and Fraudulent Transfer Proceedings as they have information relevant to the Committee's claims in those undisputedly non-stayed actions. At the very least, discovery as to the defendants to the Fiduciary Duty Proceeding that are also defendants to the SubCon and Fraudulent Transfer Proceedings should proceed; otherwise, the parties risk relitigating the terms of another discovery plan with the defendants with whom the Plaintiff already spent significant time and effort negotiating.

34. Notwithstanding the above, as discussed with the Defendants already, the Plaintiff acknowledges that there are potentially discrete discovery issues that are unique to the claims in the Fiduciary Duty Proceeding that could potentially be carved out and, thus, stayed. For example, the financial wherewithal of a Fiduciary Duty Defendant that is not a defendant in the other Adversary Proceedings, could be a line of discovery that remains stayed. However, by way of

contrary example, the intent of the parties clearly overlaps the claims in all three Adversary Proceedings, and thus should proceed.

35. The Plaintiff raised this aforementioned issue to the Defendants during their November 21, 2022 meet and confer. While the Defendants were only able to identify one issue that was unique to the Fiduciary Duty Proceeding (*i.e.*, an individual defendants' financial wherewithal) and otherwise refused to negotiate potential avenues where a stay made sense, the Plaintiff is willing to meet and confer further (perhaps in the context of a Rule 26(f) conference) to see if the parties can reach agreement on certain of those issues. Thus, while the Plaintiff believes the stay of discovery to the Fiduciary Duty Proceeding does not make any sense, from an efficiency or other standpoint, the parties should be permitted an opportunity to reach agreement on the parameters of where the stay of discovery could apply.

II. ISSUE TWO: The extent to which the "non-duplication" of discovery should be addressed in the CMO, *see* Ex. A at § C.2.ii.

36. Even before discovery requests have been served and depositions taken in these Adversary Proceedings, the Defendants accuse the Plaintiff of intending "to engage in unfettered, duplicative discovery[.]" Defs.' Letter at 5. There is nothing to support this baseless assertion, which, at the end of the day, is pure supposition. As previously noted to the Court, the Plaintiff has no intention of seeking documents already produced to the Plaintiff. The Defendants nonetheless insist that the Court should affirmatively prohibit any "discovery that is duplicative of the discovery that has already occurred in connection with the preliminary injunction proceeding." Defs.' Letter at 12. This requested prohibition is problematic for at least two reasons.

37. First, it seeks to contravene the applicable federal discovery rules. As the Federal Rules contemplate, after the Plaintiff serves its discovery requests, it is the *Defendants'* burden to object with particularity, including as to duplication. *See, e.g.*, *Columbian Chems. Co. v. AIG*

Specialty Ins. Co., No. 5:14-CV-166, 2015 WL 12755711, at *3 (N.D.W. Va. Sept. 18, 2015) ("If a party believes that a discovery request exceeds the allowable bounds of this broad scope, it may object, but the party resisting discovery has the burden of clarifying, explaining and supporting its objections.") (internal quotation marks omitted); *Marens v. Carrabba's Italian Grill, Inc.*, 196 F.R.D. 35, 38-39 (D. Md. 2000) ("[Rule 26] impose[s] an affirmative duty on the objecting party to particularize with facts, not conclusory statements, the basis for these objections."). The Plaintiff, however, has not yet served its discovery requests. The Defendants should not be permitted to "contravene the intent of the Federal Rules, which place the burden of objecting to discovery requests with specificity squarely on the producing party rather than the requesting party," and preemptively limit the Plaintiff's ability to seek discovery. *Cappetta v. GC Servs. Ltd. P'ship*, No. 3:08-CV-288, 2008 WL 5377934, at *3 n.4 (E.D. Va. Dec. 24, 2008).

38. Second, it creates ambiguity as to whether and to what extent a request "duplicates" a prior request. For example, would a request be "duplicative" of discovery done in the preliminary injunction proceeding if that request merely pertained to Project Omega? Suppose an interrogatory propounded in the Adversary Proceedings is substantially similar to a previous interrogatory but is directed to a Defendant that did not participate in the preliminary injunction proceeding? Would that interrogatory be "duplicative" in that circumstance? Would a prohibition against "duplicative" discovery prevent the Plaintiff from taking Rule 30(b)(6) depositions of the Debtors in the Adversary Proceedings because the same Debtors were deposed under that rule in the preliminary injunction proceeding? These examples show that the word "duplicative" can open the door to broad and differing interpretations that will likely lead to more discovery disputes rather than fewer.

39. Moreover, the supposedly "non-controversial"[18] shield against "duplicative" discovery that the Defendants seek can be turned into a sword against the Plaintiff to thwart its legitimate discovery efforts. Indeed, the Defendants indicate that they want to be in a position to instruct witnesses not to answer deposition questions whenever their counsel deems such questions to be "duplicative" of ones posed in the preliminary injunction proceeding. Defs,' Letter at 8. This could open the door to mischief and abuse that would be intended to shut down the Plaintiff's discovery in the Adversary Proceedings. Again, this would likely lead to more discovery disputes for the Court to resolve, not fewer.

40. The Plaintiff in these Adversary Proceedings should be permitted to build on the discovery taken in the preliminary injunction proceeding, which may include discovery requests or deposition questions that are intended as a follow-up to the requests made and questions posed in the preliminary injunction proceeding. Moreover, to the extent documents were withheld or witnesses instructed not to answer on the basis of privilege in the preliminary injunction proceeding, the Plaintiff would want to propound previous requests or ask the same questions if the Court were to find that the crime-fraud exception applied or there was an at-issue waiver of the privilege. If the Plaintiff's discovery in these Adversary Proceedings were somehow to become "unreasonably cumulative and duplicative," the Defendants could ask this Court to limit that discovery in accordance with Rule 26(b)(2)(C)(i). In other words, there already are protections and remedies built into the Federal Rules that are available to the Defendants. A blanket prohibition on "duplicative" discovery is simply unnecessary. The Defendants should not be allowed to hamstring the Plaintiff's ability to pursue discovery in the Adversary Proceeding

[18] Defs.' Letter at 6.

through a blunt, ambiguous, and overbroad prohibition against "duplicative" discovery that is neither authorized under the Federal Rules nor warranted here.

41. None of the cases cited by the Defendants in their Letter dictates a different result. In asserting that "the burden [is] on the Committee—not the Defendants—to avoid duplicative discovery" (*see* Defs.' Letter at 7), the Defendants rely on Rule 26(g), which discusses "sanctions for improper certifications."[19] But that is not yet applicable here, as again, the Plaintiff has not even had the opportunity to serve its discovery requests. The Defendants' requested relief is thus premature in connection with the CMO.

III. ISSUE THREE: Whether the Plaintiff is preemptively prohibited from seeking from any Defendant electronically stored information on personal mobile devices.

42. As a preliminary matter, it is "well established that text messages" and similar types of documents found on mobile devices "'fit comfortably within the scope of materials that a party may request under Rule 34.'" *Paisley Park Enters., Inc. v. Boxill*, 330 F.R.D. 226, 234 (D. Minn. 2019) (quoting *Flagg v. City of Detroit*, 252 F.R.D. 346, 352-53 (E.D. Mich. 2008)). There is no dispute among the parties as to whether ESI found on mobile devices is discoverable.

[19] None of the cases cited by the Defendants on pages 7 and 8 of their letter relate to the entry of a CMO. *See* Defs.' Letter at 7-8 (citing *Huggins v. N.C. Dep't of Admin.*, No. 5:10-CV-414-FL, 2012 WL 5303702, at *2 (E.D.N.C. Oct. 25, 2012) (denying the plaintiff's motion to compel where the plaintiff failed to address the defendant's discovery objections and filed its motion *after* the deadline for fact discovery); *Kinetic Concepts, Inc. v. ConvaTec Inc.*, 268 F.R.D. 226, 239, 246 (M.D.N.C. 2010) (granting, in part, a motion to compel); *In re Seven Cntys. Servs., Inc.*, No. 13-03014, 2013 WL 5965754, at *1 (Bankr. W.D. Ky. Nov. 8, 2013) (denying a motion to dismiss for lack of jurisdiction, lack of standing, and failure of state a claim); *Rowe v. Heritage Auto. Grp., Inc.*, No. 5:17-CV-38, 2018 WL 3458356, at *1 (D. Vt. July 18, 2018) (denying a motion to reconsider a discovery order permitting a joint deposition across two employment discrimination cases to save costs); *Stoddard v. Pliva USA, Inc.*, No. 4:08-CV-173-H(3), 2013 WL 9675380, at *2 (E.D.N.C. May 3, 2013) (denying the defendant's motion to re-depose the plaintiffs where the request was untimely and the defendants "provide[d] scant argument in support of [their] request"); *Aldridge v. Goodyear Tire & Rubber Co.*, 30 F. App'x 184, 186–87 (4th Cir. 2002) (affirming the district court's decision to grant summary judgment and noting that the district court denied the plaintiff's request for further discovery upon finding that the requested discovery was "[not] relevant to the dispositive issue"); *Martinac v. I-Flow Corp.*, No. CV 08-5035 (JRT/JJK), 2009 WL 10678562, at *1 (D. Minn. Apr. 22, 2009) (granting the plaintiffs' motion to quash defendants' cross-notice of depositions where substantial discovery had already occurred in related cases and the defendants failed to provide any custodial records necessary for the plaintiffs to conduct the cross-noticed depositions)).

43. Accordingly, consistent with the procedures set forth in the Federal Rules, the Plaintiff's Proposed CMO seeks to ensure that all parties comply with their discovery obligations at this early stage. In particular, the Plaintiff's Proposed CMO contemplates that the parties (i) exchange initial disclosures which, among other things, will identify "all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses," Fed. R. Civ. P. 26(a)(1), and (ii) proceed with a Rule 26(f) conference and develop a proposed discovery plan which will state, among other things, the parties' views on (a) "the subjects on which discovery may be needed" and (b) "any issues about disclosure, discovery, or preservation of electronically stored information, including the form or forms in which it should be produced," Fed. R. Civ. P. 26(f).

44. In fact, this exact procedure is what the parties negotiated and agreed to, as is reflected in both draft CMOs. Specifically, the CMOs contemplate that the parties will meet and confer "to create a discovery protocol" applicable to the proceeding discovery. *See* Ex. A, § C.3.i; *see also* Ex. B, § C.3.ii.

45. Yet, prior to exchanging initial disclosures or participating in a discovery conference from which the discovery protocol will be established, the Defendants now request that the Plaintiff be barred from seeking information, including that which is found on the Defendants' mobile devices.[20] The problem for Defendants is that this issue is not yet ripe. Worse yet, the

[20] Based on Defendants' Proposed CMO, and as is evidenced in the comparison draft appended as Exhibit B to this Motion, Defendants seek to bar Plaintiff from seeking far more than just information on mobile devices. *See* Ex. B, § C.3.ii. Rather, by incorporating a specific provision of a prior order in the preliminary injunction proceeding, Defendants seek to bar Plaintiff from seeking information regarding the following categories:

- Data stored in a backup system for the purpose of system recovery or information recovery, including, but not limited to: disaster recovery backup tapes and media; continuity of operations systems; and data or system mirrors or shadows.
- Voicemail recordings.
- Mobile devices and ESI or other data stored on mobile devices, including smart phones or tablets.
- Instant/Chat Messaging.
- Legacy Data (e.g., data stored on floppy discs).

Defendants have not yet confirmed whether they even have discoverable information on mobile devices within their possession, custody, and control, including from the Defendants that were not defendants to the preliminary injunction proceeding. In fact, during the November 21, 2022 meet and confer, the Plaintiff asked repeatedly whether the Defendants possessed relevant information on mobile devices, and *the Defendants repeatedly refused to even answer the question*, making it impossible for the Plaintiff to take a position on their desire to seek such information or the relative burden to produce same. In assessing whether the Defendants must produce discoverable information found on mobile phones, the parties first need to discuss the issues and determine whether such information even exists.

46. Nonetheless, even if the Defendants were to argue that information on mobile devices was not reasonably accessible, the burden of demonstrating such inaccessibility is through "a motion to compel or for a protective order." *See Westdale Recap Props., Ltd. v. NP/I&G Wakefield Commons, L.L.C.*, No. 5:11-CV-659-D, 2013 WL 5424844, at *3 (E.D.N.C. Sep. 26, 2013) (citing Fed. R. Civ. P. 26(b)(2)(B)). The Defendants have not—and cannot—satisfy their burden here.[21]

- Deleted, erased, or overwritten computer files, whether fragmented or whole, which were deleted in the regular course of business.
- Data stored in Random Access Memory ("RAM"), cache memory, or in temporary or cache files, including internet history, web browser cache, and cookie files, wherever located.
- Encrypted data/password protected files, where the key or password cannot be ascertained absent extraordinary efforts.
- Data stored on printers, photocopiers, scanners, and fax machines.
- Data stored as server, system, or network logs.

See Adv. Pro. No. 3:20-ap-03041, ECF No. 69, at § 2.1.3. Of course, the Plaintiff believes such blanket prohibition is premature before even conducting the Rule 26(f) conference, let alone having had no discussion in this litigation regarding the availability of such discoverable information. Nonetheless, because the Defendants focus their argument on the prohibition of mobile devices, *see generally* Defs.' Letter, the Plaintiff shall do the same, subject to an express reservation of rights and incorporation of similar arguments with respect to the other above categories.

[21] Again, none of the cases cited by the Defendants on pages 9 and 10 of their letter relate to the entry of a CMO but instead concern motions to compel or motions for a protective order. *See* Defs.' Letter at 9-10 (citing *Hobby Works, Inc. v. Protus IP Sols.*, Inc., No. CV DKC-08-1618, 2009 WL 10685585, at *1 (D. Md. Oct. 26, 2009) (denying plaintiff's motion to modify order for sanctions which sought to compel inspection of defendant's data where plaintiff

47. Furthermore, to the extent the parties agreed to any limitation for reasonable accessibility of ESI found on mobile devices in a prior ESI protocol, that limitation was solely based on the accessibility of the parties in a separate litigation on an expedited discovery track during the height of the COVID pandemic. While expediency is preferred in these Adversary Proceedings, the parties are not subject to the same emergency relief that was sought in the preliminary injunction action, and, fortunately, the same considerations during the height of the COVID pandemic have waned. Thus, the circumstances have changed, warranting further consideration of what discoverable information is reasonably accessible.

* * *

48. Therefore, implementation of the Plaintiff's Proposed CMO is warranted and appropriate to avoid duplication of resources, avoid unnecessary cost and delay, and promote the

simply sought to "cross-check on the thoroughness and accuracy of [defendant's] searches"); *Diepenhorst v. City of Battle Creek*, No. 1:05CV00734, 2006 WL 1851243, at *3 (W.D. Mich. June 30, 2006) (denying, in part, defendant's motion to compel plaintiff to produce the hard drive of her personal computer); *C.H. v. Sch. Bd. of Okaloosa Cnty. Fla.*, No. 3:18-CV-2128-MCR-HTC, 2020 WL 6572430, at *3 (N.D. Fla. Nov. 4, 2020) (granting motion for protective order and to quash subpoena issued to non-party for records related to defendant's personal cell phone); *Cross by & Through Steele v. XPO Express, Inc.*, No. 4:15-CV-2481-BHH, 2016 WL 11519221, at *7 (D.S.C. May 3, 2016) (on motion to compel, finding forensic examination of defendant's personal laptop to be unnecessary but directing defendant "to conduct a search of his laptop to determine whether it contains any responsive documents"); *Hespe v. City of Chicago*, No. 13 C 7998, 2016 WL 7240754, at *3, *7 (N.D. Ill. Dec. 15, 2016) (affirming the magistrate's report and recommendation denying motion to compel where "plaintiff had turned over all the ESI defendants had requested"); *Henson v. Turn, Inc.*, No. 15-CV-01497-JSW (LB), , at *5 (N.D. Cal. Oct. 22, 2018) (after the parties seemingly agreed to a protocol for producing information from the parties' devices or forensic images and served discovery requests, the court found that the defendant's request to "directly inspect [the plaintiffs'] devices (or produce complete forensic images of their devices) [was] not relevant or proportional to the needs of this case"); *John Crane Grp. Corp. v. Energy Devices of Tex., Inc.*, No. 6:14-CV-178, 2015 WL 11112540, at *2 (E.D. Tex. Oct. 30, 2015) (declining to reconsider its order denying the requested forensic examination because inconsistencies in deposition testimony did not rise to the necessary level of withholding information); *Hardy v. UPS Ground Freight, Inc.*, No. 3:17-CV-30162-MGM, 2019 WL 3290346, at *2, *4 (D. Mass. July 22, 2019) (denying motion to compel production of a complete forensic image of plaintiff's cell phone where plaintiff represented that he had "produced screenshots of all relevant, responsive text messages" and defendant could have sought other texts from its own employees); *Wisk Aero LLC v. Archer Aviation Inc.*, No. 3:21-CV-02450-WHO, 2022 WL 6250989, at *2 (N.D. Cal. Aug. 19, 2022) (affirming magistrate judge's order denying a forensic inspection of non-parties' personal devices); *Tingle v. Hebert*, No. CV 15-626-JWD-EWD, 2018 WL 1726667, at *5 (M.D. La. Apr. 10, 2018) (denying motion for contempt of court seeking an independent forensic examination of plaintiff's personal cell phone and personal email accounts where plaintiff "conducted a diligent search of [p]laintiff's text messages, emails and social media messages"); *Crabtree v. Angie's List, Inc.*, No. 116CV00877, 2017 WL 413242, at *3 (S.D. Ind. Jan. 31, 2017) (denying motion to compel forensic examination where plaintiffs "have already produced cell phone records")).

efficient and orderly administration of the matters by, among other things, providing briefing schedules, resolving pending discovery disputes, and consolidating the Adversary Proceedings for discovery purposes going forward.

BASIS FOR RELIEF

49. Section 105(a) of the Bankruptcy Code provides that bankruptcy courts "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a). This section thus grants bankruptcy courts broad authority and discretion to enforce the provisions of the Bankruptcy Code either under specific statutes or under equitable common law principles.

50. Courts in this District and other districts in this Circuit regularly approve case management procedures to promote the efficient administration of cases. *See, e.g.*, *In re DBMP LLC*, Adv. Pro. No. 3:21-ap-03023, ECF No. 94, Adv. Pro. No. 3:22-ap-03000, ECF No. 48, Adv. Pro. No. 3:22-ap-03001, ECF No. 37 (Bankr. W.D.N.C. May 23, 2022) (approving case management procedures in three adversary proceedings); *In re Oldco, LLC*, No. 17-BK-30140 (JCW), ECF No. 49 (Bankr. W.D.N.C. Feb. 3, 2017) (approving case management and noticing procedures); *In re Kaiser Gypsum Co., Inc.*, No. 16-BK-31602 (JCW), ECF No. 277 (Bankr. W.D.N.C. Dec. 30, 2016) (approving case management and scheduling procedures); *In re Cox & Schepp, Inc.*, No. 12-BK-30019 (JCW), ECF No. 117 (Bankr. W.D.N.C. Feb. 1, 2012) (approving case management and noticing procedures); *In re Northampton Generating Co., L.P.*, No 11-BK-33095 (JCW), ECF No. 47 (Bankr. W.D.N.C. Dec. 12, 2011) (same); *In re Garlock Sealing Techs. LLC*, No. 10-BK-31607 (JCW), ECF No. 69 (Bankr. W.D.N.C. June 11, 2010) (same); *see also In re Dacco Transmission Parts (NY), Inc.*, No. 16-BK-13245 (MKV), ECF No. 290 (Bankr. S.D.N.Y. Feb. 14, 2017) (same); *In re Alpha Natural Res., Inc.*, No. 15-BK-33896 (KRH), ECF No. 99 (Bankr. E.D. Va. Aug. 5, 2015) (same); *In re NII Holdings, Inc.*, No. 14-BK-12611 (SCC),

ECF No. 215 (Bankr. S.D.N.Y. Nov. 12, 2014) (same); *In re Specialty Prods. Holding Corp.*, No. 10-BK-11780 (JKF), ECF No. 252 (Bankr. D. Del. July 23, 2010) (same).

NOTICE AND NO PRIOR REQUEST

51. Notice of this Motion has been provided to the Defendants via ECF and by electronic mail. The Movant submits that, in light of the nature of the relief requested, no other or further notice need be provided.

52. No prior motion for the relief requested herein has been made to this or any other Court in connection with the Adversary Proceedings.

CONCLUSION

WHEREFORE for the reason set forth herein the parties respectfully request that this Court (a) enter the Plaintiff's Proposed CMO, substantially in the form attached hereto as Exhibit A and (b) grant such other and further relief as is just and proper.

[signature page to follow]

Dated: November 28, 2022

/s/ Glenn C. Thompson

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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 motion filed by the Plaintiff (the "**Plaintiff's Motion**")[2] and defendants' letter (the "**Defendants' Letter**"[3] and together with the Plaintiff's Motion, the "**Pleadings**")[4] in the above-captioned adversary proceedings (collectively, the

[2] *See* 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] *See* 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. ___.

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

"**Adversary Proceedings**"); the Court having reviewed the Pleadings and the other papers filed related thereto and having considered the statements of counsel related thereto at a hearing before the Court on the Pleadings (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 Pleadings and the Hearing was sufficient under the circumstances, and (d) implementation of the case management procedures described herein in connection with the Adversary Proceedings 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 Motions

1. The Plaintiff's Motion is GRANTED, and the Defendants' Letter is DENIED, to the extent set forth herein and on the record of the Hearing (which is incorporated herein by reference).

2. 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 timely 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

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

ii. Discovery in the Substantive Consolidation Proceeding shall proceed according to the Discovery Protocol set forth in Section C below.

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. Discovery in the Fraudulent Transfer Proceeding shall proceed according to the Discovery Protocol set forth in Section C below.

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. Subject to the Discovery Protocol set forth in Section C below, the Fiduciary Duty Proceeding shall be stayed 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 Adversary Proceedings (collectively, the "**Post-CMO Discovery**") shall be deemed to have occurred in all Adversary Proceedings, including, without limitation, the Fiduciary Duty Proceeding that is otherwise being held in abeyance.

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 further Post-CMO Discovery from parties, entities, or individuals who received discovery requests in connection with the Prior Discovery, or (b) right to object to any such Post-CMO Discovery on any ground. 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. Notwithstanding the foregoing, the parties shall negotiate a discovery protocol and/or seek relief from the Court, as set forth in Paragraph C.3.i below.

3. *Discovery Protocol*

i. As set forth in Paragraph C.5.i below, within **fifteen (15) business days** after entry of this Order, the parties shall conduct an initial meet-and-confer to create a discovery protocol applicable in the Adversary Proceedings, 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.

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 C.5.i and subject to Section C.2.ii, the parties 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

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.

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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]*~~motion filed by the Plaintiff (the "**Plaintiff's Motion**")[2] and defendants' letter (the "~~**Motion**~~**Defendants' Letter**"~~)~~[3] and together with the Plaintiff's Motion, the "**Pleadings**")[4] in the above-captioned adversary proceedings

[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] *See* 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~~[4] Capitalized terms used but not otherwise defined herein shall have the meanings given to such terms in the ~~Motion~~Motions.

(collectively, the "**Adversary Proceedings**") ~~and the above-captioned base case (the "**Bankruptcy Case**")~~; the Court having reviewed the ~~Motion~~Pleadings and the other papers filed related thereto and having considered the statements of counsel related thereto at a hearing before the Court on the ~~Motion~~Pleadings (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~~Pleadings 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:

[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.~~

A. The ~~Motion~~Motions

1. The Plaintiff's Motion is GRANTED, ~~in part~~and the Defendants' Letter is DENIED, to the extent set forth herein and on the record of the Hearing (which is incorporated herein by reference).

2. ~~Defendants' consent to entry~~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 timely 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 Consolidation Proceeding shall not trigger the entry of any pre-trial orders or deadlines until ordered by the Court.

   ii. ~~With limiting~~Discovery in the Substantive Consolidation Proceeding shall proceed according to the Discovery Protocol set forth 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. ~~With limiting~~Discovery in the Fraudulent Transfer Proceeding shall proceed according to the Discovery Protocol set forth 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~~Subject to the Discovery Protocol set forth in Section C below, 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~~Adversary Proceedings (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~~is otherwise being held in abeyance.

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 further Post-CMO Discovery ~~that does not duplicate the interrogatories, document requests, depositions, or other~~from parties, entities, or individuals who received 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. Notwithstanding the foregoing, the parties shall negotiate a discovery protocol and/or seek relief from the Court, as set forth in Paragraph C.3.i below.

3. *Discovery Protocol*

i. As set forth in Paragraph C.5.i below, within **fifteen (15) business days** after entry of this Order, 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~~in the ~~Fraudulent Transfer Proceeding and Substantive Consolidation Proceeding~~Adversary Proceedings, 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