Docket #1712 Date Filed: 4/6/2023

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

In re:	)	
	)	**Chapter 11**
ALDRICH PUMP LLC,	)	
MURRAY BOILER LLC,	)	
	)	**Case No. 20-30608 (JCW)**
Debtors.	)	

MOTION TO DISMISS ON BEHALF OF ROBERT SEMIAN AND OTHER CLIENTS OF MRHFM[1]

The Bankruptcy Code exists for companies and individuals having trouble paying their bills or imminently in danger of having trouble paying their bills. This foundational, jurisdictional threshold for access to Bankruptcy Court is recognized by the Supreme Court, all federal Circuit Courts of Appeal, and the legislative history of 1994's Bankruptcy Reform Act. *Williams v. U.S. Fidelity & Guar. Co.*, 236 U.S. 549, 554–55 (1915). *See also* FN16, *infra.*; H.R. Rep. 103-835, at 40–41. Financial distress is, and always has been, the jurisdictional touchstone of the bankruptcy system.

The Fourth Circuit hews to that rule. In *Carolin*, it confirmed that the good faith standard protects the statutory purpose of the Code: to "resuscitate a financially troubled debtor." *Carolin Corp. v. Miller*, 886 F.2d 693, 701 (4th Cir. 1989) (quoting *In re Coastal Cable T.V., Ind.*, 709 F.2d 762, 765 (1st Cir. 1983)). Seven years later, it affirmed the centrality of that purpose, noting it is "correct as far as it goes, but [ ] does not go far enough." *In re Kestell v. Kestell*, 99 F.3d 146, 147 (4th Cir. 1996). Courts should (and do) draw upon their equity powers to ensure that bankruptcy proceedings "reflect the intended policies of the Code." *Id.* (citing COLLIER ON BANKRUPTCY, § 301.05[1], and *In re Little Creek*

[1] The movants (the "Movants") in this matter are Robert Semian (who was not required to file a proof of claim) and forty-six clients of Maune Raichle Hartley French & Mudd, LLC ("MRHFM") who filed proofs of claim in this case. MRHFM represents only mesothelioma victims. MRHFM represents forty-seven mesothelioma victims who have filed proofs of claim in this case. MRHFM client Joseph Hamlin (deceased, now represented by his surviving spouse) is a member of the Official Committee. This Motion is *not* made on behalf of Mr. Hamlin or on behalf of the Committee.

Dev. Co., 779 F.2d 1068, 1072 (5th Cir. 1986)). Eighteen years post-*Carolin*, the Fourth Circuit again affirmed the foundational jurisdictional predicate for accessing bankruptcy courts: financial distress. "[C]ourts have consistently dismissed Chapter 11 petitions filed by financially healthy companies with no need to reorganize under the protection of Chapter 11." *In re Premier Auto. Servs., Inc.*, 492 F.3d 274, 280 (4th Cir. 2007) (cleaned up) (quoting *In re SGL Carbon Corp.*, 200 F.3d 154, 166 (3d Cir. 1999)).

Because the facts in this case demonstrate that the debtors in this case (the "Debtors") are not and have never been financially distressed by asbestos liabilities, this Chapter 11 case does not further the purpose of the Code. Aldrich and Murray are not in need of resuscitation; they have no need for a fresh start.[2] To the contrary, without any restructuring of their liabilities or assets, and without altering their current business practices, they are fully capable of paying their current and future asbestos liabilities as they come due. The Debtors' petition is, therefore, both objectively futile and lacking in good faith.

The triage analysis in *Carolin*—whether there is enough left of a debtor to make resuscitation worthwhile, has no application to financially robust companies. The Debtors gloss over *Carolin*'s express statement of purpose and pervert *Carolin* into a new standard that effectively eliminates financial distress from good faith analysis. The Debtors attempt this sleight-of-hand by defining "financial distress" as "significant liability."[3]

According to the Debtors, they qualify as "financially distressed" so long as the numerator of the equation (*i.e.*, the liability) is large, no matter how gargantuan the denominator (*i.e.*, financial resources available to pay the liability). The Debtors then claim that their unquestionable ability to pay all their liabilities precludes dismissal under *Carolin*. This sleight-of-hand requires the Court to ignore

[2] The cases are jointly administered, and treated by the Court as a single reorganization. *See* No. 20-3041 (JCW), Dkt. 308, 7 n.6.

[3] For the purposes of this Motion, Movants do not challenge the effectiveness of the Two-Step or the bona fides of the funding agreements. Movants' jurisdictional argument—that the tools provided by the Code are not available to non-distressed companies—applies with equal force whether or not Aldrich/Murray ever executed a Two-Step.

what *Carolin* actually says: the purpose of objective futility analysis is to ensure that the petition furthers the purpose of the Code—the "resuscitation of a financially troubled debtor."

When facing an attack on its good faith, the burden is on the debtor and must be satisfied by a preponderance of the evidence. *In re Patel*, 2022 WL 1420045, at *4 (Bankr. W.D.N.C. 2022). The Debtors cannot carry that burden here. The Court must enforce the limits of its subject-matter jurisdiction and, under Section 1112(b)(2) of the Code, dismiss the case.

FACTUAL BACKGROUND

Aldrich Pump LLC ("Aldrich") and Murray Boiler LLC ("Murray") filed voluntary Chapter 11 petitions on June 18, 2020—almost three years ago. The Court is well-versed in the procedural history of the case and the convoluted corporate restructurings that preceded it. *See* No. 20-3041 (JCW), Dkt. 308. At this juncture, Aldrich and Murray are indirect subsidiaries of Trane Technologies plc, a publicly traded global manufacturing company. Trane Technologies plc and its non-bankrupt subsidiaries possess substantially all the assets of both Aldrich's predecessor (the former Ingersoll-Rand Company, "Old IRNJ") and Murray's predecessor (the former Trane U.S. Inc., "Old Trane").[4]

There is no dispute that the restructuring was performed to isolate a single liability—Aldrich/Murray's liability for state-law personal injury claims related to asbestos. *See* Ex. 1, 2022 Form 10-K, 8. Nor is there any dispute that the sole purpose of this proceeding is to use the petition to achieve "a holistic and global resolution"[5] of that liability, and that the "holistic" relief desired by the Debtors cannot be achieved absent the tools of Section 524(g).[6] *See also* Ex. 1, 2022 FORM 10-K, 8.

It is likewise beyond dispute that the Debtors' asbestos liabilities were manageable (and being managed) without financial distress at the time of filing, and that the Debtors' ability to pay those

[4] New TTC received 99% of Old IRNJ's assets (No. 20-3041 (JCW), Dkt. 308, 19); New Trane received 98% of Old Trane's assets (*id.* at 21).
[5] *See* Dkt. 115, Tr. of Emergency Hr'g on First Day Pleadings, June 22, 2020, 25:19–21.
[6] *See id.*

liabilities has improved in the intervening years. The Debtors' asbestos liabilities—while substantial in the abstract—never put the Debtors in financial distress. The admitted purpose of this case is to "overcome the tort system," [7] not to further Chapter 11's "statutory objective of resuscitating a financially troubled debtor." *Carolin Corp. v. Miller*, 886 F.2d 693, 701–02 (4th Cir. 1989).

Indeed, the Debtors' counsel has publicly admitted that a debtor fails to show financial distress, and therefore cannot meet its burden of proving good faith, when litigation is "manageable."[8] The Debtors ignore their counsel's candid, public admission and attempt to limit consideration of "financial distress" to only the number of litigation claims, the amount being paid per year, and the expected number of additional years of litigation.[9] But this "numerator-only" re-definition of "financial distress" ignores the other half of the equation: the Debtors' ability to pay this liability without any financial distress.

1. The Debtors are Fully Backstopped by Non-Distressed Corporations and Significant Insurance. The Debtors' Asbestos Liabilities are—and Always Were—Manageable.

At the time of filing these petitions, the Debtors and their predecessors had manageable asbestos personal injury liabilities—and they were managing those liabilities without financial stress, let alone financial distress. The Debtors' ability to manage those liabilities has only increased since their bankruptcy filings.

A. Pre-Petition: Old IRNJ's and Old Trane's Manageable Asbestos Liabilities

Before filing for bankruptcy, Old IRNJ and Old Trane managed asbestos liabilities without distress. While those liabilities were expensive, they swore to the SEC and their shareholders that there was no expectation asbestos-related liability would have "material adverse impact on [their] results of operations, financial condition, liquidity or cash flows." Ex. 3, 2019 ANNUAL REPORT +

[7] *See* Ex. 2, Tr. of Am. Bankr. Inst. Panel, Apr. 2022, 40, 50.
[8] Ex. 2, 43.
[9] *Id.* at 42–43. Debtors cite no precedent that defines "financial distress" in such an opportunistically myopic fashion, because Debtors' definition is nonsensical.

FORM 10-K, 120.[10] The companies' independent auditors tested "[m]anagement's key assumptions underlying the estimated asbestos-related liabilities" and certified that conclusion. *Id.* at PDF 153–54. *See also* Ex. 4, 2017 ANNUAL REPORT / 2018 NOTICE & PROXY STATEMENT, 133 ("In our opinion, pending legal matters [expressly including asbestos-related claims] are not expected to have a material adverse impact on our results of operations, financial condition, liquidity or cash flows.").

Part of the Debtors' management of asbestos liabilities included booked cash reserves to address the contingent asbestos liabilities. *See* Ex. 3, at PDF 110 ("As required by generally accepted accounting principles in the United States, we establish reserves based on our assessment of contingencies."); Ex. 5, 2018 ANNUAL REPORT & 2019 NOTICE / PROXY STATEMENT, FORM 10-K, 96 (same); Ex. 4, 126 (same); Ex. 6, 2016 ANNUAL REPORT & 2017 NOTICE/PROXY STATEMENT, 104 (same); Ex. 7, 2015 ANNUAL REPORT AND 2016 NOTICE/PROXY STATEMENT, 155 (same). The Debtors booked those reserves based on actuarial estimates and historical and predicted data. Ex. 3, 162; Ex. 7, 180. To both their shareholders and to the SEC, the Debtors represented multiple times that they "believe our estimated reserves are reasonable and do not believe the final determination of the liabilities with respect to these matters would have a material effect on our financial condition, results of operations, liquidity or cash flows for any year." Ex. 3, 162; Ex. 7, 180.[11]

B. Time of Filing: Indisputable "Ability to Fund" Asbestos P.I. Liabilities

The Debtors do not dispute that the assets of Trane Technologies plc, New TTC, and New Trane are fully available to address the Debtors' asbestos liabilities, or that those corporate assets fully backstop those liabilities. To the contrary, the Debtors insist upon it: "due to the Funding Agreements, [Debtors and their parents] argue that the Debtors have the same ability to pay asbestos

[10] Given the multi-document nature of Debtors' affiliates' financial reports, Movants cite to the .pdf pagination of those reports for ease of navigation.

[11] In contrast, a fundamental basis for the finding that Johns-Manville "was and remains 'a financially besieged enterprise in desperate need of reorganization of its crushing real debt, both present and future" was the fact that Johns-Manville was going to have to book a $1.9 billion dollar asbestos liability [approximately $6 billion in 2023 dollars] and that would, in turn, have put the company in danger of liquidation. *Kane v. Johns-Manville Corp.,* 843 F.2d 636, 649 (2d Cir. 1988).

claims as did their predecessors." No. 20-3041 (JCW), Dkt. 308, 49 ¶ 151. *See also* Ex. 8, Dkt. 29, Decl. of A. Tananbaum, 13 ¶ 36 (emphasis here) (swearing that the Debtors "have access to additional *uncapped* funds through the Funding Agreements…").

This Court independently found that the Debtors' "ability to fund" their liabilities is beyond question: "Certainly, New TTC and New Trane have the ability to fund their respective obligations under the Funding Agreements." No. 20-3041 (JCW), Dkt. 308, at 42 ¶ 129. "That ability is demonstrated by, among other things, New TTC's book-value equity of approximately $7.8 billion and New Trane's book-value equity of $3 billion, as of December 31, 2020." *Id.*

This Court summarized, in factual findings, the financial health of the Debtors and their predecessors. *See generally id*. Old Trane and Old IRNJ comprised "a profitable going concern whose assets *significantly outweighed* its combined operating and asbestos liabilities." *Id.* at 17 ¶ 47 (emphasis here). While the current and future asbestos liabilities of Old Trane/Old IRNJ were projected to be at least $547 million, *id.* at 14 ¶ 36, only $240 million (43%) of that projection would not be covered by insurance, *id.* at 14–15 ¶ 39.[12] The remaining 57% percent of the Debtors' liability was, according to the Debtors, covered by insurance.

C. Now: Debtors' Asbestos Liabilities are More Manageable than Ever.

Three years into this case, the record shows $240 million pales in comparison to the assets and cash flow available to Murray and Aldrich. Trane Technologies plc's public filings show an asset-rich, successful company, awash in surplus cash. It has applied its cash flow to massive dividend transfers to equity, voluntary pre-payment of debt, and stock buybacks.

[12] The highest amount of liability estimated on the record is $500 million each for both Aldrich and Murray; it does not account for available insurance. *See* No. 20-30608, Dkt. 1, 4 (Aldrich's Official Form 201); No. 20-30609, Dkt. 4, 4 (Murray's Official Form 201). These estimates and assertions come from the Debtors. While the Movants do not agree that the Debtors have adequately estimated their present and future asbestos liabilities, the Debtors must be estopped from arguing otherwise given their strident insistence on their ability to pay their tort victims in full.

In 2020, the year their petitions were filed, the Debtors' affiliates boasted of $12.5 billion in revenue. Ex. 9, 2020 ANNUAL REPORT & 2021 NOTICE/PROXY STATEMENT, 5. The companies paid dividends of $2.12 per share for over 243 million shares, totaling over $515 million in outgoing dividends. *Id.* at 199. *See also* Ex. 10, Dividend History.[13] That same year, the Debtors' affiliates retired $300 million in debt and bought back $250 million in stock. Ex. 9, 6. Just considering these three voluntary expenditures, the Debtors' corporate backstops distributed excess cash flow totaling over $1,065,000,000 ($1.065 billion). In 2020 alone, the massive giveaway amounted to more than 400% of Debtor's sworn, audited estimate of its all-in, forever asbestos liabilities, net of insurance.[14]

In 2021, the Debtors' affiliates and their investors did even better. Net revenues totaled over $14.1 billion. Ex. 11, 2021 ANNUAL REPORT & 2022 NOTICE/PROXY STATEMENT, 11. The companies paid $561 million in dividends, bought back $1.1 billion in stock, and retired $425 million in debt. *Id.* at 6.

2022 proved even better for the Debtors' backstops: $16.0 billion of consolidated revenue, $1.2 billion in buybacks, and $620.7 million in dividends declared. Ex. 1, 62, 66. The Debtors and their affiliates loudly proclaimed their financial health, including a strong balance sheet, liquidity position, and continued confidence in future cash flows:

[13] Attached here and available at https://investors.tranetechnologies.com/stock-information/dividend-history/.
[14] Indeed, during the three massively profitable years prior to and including the filing of these petitions, Debtors' affiliates' most highly paid executives alone made over $135 million in compensation. Ex. 11, 60.

Trane Technologies Declares Quarterly Dividend and Announces New $3 Billion Share Repurchase Program

FEB 03, 2022

SWORDS, Ireland--(BUSINESS WIRE)-- The Board of Directors of Trane Technologies plc (NYSE:TT), a global climate innovator, declared a quarterly dividend of $0.67 per ordinary share, or $2.68 annualized. The dividend is payable March 31, 2022, to shareholders of record on March 4, 2022. The declaration was consistent with the company's previously announced intention to increase the dividend by 14%. When combined with the dividend increase of 11% in the first quarter of 2021, the annual dividend is up 26% since launching as a company focused on climate innovation in March of 2020.

The Board of Directors also authorized a new share repurchase program of up to $3 billion, to commence upon the completion of the company's 2021 $2 billion program. The 2021 program had approximately $1.05 billion remaining as of Jan 31, 2022.

"Today's announcements reflect our strong balance sheet, liquidity position and continued confidence in our ability to generate strong future free cash flow," said Dave Regnery, chair and CEO of Trane Technologies. "We remain committed to deploying 100% of excess cash over time through our balanced capital allocation strategy, which includes maintaining a competitive dividend that grows with earnings and repurchasing shares when they trade below the company's calculated intrinsic value."

Ex. 12, Trane Press Release, Feb. 3, 2022.[15] The Debtors' affiliates' enormous, growing annual profits—to say nothing of their total book value—that dwarf the Debtors' sworn estimate of all-in, total asbestos liability. That is particularly true given that over half that liability is covered by third-party insurance.

Taking the Debtors at their word, and examining documents published during the time since the Debtors filed, the ratio between liabilities and assets cannot be said to be distressing to Murray/Aldrich. Certainly, a numerator of $240 million in total liabilities sounds impressive on its face. But the Debtors' asbestos liability is dwarfed when put over a denominator of $16 billion in *annual* revenue (over $42 billion in the last three years), or *annual* excess cash flow eclipsing $1.8 billion ($620.7 million in dividends plus $1.2 billion stock buyback; three year total over $1.5 billion in dividends and $2.5 billion in stock buybacks).

The Debtors have failed to produce any evidence of past, current, or future threat to their (or their affiliates') "operations, financial condition, liquidity or cash flows" due to asbestos litigation liabilities. *See* Ex. 3, 162; Ex. 7, 180. To the contrary, sworn SEC filings deny such distress and preclude any after-the-fact claim that estimates were wrong or have changed for the worse.

[15] Available at https://investors.tranetechnologies.com/news-and-events/news-releases/news-release-details/2022/Trane-Technologies-Declares-Quarterly-Dividend-and-Announces-New-3-Billion-Share-Repurchase-Program/default.aspx.

Through the funding agreements of which they are the unlimited beneficiary, the Debtors are fully backstopped by their corporate affiliates. And the Debtor's corporate affiliates are (and were at the time of their Chapter 11 filings) massively profitable, asset wealthy, and entirely non-distressed. Assigning even half of one year's dividends to the Aldrich/Murray asbestos liabilities would allow the Debtors to manage those liabilities in the tort system forever—according to the Debtors.

While the Debtors, no doubt, will claim that future events might prove their sworn, audited estimates of total liabilities wrong, the jurisdiction of this Court cannot be based upon fantasies. Any such hypothesized change of circumstances might support a finding of financial distress in the future, but there are no facts to support such a claim now. And given the vast wealth and profitability of the Debtors' affiliates, the Debtors would have to demonstrate that their estimates were off by orders of magnitude before they would create an argument for actual financial distress.

This Court has the obligation to jealously guard its jurisdiction to prevent abuse. And "abuse" in this context does not require malice or ill will. *See e.g. In re Waldron,* 785 F.2d 936, 941 (11th Cir. 1986) ("unmistakable manifestations of bad faith need not be based upon a finding of actual fraud, requiring proof of malice, scienter or an attempt to defraud."). Abuse in this context means using the *tools* of the Code in a manner inconsistent with the Code's foundational *purposes*: providing relief to "the honest debtor from the weight of oppressive indebtedness," and allowing for the "resuscitation of a financially troubled debtor."

LEGAL STANDARDS: FINANCIAL DISTRESS IS (AND HAS ALWAYS BEEN) THE TOUCHSTONE OF THE BANKRUPTCY SYSTEM. BANKRUPTCY COURTS CANNOT EXTEND EQUITABLE PROTECTIONS TO NON-DISTRESSED DEBTORS.

Over a century ago, the Supreme Court confirmed that the bankruptcy system established by Congress as provided for in Article I, Section 8 of the Constitution is to assist those who face financial distress.

> It is the purpose of the bankrupt act to convert the assets of the bankrupt into cash for distribution among creditors, and then to relieve the honest debtor from the weight

> of oppressive indebtedness, and to permit him to start afresh free from the obligations and responsibilities consequent upon business misfortunes.

Williams v. U.S. Fidelity & Guar. Co., 236 U.S. 549, 554–55 (1915). *Accord Wetmore v. Markoe*, 196 U.S. 68, 77 (1904) ("Systems of bankruptcy are designed to relieve the honest debtor from the weight of indebtedness which has become oppressive…"); *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934) (relieving "oppressive indebtedness" a primary purpose of the Bankruptcy Act); *Ry. Labor Executives' Ass'n v. Gibbons*, 455 U.S. 457, 466 (1982) (emphasis here) ("Congress' power under the Bankruptcy Clause contemplate[s] an adjustment of a *failing debtor's* obligations.").

In the century since *Williams*, the Supreme Court, the Circuit Courts of Appeal, United States District Courts, and United States Bankruptcy Courts around the country—including this Court—have reaffirmed this self-evident proposition. Federal courts uniformly affirm this bedrock principle: bankruptcy is for individuals and companies faced with actual financial distress and in *need* of resuscitation. Bankruptcy is not a menu option for non-distressed companies and individuals who want a better deal than they are entitled to under state or federal law—no matter how attractive the equitable tools of the bankruptcy code are to the non-distressed company. *See* FN16, *infra*.

1. The Categorical, Jurisdictional Rule: No Non-Distressed Debtors in Bankruptcy.

Black-letter law, uniformly applied by federal courts, forbids the wielding of bankruptcy courts' "powerful equitable weapons" by "financially healthy companies with no need to reorganize." *In re Premier Auto. Servs., Inc.*, 492 F.3d 274, 281–82 (4th Cir. 2007).[16] As the Fourth Circuit noted in

[16] *See Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934) ("One of the primary purposes of the Bankruptcy Act is to relieve the honest debtor from *the weight of oppressive indebtedness*, and permit him to start afresh free from the obligations and responsibilities consequent upon business misfortunes.") (emphasis added); *Wetmore v. Markoe*, 196 U.S. 68, 77 (1904) ("Systems of bankruptcy are designed to relieve the honest debtor from the weight of indebtedness which has become oppressive…"); *In re Capitol Food Corp. of Fields Corner*, 490 F.3d 21, 25 (1st Cir. 2007) (reasoning that a debtor need not be insolvent before filing bankruptcy petition, but that it must be experiencing "some sort of financial distress"); *In re Cohoes Indus. Terminal, Inc.*, 931 F.2d 222, 228 (2d Cir. 1991) (debtor must "at least…face such financial difficulty that, if it did not file at that time, it could anticipate the need to file in the future"); *In re SGL Carbon Corp.*, 200 F.3d 154, 164–66 (3d Cir. 1999) (reversing the district court and dismissing the debtor's bankruptcy because, *inter alia*, "[t]he mere possibility of a future need to file, without more, does not establish that a petition was filed in 'good faith,'" and "Chapter 11 was designed to give those teetering on the verge of a fatal financial plummet an opportunity to reorganize on solid ground and try again, not to give profitable enterprises an opportunity to evade contractual or other liabilities"); *In re Premier Auto. Servs.,*

Premier Auto, federal courts "have consistently dismissed Chapter 11 petitions filed by financially healthy companies with no need to reorganize under the protection of Chapter 11." *Id.* at 280 (quoting *In re SGL Carbon Corp.*, 200 F.3d 154, 166 (3d Cir. 1999)).

Barring non-distressed companies from bankruptcy courts is a jurisdictional exercise—a mandatory requirement that safeguards the bounds of bankruptcy courts' subject-matter jurisdiction by limiting the use of bankruptcy courts' "powerful equitable weapons." *Carolin*, 886 F.2d at 698 (quoting *In re Little Creek Dev. Co.*, 779 F.2d 1068, 1072 (5th Cir. 1986)); *Premier Auto*, 492 F.3d at 279.

The limitation of bankruptcy to distressed companies "protects the jurisdictional integrity of the bankruptcy courts." *Carolin*, 886 F.2d at 698. *See also In re Little Creek*, 779 F.2d at 1071 n.1 (approving the bankruptcy court's raising the issue of good faith *sua sponte* as an inquiry into its jurisdiction); *In re Coastal Cable T.V., Inc.*, 709 F.2d 762, 764 (1st Cir. 1983) (raising *sua sponte* as jurisdictional matters the good faith standard, the principle that a person in bankruptcy must be facing financial distress, and the rule that bankruptcy requires an arguable connection between a Chapter 11 filing "and the reorganization-related purposes that the chapter was designed to serve.").

Inc., 492 F.3d 274, 280–81 (4th Cir. 2007) (dismissal upheld because debtor was not "experiencing financial difficulties;" the debtor's filings "reveal a solvent business entity," a fact that "alone may justify dismissal of [the debtor's] Chapter 11 petition"); *In re Little Creek Dev. Co.*, 779 F.2d 1068, 1072–73 (5th Cir. 1986) ("The 'new debtor' syndrome, in which a one-asset entity has been created … to isolate the insolvent property and its creditors, exemplifies … bad faith cases…Neither the bankruptcy courts nor the creditors should be subjected to the costs and delays of a bankruptcy proceeding under such conditions."); *In re Cook*, 104 F.2d 981, 985 (7th Cir. 1939) (no valid bankruptcy purpose where "proceeding was instituted not for the purpose of obtaining benefits afforded by the Act to a corporation in financial distress, but to enable appellees to escape the jurisdiction of another court where the day of reckoning … was at hand"; "A Federal Court should not extend its jurisdiction under such circumstances."); *In re Cedar Shore Resort, Inc.*, 235 F.3d 375, 380 (8th Cir. 2000) (affirming dismissal because, *inter alia*, the bankruptcy court found the primary motivation of the debtor—a healthy company "not in dire financial straits"—was to dispose of a state court lawsuit); *In re Marsch*, 36 F.3d 825, 829 (9th Cir. 1994) (no good faith where debtor "had the financial means to pay" its obligations, which posed no "danger of disrupting business interests"); *In re Stewart*, 175 F.3d 796, 811 (10th Cir. 1999) (affirming dismissal and recognizing that relieving "oppressive indebtedness" is "[o]ne of the main purposes of bankruptcy law"); *In re Waldron*, 785 F.2d 936, 940 (11th Cir. 1986) (rejecting a debtor's bankruptcy because "[t]he bankruptcy laws are intended as a shield, not as a sword," and recognizing that the purpose of Chapter 11 is to give a fresh start to a "financially troubled debtor" rather than the "financially secure"). *See also Grogan v. Garner*, 498 U.S. 279, 286–87 (1991) ("This Court has certainly acknowledged that a central purpose of the Code is to provide a procedure by which *certain insolvent* debtors can reorder their affairs … But in the same breath that we have invoked this 'fresh start' policy, we have been careful to explain that the Act limits the opportunity for a completely unencumbered new beginning to the 'honest *but unfortunate* debtor.'") (emphasis added).

Carolin specifically held that the fundamental purpose of the good faith inquiry is to "determine whether the purposes of the Code would be furthered" by the petition. *Carolin*, 886 F.2d at 701. *Carolin* then defines the relevant purpose of the Code: "resuscitating a financially troubled debtor." *Id.* (quoting *In re Coastal Cable T.V., Inc.*, 709 F.2d 762, 765 (1st Cir. 1983)). This has been the rule for well over a century, recognized by the Supreme Court time and again. *Williams*, 236 U.S. at 554–55; *Wetmore*, 196 U.S. at 77; *Local Loan Co.*, 292 U.S. at 244; *Ry. Labor Executives' Ass'n v. Gibbons*, 455 U.S. at 466. Financially healthy, non-distressed companies do not need rehabilitation or resuscitation.

In the context of a terminally financially distressed debtor, *Carolin* articulated a two-pronged analytical framework for ensuring the petition was consistent with the purposes of the Code. Because the ultimate question—whether the proceeding was consistent with the purposes of the Code—is the ultimate goal of both prongs, the Fourth Circuit acknowledged that "proof inevitably will overlap" as to the prongs, and that courts should look to the "totality of the circumstances" when considering dismissal. *Id.* at 701. "Evidence of subjective bad faith in filing may tend to prove objective futility, and *vice versa*." *Id.*

Seven years after *Carolin*, the Fourth Circuit affirmed the vitality of *Williams*' statement that the purpose of the Code is to "relieve the honest debtor from the weight of oppressive indebtedness, and permit him to start afresh." *In re Kestell*, 99 F.3d 146, 147 (4th Cir. 1996). But the Fourth Circuit noted *Williams*' language "does not go far enough" to prevent abuse of the bankruptcy system by debtors who seek to use bankruptcy's "powerful equitable weapons" in inappropriate cases. *Id.* Courts should (and do) draw upon their equity powers to ensure that bankruptcy proceedings "reflect the intended policies of the Code." *Id.* (citing COLLIER ON BANKRUPTCY, § 301.05[1], and *In re Little Creek Dev. Co.*, 779 F.2d 1068, 1072 (5th Cir. 1986)).

The Debtors ignore *Carolin's* express statement of the purpose of the objective futility prong—ensuring the petition furthers the Code's purpose of rehabilitating a "financially troubled"

company—and attempt to apply *Carolin's* analysis of whether there was enough life left in *Carolin's* terminally ill debtor to even bother trying to resuscitate it. But here, where the Debtors are awash in disposable income that dwarfs the liability in question and massive net assets, they provide no legal (or factual, or logical) support for their perversion of *Carolin*'s plain language

Nothing in *Carolin's* discussion of how to analyze "objective futility" in the context of a financially distressed company undermines or conflicts with *Carolin's* express statement that Chapter 11 is for financially distressed companies in need of resuscitation. *Carolin* concerned an obviously distressed company with "no realistic chance" of resuscitation. *Carolin*, 886 F.2d at 702. But *Carolin's* exposition of how to look at "objective futility" when examining a company that is financially distressed is facially inapplicable to companies that are not in financial distress.

Not surprisingly, the Debtors pretend that *Premier Auto*—the Fourth Circuit's post-*Carolin* examination of a *non-distressed* debtor's bad faith—never happened. Premier Automotive Services sought Chapter 11 petition to forestall eviction on an expired lease. *In re Premier Auto. Servs., Inc.*, 492 F.3d at 274, 277 (4th Cir. 2007). The Fourth Circuit affirmed dismissal, holding there was substantial record evidence supporting findings of objective futility and subjective bad faith. *Id.* at 280. Premier had "no right to judicially compelled negotiations," filed its petition to escape a looming obligation to quit a leased premises, admitted that its plan for reorganization was the Chapter 11 litigation itself, and—most importantly—was not "experiencing financial difficulties." *Id.* at 280–81. Premier's bankruptcy filings revealed "a solvent business entity with no unsecured creditors and few, if any, secured creditors. *This fact alone may justify dismissal of [a] Chapter 11 petition*." *Id.* at 280 (emphasis added). The Fourth Circuit specifically noted that federal courts "have consistently dismissed Chapter 11 petitions filed by financially healthy companies with no need to reorganize under the protection of Chapter 11." *Id.* (emphasis added).

For that proposition—and contrary to the suggestion that the Fourth Circuit is unique in its approach to the foundational, jurisdictional financial distress requirement—*Premier Auto* cites and relies upon *In re SGL Carbon Corp.* 200 F.3d 154, 166 (3d Cir. 1999). *SGL Carbon* held that a "financially healthy company" that filed a Chapter 11 petition in the face of potentially significant civil liability acted outside the purposes of the Code and remanded for dismissal on bad faith grounds. *In re SGL Carbon*, 200 F.3d at 156, 162–63. While there was evidence that defending against civil litigation "occupied some [SGL] officers' time," there was "no evidence this 'distraction' posed a 'serious threat' to the company's operational well being." *Id.* at 162.

SGL faced "no immediate financial difficulty. All the evidence shows that management repeatedly asserted the company was financially healthy at the time of the filing." *Id.* at 163. The company had "only $276 million" in liabilities and assets of $400 million, a liability-to-asset ratio of 69:100. Because courts recognized that a petition "cannot serve the rehabilitative purpose for which it was designed" if a "petitioner has no *need* to rehabilitate or reorganize," the exercise of bankruptcy's "considerable" equitable powers is not "justified." *Id.* at 165–66. The record contained no actual evidence of distressing litigation costs, only "repeated characterization(s)" by SGL Carbon that its pre-bankruptcy litigation opponents were "being 'unreasonable.'" *Id.* at 163.

SGL Carbon's financial health meant it lacked "a valid reorganizational purpose," and consequently lacked good faith. *Id.* at 166. "When financially troubled petitioners seek a chance to remain in business, the exercise of [bankruptcy] powers is justified. But this is not so when a petitioner's aims lie outside the Bankruptcy Code." *Id.* at 165–66 (citing, *inter alia*, *Furness v. Lilienfield*, 35 B.R. 1006, 1009 (D. Md. 1983)).

In support of its reasoning (and as acknowledge by *Premier Auto*), *SGL Carbon* invokes an array of cases from around the country, including *Carolin*.[17] *See id.* (citing, *inter alia*, *In re Coastal Cable T.V., Inc.*, 709 F.2d at 764 (1st Cir. 1983); *In re Cohoes Indus. Terminal Inc.*, 931 F.2d 222 (2d Cir. 1991); *In re Little Creek Dev. Co.*, 779 F.2d at 1072–73 (5th Cir. 1986); *In re Marsch*, 36 F.3d at 828 (9th Cir. 1994); *In re Winshall Settlor's Trust*, 758 F.2d at 1137 (6th Cir. 1985); *In re Phoenix Piccadilly*, 849 F.2d at 1394 (11th Cir. 1988); and *Furness*, 35 B.R. at 1009).

Furness is a seminal, 1983 exposition of the issue from inside this circuit:

> Chapter 11 was designed to give those teetering on the verge of a fatal financial plummet an opportunity to reorganize on solid ground and try again, not to give profitable enterprises an opportunity to evade contractual or other liability.

Id. at 1009. Presciently, *Furness* predicted (and cautioned against) non-distressed companies attempting to use the bankruptcy courts to avoid liability for defective products, specifically including asbestos personal injury claims. *Id.* at 1011. *Furness* has been repeatedly relied upon by the Circuit Courts when discussing this issue. *See, e.g.*, *SGL Carbon,* 200 F.3d at 165; *Cedar Shore Resort, Inc.*, 235 F.3d at 381 (8th Cir. 2000); *In re Marsch*, 36 F.3d at 828 (9th Cir. 1994); *Little Creek*, 779 F.2d at 1071 n.1 (5th Cir. 1986).

Recent decisions from the Fourth Circuit and Third Circuit reaffirm the "no non-distressed debtors in bankruptcy" rule. The Third Circuit applied *In re SGL Carbon* and dismissed Johnson & Johnson's Chapter 11 case because its Two-Stepping spinoff, LTL Management, faced no financial distress. "The theme is clear: absent financial distress, there is no reason for Chapter 11 and no valid bankruptcy purpose." *In re LTL Mgmt., LLC*, 58 F.4th 738, 754–55 (3d Cir. 2023). "[G]iven Chapter 11's ability to redefine fundamental rights of third parties, *only those facing financial distress can call on bankruptcy's tools to do so*." *Id.* at 763 (emphasis added).

[17] *SGL Carbon* cites *Carolin* for several rules, including the jurisdictional nature of the good faith requirement and the existence of the "general good faith requirement under which petitions can be dismissed for bad faith." 200 F.3d at 161, 162.

Just as the Fourth Circuit (in *Premier Auto*) cited the Third Circuit for the foundational "financial distress" requirement, the Third Circuit relied on both itself (*SGL Carbon*) and other circuits, including the Fourth Circuit, for the universal requirement of financial distress. *LTL*, 58 F.4th at 756 n.14 (citing *Coastal Cable* from the First Circuit, *Cohoes Indus. Terminal* from the Second Circuit, *Carolin* from the Fourth Circuit, *Little Creek* from the Fifth Circuit, *In re James Wilson Assocs.*, 965 F.2d 160 (7th Cir. 1992) from the Seventh Circuit, and *In re Cedar Shore Resort, Inc.*, 235 F.3d 375 (8th Cir. 2000) from the Eighth Circuit). Indeed, Judge Ambro, writing for the panel, noted that the universality of this basic premise of bankruptcy law provided him with reassurance of the correctness of his decision. As the Court is aware, the Third Circuit unanimously rejected LTL's request for rehearing *en banc* on March 22, 2023. *See* Ex. 7, Order Denying Petition for Rehearing, 3/22/2023.

The principle that bankruptcy's tools are only available to financially distressed companies is further confirmed by Section 524(g)'s legislative history. In *Kaiser Gypsum*, the Fourth Circuit approvingly cited that legislative history in explaining that Section 524(g) is meant to allow a "Chapter 11 debtor with *substantial* asbestos liabilities" to "emerge from bankruptcy as an economically viable entity." *In re Kaiser Gypsum Co., Inc.*, 60 F.4th 73, 77–78 (4th Cir. 2023). While this statement appears at first glance to focus on the "numerator" of the financial distress equation, *Kaiser Gypsum* cited and relied upon H.R. Rep. 103-835, which makes plain: Section 524(g)'s "asbestos trust/injunction mechanism established in the bill is available for use by any asbestos company facing a similarly *overwhelming* liability." H.R. Rep. 103-835, at 40–41 (emphasis added, and discussing Johns-Manville). The contrast between Johns-Manville and the Debtors could not be clearer. *See Kane v. Johns-Manville Corp.*, 843 F.2d 636, 640 (2d Cir. 1988). Johns-Manville was faced with "crippling" lawsuits and the Bankruptcy Court found that it "was and remains 'a financially besieged enterprise in desperate need of reorganization of its crushing real debt, both present and future." *Id.* at 649; S. Rep. No. 95-989,

at 9 (cited by *SGL Carbon*, 200 F.3d at 166) (Chapter 11 was meant to deal "with the reorganization of a *financially distressed* enterprise").

While this case can be resolved solely by acknowledging the Debtors' absolute lack of financial distress, *see Premier Auto*, 492 F.3d at 280, courts have looked to other factors to identify a lack of good faith. Many of those factors apply here.

Premier Automotive's attempt to use bankruptcy to force creditors into "judicially compelled negotiations" indicated bad faith. *Premier Auto*, 492 F.3d at 280. *See also In re Patel*, 2022 WL 1420045, at *7 ("The Debtors are attempting to use a bankruptcy tool…at the very least … as a coercive tactic to force [a creditor] to settle for substantially less than what it is owed."). The Debtors here admit that they seek to negotiate a single "holistic" settlement with present and future asbestos claimants and that this "holistic" negotiation is not possible absent these petitions.

In *Kestell*, the isolation of one class of debt—to the debtor's ex-wife—likewise indicated that the petition violated the purposes of the Code. *In re Kestell*, 99 F.3d at 149–50. *Accord In re Cedar Shore Resort, Inc.*, 235 F.3d 375, 380–81 (8th Cir. 2000) (debtor was not in dire financial straits, and its primary motivation for bankruptcy—disposing of one lawsuit—warranted dismissal). Like Mr. Kestell seeking to discharge his debts to his ex-wife while re-affirming his debts to all other creditors, the Debtors admit that their very existence, and these petitions, deliberately isolated one liability – their asbestos personal injury liability – for the purpose of addressing that liability in bankruptcy while affirming all other liabilities of Old Trane and Old IR.

Forum shopping is another recognized indicia of bad faith. *In re Phoenix Piccadilly, Ltd.*, 849 F.2d 1393, 1395 (11th Cir. 1988) (cited favorably in *Patel*, 2022 WL 1420045, at *5). And there is no dispute that the Debtors went to great lengths to facilitate their forum-shopped filing of these petitions in North Carolina.

Finally, the creation of a debtor then rapid retreat into bankruptcy—the "new debtor syndrome"—has been said to "exemplify" bad faith. *In re Little Creek Dev. Co.*, 779 F.2d at 1072–73. *See id.* ("Neither the bankruptcy courts nor the creditors should be subjected to the costs and delays of a bankruptcy proceeding under such conditions."). Again, there can be no dispute that the Debtors here were created for the purpose of immediately filing for bankruptcy, and that they followed through on that purpose.

No matter how hard the Debtors attempt to say actual financial distress is not required for accessing bankruptcy, or that all that is required is significant liabilities (irrespective of ability to pay), the law uniformly rejects this proposition.[18] As discussed above, the Supreme Court, the Congressional record, the Circuit Courts of Appeal, and countless lower courts form an interlocking wall of case law and legislative history confirming that the aims of the Bankruptcy Code are *only* served when "financially troubled petitioners seek to remain in business." *In re SGL Carbon Corp.*, 200 F.3d at 165–66. *See also* FN16, *supra.*; *In re Kestell*, 99 F.3d at 147–48, 149 (citing *Carolin* and *In re Little Creek*) ("Congress has made it clear … that misuse of the bankruptcy process should not be countenanced …," and that a foundational purpose of the Code is "[t]he right of debtors to a fresh start.").

2. Carolin's Waning Solicitude: As a Chapter 11 Petition Develops, The Debtor's Burden of Demonstrating Good Faith Becomes More Challenging.

In *Carolin*, the Fourth Circuit established that even at the "very portals" of bankruptcy a lack of good faith may be shown by establishing that objective futility and subjective bad faith taint the

[18] Nor can Debtors attempt to recast Movants' argument as asserting that *insolvency* is required. That is not Movants' argument; insolvency and financial distress are not the same thing. This would be simply another predictable attempt by the Debtor to twist what is actually said (by the Courts or the Movants) into something more favorable. A debtor need not be insolvent before filing for Chapter 11 relief - but it must be in actual financial distress. *In re Capitol Food Corp.*, 490 F.3d 21, 25 (1st Cir. 2007) (citing *Integrated Telecom,* 384 F.3d 108, 122 (3d Cir. 2004); *SGL Carbon*, 200 F.3d at 165-66; and *Coastal Cable*, 709 F.2d at 765). "Catastrophic business events, such as an imminent or threatened foreclosure on the debtor's interests in real property essential to successful reorganization efforts, are precisely the sort of imminent financial distress for which debtors routinely seek chapter 11 protection." *Id.* at 25. As noted in *Capitol Food*, the breathing spell created by the bankruptcy in that case was both necessary and worked to protect the *rights of the creditor* and to preserve the *viability of the debtor. Id.* at 25-26 (citing *In re Cohoes Indus. Terminal, Inc.*, 931 F.2d 222, 228 (2d Cir. 1991)).

debtor's petition. *Id.* at 700–01. *Carolin*'s analysis of the question of good faith at the "portals" evidences a cautious approach, lest the bar be set too high and meritorious debtors be barred from the court. *See id.* But courts have also recognized that the rationale for that solicitous approach to the debtor's burden of proof at the "very portals" of bankruptcy wanes over time.

In *Dunes II*, for example, a debtor survived a threshold motion to dismiss for bad faith, but the case was dismissed—about three years later—because the debtor no longer faced financial distress. *Dunes Hotel Assocs. v. Hyatt Corp. (Dunes II)*, 245 B.R. 492, 493–96, 512 (D.S.C. 2000). Because the actual financial crisis (threatened foreclosure) had passed, remaining relief would not resuscitate the business, and the "policies and purposes of the Bankruptcy Code" precluded Dune's further use of bankruptcy court equity power. *Id.* at 497. As to *Carolin*'s waning solicitude to debtors during the pendency of a case, this Court has agreed. *See In re Patel*, 2022 WL 1420045, at *5, *7 (Bankr. W.D.N.C. 2022) (acknowledging that *Carolin* applies "at the *outset* of the case" and dismissing for lack of good faith after two years) (emphasis in original).

Three years into the case, the evidence establishing the Debtors' indisputably strong financial position vis-à-vis its asbestos liabilities is overwhelming. Where a court recognizes that the entire Chapter 11 is tainted by a debtor's lack of good faith, it must terminate proceedings to prevent further abuse. *See Patel*, 2022 WL 1420045, at *5 (citing *Phoenix Piccadilly, supra*).

ANALYSIS: THE DEBTORS CANNOT DEMONSTRATE GOOD FAITH: THEY FACE NO FINANCIAL DISTRESS, AND NUMEROUS OTHER INDICIA OF BAD FAITH ARE INDISPUTABLE. CHAPTER 11 IS UNAVAILABLE. THIS COURT LACKS JURISDICTION AND MUST DISMISS.

In these cases, the Debtors face no financial distress from the asbestos liabilities underpinning their Chapter 11 filings. The Court must accordingly dismiss under the rule of *Williams*, *Wetmore*, *Local Loan Co.*, *Premier Auto*, *Carolin*, and the uniform holdings of all the interlocking authorities from other Circuits and other courts.

The Debtors affirmatively admit (and are estopped from denying) that they are fully backstopped by Trane Technologies plc's financially healthy subsidiaries. Before bankruptcy, the Debtors comprised "a profitable going concern whose assets *significantly outweighed* its combined operating and asbestos liabilities." No. 20-3041 (JCW), Dkt. 308, 17 ¶ 47 (emphasis added). Now, New TTC and New Trane (which backstop Debtors) are "prosperous corporations," *id.* at 28 ¶ 80, with respective book-values of $7.8 billion (New TTC, backstopping Old IRNJ) and $3 billion (New Trane, backstopping Old Trane), *id.* at 42 ¶ 129.

And the financial condition of the Debtors, through their unlimited funding agreement, has only improved since this Court's findings. The Debtors' affiliates have paid over $1.5 billion in dividends over the last three years, and have bought back over $2.5 billion in stock and have voluntarily and prematurely retired hundreds of millions of dollars of debt, all using the excess cash flow generated by their massively successful businesses.

Against this indisputable evidence of a tsunami of excess cash flow and assets orders of magnitude higher than the Debtors' sworn best estimate of their liability of $240 million,[19] there is no possible way that the Debtors can meet their burden of proving good faith—which begins with proving actual financial distress and a need for resuscitation.

1. ***Premier Auto* and *SGL Carbon* Require Dismissal: When Viewed in Context of their Available Assets and Revenue Streams, the Debtors' Asbestos Liabilities Fall (Far) Short of Establishing Financial Distress.**

Here, as in *SGL Carbon*, the Debtors' liability-to-asset ratios fall short of establishing financial distress. In *SGL Carbon*, the debtor's case was dismissed even though the debtor had "only" $276 million in liabilities and $400 million in assets—it owed 69% of its total value. *See In re SGL Carbon*, 200 F.3d at 166. Here, Murray faces at most $240 million in liability and its backstopping affiliate is worth $3 billion; its asbestos liability is at most 16% of its effective total value. Aldrich faces at most

[19] Net of insurance.

$240 million in liability but can draw on $7.8 billion in assets; its asbestos liability is at most 6% of its book value. The Debtors can draw on companies whose growing *annual revenue* exceeded $16 billion last year, who have given away over $500 million *per year* in dividends for each of the last three years, and who have bought back over $2.5 billion in stock during that time. Indeed, had the Debtors applied last year's raw profits—dividends ($620.7 million) + buyback ($1.2 billion)—to their asbestos liability, they could have paid off that estimated liability ($240 million) more than seven times—just last year. The Debtors are in far better financial condition than SGL Carbon, which was dismissed from Chapter 11 for being too "financially healthy." And they already reserved for their expected liability and swore to the SEC that they (and their auditors) believed the reserve to be sufficient.

The "evidence" of dire-threat-through-litigation mustered by the Debtors amounts to the same speculative conjecture that *SGL Carbon* rejected. Like SGL Carbon's repeated characterizations of its litigation liabilities as "unreasonable," here the Debtors strenuously point to the total number of asbestos cases and their annual defense and indemnification costs—everything but the Debtors' actual liabilities and the assets (and revenue) with which they can pay them. The Debtors strategically ignore the real question as defined by their lead counsel: whether the Debtor's liabilities are "manageable." As noted above, not only are these liabilities "manageable" they were effectively managed for many years in the tort system without financial stress— let alone financial distress.

The Johns-Manville bankruptcy illustrates the kind of unmanageable litigation costs that amount to financial distress. Manville's estimated all-in asbestos liability was approximately $2 billion.[20] *SGL Carbon*, 200 F.3d at 164. The catalyst for Manville's Chapter 11 petition was the onset of sudden, massive liability that threatened its existence: it had to either enter Chapter 11 or book a $1.9 billion reserve, in turn triggering the acceleration of $450 million in debt and possible forced liquidation. *Id.* "Johns-Manville was and remains a financially besieged enterprise in *desperate need of*

[20] $2 billion in 1982 dollars is the equivalent of over $6 billion today.

reorganization of its *crushing* real debt, both present and future." *Kane v. Johns-Manville Corp.*, 843 F.2d 636, 639, 649 (2d Cir. 1988) (emphasis added).

Unlike Johns-Manville, the Debtors and their affiliates long-ago booked cash reserves to service future asbestos liabilities, swearing to both their shareholders and the SEC that those reserves were adequate. *See* Ex. 3, 162; Ex. 7, 180. There can be no dispute: Aldrich and Murray do not now (and never have) faced the "dismemberment of [their] business" because of asbestos liabilities. *See In re Johns-Manville Corp.*, 36 B.R. at 746. Indeed, this Court articulated the difference between Manville and the Debtors almost three years ago:

> The bottom line is I question whether this is what Congress intended when they created 524(g). It's not a *Manville* situation and generally, *when enterprise integrity is threatened by claims and assets are limited* it appears to me that Congress envisioned that 524(g) would be a vehicle could come in, subject its assets and transactions to, to scrutiny, and then with the cooperation of the asbestos creditors come up with a, a trust and a plan under that vehicle. *This is something less than that.*

Ex. 13, Tr. of Emergency Hr'g on First Day Pleadings, 6/22/2020, 135:6–15 (emphasis added). Here, enterprise integrity is not threatened, and assets are not limited. The Debtors' petitions do not serve the purpose of the Code.

As discussed above, in addition to flatly failing to meet bankruptcy's threshold requirement of financial distress, the Debtors' petitions are plagued with additional indicia of bad faith present in other non-distressed—and dismissed—bankruptcies. They have isolated one class of debt; admit that they filed the petitions for the purpose of avoiding state-law tort litigation and to force negotiations of that litigation in bankruptcy; blatantly forum shopped; and admitted that they were created for the purpose of immediately filing bankruptcy—which they did. The Debtors simply cannot meet their burden of proving good faith in the face of this mountain of evidence, years into these proceedings.

The Third Circuit Court of Appeals is the only Article III court that has ruled on the viability of a non-distressed Two-Step debtor's presence in the bankruptcy system. It was unimpressed. In *LTL*, the Court held that Johnson & Johnson's Two-Stepping affiliate was not financially distressed.

In re LTL Mgmt. LLC, 58 F.4th 738 (3d Cir. 2023), *amended and superseded by* --- F.4th ----, 2023 WL 2760479. Unlike distressed debtors like Johns-Manville ("urgency" to reorganize in the face of potential "forced liquidation of key business segments), Dow Corning (a "financially-distressed corporation"), and A.H. Robins Co. (a "bleak" financial picture and only $5 million in unrestricted funds), LTL "did not have any likely need in the present or the near-term, or even in the long-term," to exhaust its unlimited funding rights. *Id.* at 757–61.

Here similarly, the Debtors insist (and the evidence shows) that they can fully meet their asbestos liabilities with zero financial distress: "Debtors have the same ability to pay asbestos claims as did their predecessors," No. 20-3041 (JCW, Dkt. 308, 49 ¶ 151, and swear they "have access to additional uncapped funds through the Funding Agreements," Ex. 8, 13 ¶ 36. *See also* Ex. 12 (discussing "our strong balance sheet, liquidity position and continued confidence in our ability to generate strong future free cash flow").

Last week, the Third Circuit amended its *LTL* decision, and entered clarifying language directly on point here.

> From these facts—facts presented by [Debtor and affiliate] themselves—we can only infer that LTL, at the time of its filing, was highly solvent with access to cash to meet comfortably its liabilities as they came due for the foreseeable future. … *This all comports with the theme [the debtor] proclaimed from day one: it can pay current and future … claimants in full.*

In re LTL Mgmt. LLC, --- F.4th ----, 2023 WL 2760479, 3d Cir. No. 22-2003, Dkt. 181-3, 6 (Order Amending Precedential Opinion), 3/31/2023 (emphasis here) (quoting LTL counsel during 10/20/2021 first day hearing here) (attached here as Ex. 14). There is no daylight between LTL's representation that it could fully pay its tort victims and Aldrich/Murray's assurances that all tort victims can be paid in full.

LTL, SGL Carbon, and *Premier Auto* demonstrate that a non-distressed company with manageable liabilities cannot qualify for bankruptcy protection. Here, the Debtors' admitted ability

to fully pay asbestos creditors is beyond dispute, and falls squarely within the *LTL* / *SGL Carbon* / *Premier Auto* rule. The Debtors swore in public financial filings that asbestos liabilities would not have any "material impact on … results of operations, financial condition, liquidity or cash flows." There is no reason to question that statement: the Debtors have the same ability to pay claimants as did their predecessors, No. 20-3041 (JCW), Dkt. 308, 49 ¶ 151, and that ability to pay is beyond dispute, *id.* at 41 ¶ 129.

As in *Premier Auto*, where the Fourth Circuit affirmed dismissal of a financially undistressed company that had entered bankruptcy to escape a lease, here the Court must dismiss the cases of these Debtors, who seek to use the Code's equitable tools but fail to meet its threshold requirement: financial distress.

2. Carolin Supports Dismissal. The Debtor's Invocation of Carolin is Divorced from its Limited Facts and Procedural Posture, and Moreover Perverts Carolin's Reasoning: that Good Faith Petitions are Those That Serve the Purposes of Bankruptcy, Which is to Resuscitate Financially Distressed Debtors.

The Debtors, as they have before, will undoubtedly scramble *Carolin*'s language into soundbites divorced from *Carolin*'s limited facts, procedural posture, and underlying principles. But dismissal here squares with *Carolin*, which articulated the bad faith standard at "the portals" of bankruptcy, and left undisturbed the categorical rule against allowing "financially healthy companies with no need to reorganize" to benefit from Chapter 11. *Premier Auto*, 492 F.3d at 281–82. *See also Local Loan Co.*, 292 U.S. at 244 (Supreme Court); *In re Capitol Food Corp.*, 490 F.3d at 25 (1st Cir.); *In re Cohoes Indus. Terminal, Inc.*, 931 F.2d at 228 (2d Cir.); *In re SGL Carbon*, 200 F.3d at 164–66 (3d Cir.); *In re Little Creek*, 779 F.2d at 1072–73 (5th Cir.); *In re Cook*, 104 F.2d at 985; (7th Cir.); *In re Cedar Shore Resort, Inc.*, 235 F.3d at 380 (8th Cir.); *In re Marsch*, 36 F.3d at 829 (9th Cir.); *In re Stewart*, 175 F.3d at 811 (10th Cir.); *In re Waldron*, 785 F.2d at 940 (11th Cir.).

As a matter of procedure, of course, the rationale behind *Carolin*'s solicitude to debtors at the "portals" of bankruptcy has faded over the last three years. *See Dunes II*, 245 B.R. at 493–96, 512

(dismissing about three years after filing because bankruptcy relief would not resuscitate business, and the Code's policies and purposes would therefore not be served); *In re Patel*, 2022 WL 1420045, at *5, *7. More importantly, *Carolin*'s holding flowed from distinguishable facts: an indisputably distressed company seeking bankruptcy protection.

Carolin's first principle is determining whether the purpose of the Code—"resuscitating a financially troubled debtor"—is furthered by a debtor's bankruptcy petition. *Carolin*, 886 F.2d at 701 (quoting *In re Coastal* Cable, 709 F.2d at 765). Here, the answer to that threshold question is "no." *Carolin* acknowledged proof of objective futility and subjective bad faith "inevitably" overlap; here the Debtors' extremely strong financial position goes to both prongs. Their petitions subjectively lack good faith because the Debtors need no rehabilitation, and they are objectively futile because they cannot serve the fundamental rehabilitative purposes of bankruptcy. *See In re Patel*, 2022 WL 1420045, at *6 (addressing both prongs of the *Carolin* standard in tandem, as evidence of one prong tends to prove evidence of the other, and *vice versa*). Facing asbestos liabilities of only a few hundred million dollars, the Debtors' backstopping affiliates rake in over $15 billion in revenue *every year*, pay over half-a-billion to shareholders *every year*, and buy back stock in amounts dwarfing their asbestos liability *every year*. It is beyond dispute that the Debtors are not using this petition for resuscitation. Lacking that purpose, the Debtors' petitions—according to *Carolin*—lack good faith.

The Fourth Circuit affirmed dismissal because Carolin lacked a path back to viability. It had "no realistic chance" of resuscitation, and so relief lay outside the Code's purposes. *Carolin*, 886 F.2d at 702. Here, relief lies outside the Code's purposes because the Debtors are not (and never were) distressed by the asbestos liabilities they seek to "overcome." The underlying fact of the Debtors' manageable liabilities, and the absolute lack of their need for resuscitation, answers the crucial *Carolin* inquiry: "whether the purposes of the Code would be furthered" by permitting the Debtors to remain in bankruptcy. *Id.* at 701. As in *Carolin* and *Premier Auto*, the answer here is "no."

The Debtors' attempt to portray *Carolin* as an alleged exception to the "no non-distressed debtors in bankruptcy" rule perverts *Carolin* in several ways. *Carolin* expressly instructs courts to filter out petitions that do not serve the Code's rehabilitative purposes and policies. But by the Debtors' reading, *Carolin* paradoxically expands bankruptcy's jurisdiction to companies rich enough to pay all their debts. The Debtors' interpretation would create a rule whereby richer companies are *more* worthy of Chapter 11 protection than companies in dire need of resuscitation.

Carolin's specific exposition of the underlying purpose of the Code is not the only thing that the Debtors ignore. They also ignore *Carolin*'s inapposite facts, from which its holding necessarily derives: Carolin was so distressed that it was beyond resuscitation—there was no point in starting CPR on the debtor in Carolin. Equally important, the Debtors ignore the existence of *Premier Auto*, which—like myriad controlling and persuasive cases, *see* FN16, *supra*.—unambiguously stands for the proposition that non-distressed debtors do not have a proper bankruptcy purpose. *See also Patel*, 2022 WL 1420045, at *8 ("There is only one major claim, resources are available to pay that claim, and the Debtors do not need a fresh start. *Without a proper bankruptcy purpose*, there is no need for the Debtors in this case to employ" bankruptcy's tools.).

Last year, this Court dismissed the analogous *Patel* Chapter 11 case for lack of good faith. *In re Patel*, 2022 WL 1420045 (Bankr. W.D.N.C. 2022). The *Patel* debtors, like the Debtors here, were "not under any financial distress and [did] not need bankruptcy to obtain a fresh start." *Id.* at *6. The Patels did "not require bankruptcy to preserve asset value for the benefit of creditors." *Id.* Likewise the Debtors here were managing their asbestos liabilities pre-petition and can access liquid assets exceeding $500 million *every year*. The *Patel* debtors had "a luxurious lifestyle and high living expenses," and were retiring their mortgage debt ahead of schedule. *Id.* at *2. Aldrich/Murray similarly gave away billions in dividends, bought back billions of dollars in stock and have retired over $700 million in debt since this case began; in the years before and since their petitions, the top six executives of the

Debtors' affiliates were paid over $135 million. *See Patel*, 2022 WL 1420045, at *6 ("Even if the Debtors could not pay the garnishment, the Debtors likely could cut back on their luxurious lifestyle and spending habits").

The Patels, like the Debtors, were "not people that typically would file for bankruptcy, particularly under Chapter 11." *Id.* Both the Patels and the instant Debtors entered Chapter 11 to isolate a single debt that was, absent bankruptcy, easily managed. Their Chapter 11 petitions must meet the same fate as the Patels'—dismissal. *See id.* at *6 ("Debtors simply have no need for a fresh start. Without restructuring any of their current liabilities or significantly altering their current expenditures, the Debtors can pay" their liabilities.).

The Debtors' counsel has admitted that his clients' non-distressed bankruptcies are unrelated to the purposes of the Code. Lead counsel for Debtors (and chief Two-Step architect) Greg Gordon, Esq., of Jones Day, made a public speaking appearance at the American Bankruptcy Institute's April 2022 spring meeting. *See* Ex. 2, Tr. of Am. Bankr. Inst. Panel, April 2022. During panel proceedings, Mr. Gordon offered two insights into his clients' approach.

First, as it pertains to the purpose of Two-Step bankruptcies, Mr. Gordon admitted they exist to "overcome the tort system" without "the obligations of a bankruptcy filing." *Id.* at 40, 50. Secondly, Mr. Gordon admitted that bad faith exists if a Two-Stepping company's asbestos litigation liabilities are "manageable." Counsel's plain language about "overcoming the tort system" is an indicator of petitions filed for an improper purpose and, accordingly, without good faith. Even more damningly, Counsel admits that non-distressed debtors who seek bankruptcy protection act in bad faith.

> [I]t's not like every one of these cases could survive a—a bad faith attack. In fact, you know, [Johnson & Johnson] is on appeal. Maybe it'll get reversed. I—I—I don't know. But you can envision other situations where companies couldn't make—you know, could not overcome these standards. Maybe they can't really show they're in financial distress because the [asbestos] litigation is **manageable**.

Id. at 43 (emphasis added). In other words, even the Two-Step's inventor admits that a company that has "manageable" litigation costs cannot meet the good faith standard. That straightforward proposition remains the law in every federal court.[21]

Dismissal here is not a discretionary exercise, but a jurisdictional requirement. This Court, when it acts to serve the Code's rehabilitative purpose, possesses vast power to redraw the relationship between financially "oppressed" debtors and their creditors. *See Wetmore v. Markoe*, 196 U.S. 68, 77 (1904); *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934); *Ry. Labor Executives' Ass'n v. Gibbons*, 455 U.S. 457, 466 (1982). Where, as here, non-distressed debtors in no need of rehabilitation seek to use bankruptcy's "powerful equitable weapons," they push this Court's jurisdiction past its limits. To "protect[] the jurisdictional integrity of the bankruptcy courts," this Court must dismiss. *Carolin*, 886 F.2d at 698.

CONCLUSION

When they file in Chapter 11, non-distressed debtors like Aldrich Pump LLC and Murray Boiler LLC seek relief that lies beyond the scope of a bankruptcy court's power. No matter how earnestly the Debtors claim that they "want to be fair," no matter how sincerely they believe that the established tort system is unfair / inefficient / inequitable, no matter how strongly the Debtors desire to use Section 524(g) to deal with their liabilities "holistically," and no matter how tantalizing Chapter 11's tools are to the Debtors, they simply do not qualify for access to the Bankruptcy system. This fundamental flaw, alone, requires dismissal under the controlling law. And in the face of the numerous other indisputable indicia of bad faith, the Debtors cannot meet their burden of demonstrating good faith.

[21] Immediately prior to this candid admission, Mr. Gordon described the debtors' numerator-only approach to "financial distress" using Johnson & Johnson as the example. *Id.* at 42–43. The Third Circuit directly and soundly rejected this approach and dismissed LTL's bankruptcy as lacking the requisite financial distress.

This Court lacks subject-matter jurisdiction over the case, and must accordingly [1] grant this motion and [2] dismiss these bankruptcies.

Respectfully submitted, this the 6th day of April, 2023.

WALDREP WALL BABCOCK
& BAILEY PLLC

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EXHIBIT 1 - 2022 FORM 10-K

MRHFM'S MOTION TO DIMISS

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K

(Mark One)

☒ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2022

or

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from ____ to ____

Commission File No. 001-34400

TRANE TECHNOLOGIES PLC

(Exact name of registrant as specified in its charter)

Ireland	**98-0626632**
(State or other jurisdiction of incorporation or organization)	*(I.R.S. Employer Identification No.)*

170/175 Lakeview Dr.
Airside Business Park
Swords Co. Dublin
Ireland

(Address of principal executive offices)

Registrant's telephone number, including area code: +(353) (0) 18707400

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol	Name of each exchange on which registered
Ordinary Shares, Par Value $1.00 per Share	TT	New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☒ No ☐

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.:

Large accelerated filer	☒	Accelerated filer	☐	Emerging growth company	☐
Non-accelerated filer	☐	Smaller reporting company	☐		

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report. Yes ☒ No ☐

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements. ☐

Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to § 240.10D-1(b). ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes ☐ No ☒

The aggregate market value of ordinary shares held by nonaffiliates on June 30, 2022 was approximately $30.0 billion based on the closing price of such stock on the New York Stock Exchange.

The number of ordinary shares outstanding of Trane Technologies plc as of February 3, 2023 was 229,074,725.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's proxy statement to be filed within 120 days of the close of the registrant's fiscal year in connection with the registrant's Annual General Meeting of Shareholders to be held June 1, 2023 are incorporated by reference into Part II and Part III of this Form 10-K.

Separation of Industrial Segment Businesses

On February 29, 2020 (Distribution Date), we completed our Reverse Morris Trust transaction (the Transaction) with Gardner Denver Holdings, Inc. (Gardner Denver, which changed its name to Ingersoll Rand Inc. (Ingersoll Rand) after the Transaction) whereby we distributed Ingersoll-Rand U.S. HoldCo, Inc., which contained our former Industrial segment (Ingersoll Rand Industrial) through a pro rata distribution (the Distribution) to shareholders of record as of February 24, 2020 (Spin-off Shareholders). Ingersoll Rand Industrial then merged into a wholly-owned subsidiary of Ingersoll Rand. Upon close of the Transaction, the Spin-off Shareholders received 50.1% of the shares of Ingersoll Rand common stock on a fully-diluted basis and Gardner Denver shareholders retained 49.9% of the shares of Ingersoll Rand on a fully diluted basis. As a result, the Spin-off Shareholders received .8824 shares of Ingersoll Rand common stock with respect to each share owned as of February 24, 2020. In connection with the Transaction, we received a special cash payment of $1.9 billion.

During the year ended December 31, 2022, the Company recorded a reduction to *Retained earnings* of $18.9 million primarily related to tax matters associated with Ingersoll Rand Industrial and the settlement of certain items related to the Transaction. During the year ended December 31, 2021, we paid Ingersoll Rand $49.5 million to settle certain items related to the Transaction. This payment was related to working capital, cash and indebtedness amounts as of the Distribution Date, as well as funding levels related to pension plans, non-qualified deferred compensation plans and retiree health benefits. We recorded the settlement as a reduction to *Retained earnings* during the first quarter of 2021.

After the Distribution Date, we do not beneficially own any Ingersoll Rand Industrial shares of common stock and no longer consolidate Ingersoll Rand Industrial in our financial statements. The historical results of Ingersoll Rand Industrial are presented as a discontinued operation in the Consolidated Statements of Earnings and Consolidated Statements of Cash Flows.

Asbestos-Related Matters

We are involved in a number of asbestos-related lawsuits, claims and legal proceedings. In June 2020, our indirect wholly-owned subsidiaries Aldrich Pump LLC (Aldrich) and Murray Boiler LLC (Murray) each filed a voluntary petition for reorganization 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 in Charlotte (the Bankruptcy Court). As a result of the Chapter 11 filings, all asbestos-related lawsuits against Aldrich and Murray have been stayed due to the imposition of a statutory automatic stay applicable in Chapter 11 bankruptcy cases. Only Aldrich and Murray have filed for Chapter 11 relief. Neither Aldrich's wholly-owned subsidiary, 200 Park, Inc. (200 Park), Murray's wholly-owned subsidiary, ClimateLabs LLC (ClimateLabs), Trane Technologies plc nor its other subsidiaries (the Trane Companies) are part of the Chapter 11 filings. In addition, at the request of Aldrich and Murray, the Bankruptcy Court has entered an order temporarily staying all asbestos-related claims against the Trane Companies that relate to claims against Aldrich or Murray (except for asbestos-related claims for which the exclusive remedy is provided under workers' compensation statutes or similar laws).

The goal of these Chapter 11 filings is to resolve equitably and permanently all current and future asbestos-related claims in a manner beneficial to claimants, Aldrich and Murray through court approval of a plan of reorganization that would create a trust pursuant to section 524(g) of the Bankruptcy Code, establish claims resolution procedures for all current and future asbestos-related claims against Aldrich and Murray and channel such claims to the trust for resolution in accordance with those procedures.

For detailed information on the bankruptcy cases of Aldrich and Murray, see:

- Part I, Item 1A, "Risk Factors - Risks Related to Litigation,"
- Part I, Item 3, "Legal Proceedings,"
- Part II, Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations - Significant Events," and
- Part II, Item 8, Consolidated Financial Statements, Note 1, "Description of Company," and Note 20, "Commitments and Contingencies."

Human Capital Management

Our people and culture are critical to achieving our operational, financial and strategic success.

As of December 31, 2022, we employed approximately 39,000 people in nearly 60 countries including approximately 14,000 outside of the United States. As of December 31, 2022, 25.7% of our global employees were women and 37.4% of our employees in the United States were racially and ethnically diverse. In 2022, 30.2% of our new hires globally were women and 50.5% of new hires in the United States were racially and ethnically diverse. Approximately 24.2% of leadership and management positions were held by women as of December 31, 2022. The diversity percentages included in this section exclude current year business acquisitions.

Critical Audit Matters

The critical audit matter communicated below is a matter arising from the current period audit of the consolidated financial statements that was communicated or required to be communicated to the audit committee and that (i) relates to accounts or disclosures that are material to the consolidated financial statements and (ii) involved our especially challenging, subjective, or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the consolidated financial statements, taken as a whole, and we are not, by communicating the critical audit matter below, providing a separate opinion on the critical audit matter or on the accounts or disclosures to which it relates.

Revenue Recognition from Contracts with Customers

As described in Notes 2 and 12 to the consolidated financial statements, the Company recognized $16.0 billion of consolidated revenue for the year ended December 31, 2022. Revenue is recognized when control of a good or service promised in a contract (i.e., performance obligation) is transferred to a customer. Control is obtained when a customer has the ability to direct the use of and obtain substantially all of the remaining benefits from that good or service. A majority of the Company's revenue is recognized at a point-in-time as control is transferred at a distinct point in time per the terms of a contract. However, a portion of the Company's revenue is recognized over-time as the customer simultaneously receives control as the Company performs work under a contract. For these arrangements, management uses the cost-to-cost input method as it best depicts the transfer of control to the customer that occurs as the Company incurs costs. The transaction price allocated to performance obligations reflects the Company's expectations about the consideration it will be entitled to receive from a customer. To determine the transaction price, variable and non-cash consideration are assessed as well as whether a significant financing component exists.

The principal considerations for our determination that performing procedures relating to revenue recognition from contracts with customers is a critical audit matter are the high degree of auditor effort in performing procedures and evaluating audit evidence related to the Company's revenue recognition of point-in-time and over-time contracts with customers.

Addressing the matter involved performing procedures and evaluating audit evidence in connection with forming our overall opinion on the consolidated financial statements. These procedures included testing the effectiveness of controls relating to the revenue recognition process on the Company's point-in-time and over-time contracts with customers. These procedures also included, among others (i) evaluating revenue transactions on a sample basis by obtaining and inspecting evidence of an arrangement with a customer, evidence of goods delivered or services provided and evidence of consideration received in exchange for transferring those goods or services, and (ii) evaluating the completeness and accuracy of data provided by management.

/s/ PricewaterhouseCoopers LLP
Charlotte, North Carolina
February 10, 2023

We have served as the Company's auditor since at least 1906. We have not been able to determine the specific year we began serving as auditor of the Company.

Trane Technologies plc
Consolidated Statements of Equity

		Trane Technologies plc shareholders' equity						
		Ordinary shares		Ordinary shares held in treasury, at cost	Capital in excess of par value	Retained earnings	Accumulated other comprehensive income (loss)	Noncontrolling Interest
In millions, except per share amounts	Total equity	Amount at par value	Shares					
Balance at December 31, 2019	$ 7,312.4	$ 262.8	262.8	$ (1,719.4)	$ —	$ 9,730.8	$ (1,006.6)	$ 44.8
Net earnings	870.0	—	—	—	—	854.9	—	15.1
Other comprehensive income (loss)	242.8	—	—	—	—	—	240.1	2.7
Shares issued under incentive stock plans	64.5	2.3	2.3	—	62.2	—	—	—
Repurchase of ordinary shares	(250.0)	(1.8)	(1.8)	—	(135.6)	(112.6)	—	—
Share-based compensation	66.3	—	—	—	69.5	(3.2)	—	—
Dividends declared to noncontrolling interest	(18.3)	—	—	—	—	—	—	(18.3)
Investment by joint venture partner	7.0	—	—	—	3.9	—	—	3.1
Cash dividends declared ($2.12 per share)	(507.7)	—	—	—		(507.7)	—	
Separation of Ingersoll Rand Industrial	(1,359.9)	—	—	—	—	(1,466.9)	135.0	(28.0)
Balance at December 31, 2020	$ 6,427.1	$ 263.3	263.3	$ (1,719.4)	$ —	$ 8,495.3	$ (631.5)	$ 19.4
Net earnings	1,436.6	—	—	—	—	1,423.4	—	13.2
Other comprehensive income (loss)	(6.6)	—	—	—	—	—	(6.1)	(0.5)
Shares issued under incentive stock plans	78.3	2.3	2.3	—	76.0	—	—	—
Repurchase of ordinary shares	(1,100.3)	(5.9)	(5.9)	—	(142.5)	(951.9)	—	—
Share-based compensation	63.6	—	—	—	66.4	(2.8)	—	—
Dividends declared to noncontrolling interest	(14.9)	—	—	—	—	—	—	(14.9)
Cash dividends declared ($2.36 per share)	(561.8)	—	—	—	—	(561.8)	—	—
Separation of Ingersoll Rand Industrial	(49.0)	—	—	—	—	(49.0)	—	—
Other	0.1	—	—	—	0.1	—	—	—
Balance at December 31, 2021	$ 6,273.1	$ 259.7	259.7	$ (1,719.4)	$ —	$ 8,353.2	$ (637.6)	$ 17.2
Net earnings	1,774.7	—	—	—	—	1,756.5	—	18.2
Other comprehensive income (loss)	(130.2)	—	—	—	—	—	(128.6)	(1.6)
Shares issued under incentive stock plans	2.6	1.1	1.1	—	1.5	—	—	—
Repurchase of ordinary shares	(1,200.2)	(7.5)	(7.5)	—	(45.4)	(1,147.3)	—	—
Share-based compensation	54.3	—	—	—	56.2	(1.9)	—	—
Dividends declared to noncontrolling interest	(14.5)	—	—	—	—	—	—	(14.5)
Acquisition of noncontrolling interest	(15.1)	—	—	—	(12.4)	—	—	(2.7)
Cash dividends declared ($2.68 per share)	(620.7)	—	—	—	—	(620.7)	—	—
Separation of Ingersoll Rand Industrial	(18.9)	—	—	—	—	(18.9)	—	—
Other	0.1	—	—	—	0.1	—	—	—
Balance at December 31, 2022	$ 6,105.2	$ 253.3	253.3	$ (1,719.4)	$ —	$ 8,320.9	$ (766.2)	$ 16.6

See accompanying notes to Consolidated Financial Statements.

EXHIBIT 2 - Tr. of Am. Bankr. Inst. Panel, April 2022

MRHFM'S MOTION TO DIMISS

Transcription of File:

American Bankruptcy Annual Spring Meeting

Texas Two Step

Runtime: 01:02:02

MR. GLEIT: Yeah, now you do. 00:10

MS. TSIOURIS: Okay. Good morning, everyone. 00:11

It's 10:01. We'll just give it another minute for 00:15

people to find their seats, and then we'll -- we'll 00:16

get started. Just have some people in the back. 00:20

All right. So good morning, everyone. Welcome to 00:43

the panel on the Texas Two Step. 00:46

As I'm sure you saw in the materials, we really 00:49

have three stated objectives for the panel. One is 00:52

to go over and describe just the basics of what the 00:56

Texas Two Step is in a divisive merger. Two, to 00:59

give a little bit of an overview of the current LTL 01:03

case and what is going on there. And three, to have 01:06

a healthy debate about the pros and cons of the Texas 01:10

Two Step and maybe get a little bit into policy 01:13

considerations around the Texas Two Step. 01:18

So, and then of course, our -- our unstated 01:19

objective is to have a little bit -- a little bit of 01:21

fun here. 01:22

So, before we get into the panel, I just want to 01:27

have my colleagues introduce themselves and maybe also 01:31

just give a quick background and maybe any connection 01:34

that you have to a Texas Two Step case. So, Jeffrey, 01:38

maybe if I can start with you. 01:39

MR. GLEIT: Okay, sure. I'm Jeff Gleit. I'm a 01:43

partner at ArentFox, and I came across the Texas Two Step basically following the Change A through the press and, you know, my thoughts on it have evolved over the past few months. And, you know, we're evaluating it, you know, for one or two companies including a nonprofit, so I'm looking forward to hearing Greg's thoughts and Judge Jones' thoughts, and Brya's thoughts on it. And that's who I am. 01:49 01:50 01:54 01:57 01:58 02:01 02:04 02:08

MS. TSIOURIS: Thanks, Jeff. Brya? 02:10

MS. KIELSON: Yes. Hi, I'm Brya Kielson. I'm a partner at Morris James in Wilmington, Delaware. My background is prior to joining Morris James I was at the U.S. Trustee's office in Delaware, so I have an interesting perspective, and I kind of struggle with the perspective that I had there versus in practice. 02:12 02:15 02:18 02:21 02:23 02:27 02:27

I don't have any cases also involving the Texas Two Step, so it's academic for me for now, and definitely an interesting issue. 02:31 02:35 02:36

MS. TSIOURIS: Thanks, Brya. Your Honor, Judge Jones. 02:38 02:39

JUDGE JONES: Good morning, everyone. I am Judge Jones. I am the chief bankruptcy judge in the Southern District of Texas. It is a pleasure to be here and speak with you all this morning, and I do 02:41 02:43 02:46 02:49

hope that what we have is a conversation. 02:52

I grew up with this statute as a practitioner, 02:56

and I hope that you will take advantage of the panel 03:00

that we have here this morning and ask questions. 03:02

Remember, the only bad question is one that you don't 03:05

ask. In terms of connections, you know, there are no 03:09

Texas Two Step cases in Texas, and we can -- we can 03:14

certainly talk about that as well. 03:16

MS. TSIOURIS: Thank you. Greg? 03:18

MR. GORDON: I am Greg Gordon, a partner with 03:20

Jones Day. I am a long-time bankruptcy and 03:26

restructuring lawyer probably longer than I would like 03:31

to think about. 03:32

But I'm involved in I think probably all the 03:38

divisional merger cases that are pending at the 03:40

moment starting with the Bestwall Chapter 11 Case, 03:46

an affiliate of Georgia Pacific that we filed in 03:48

November of 2017 through to the LTL case that we 03:53

filed in October of last year. That's the affiliate 03:58

of J&J as you probably know. 03:59

And I, of course, think the divisional merger 04:02

is the greatest innovation in the history of 04:04

bankruptcy, and we'll talk about that more today. 04:07

MS. TSIOURIS: Thank you, Greg. So, and -- and 04:10

I'm Natasha Tsiouris. I'm a partner in the 04:13

restructuring group at Davis Polk. 04:15

Recently, my touchpoint not necessarily with the Texas Two Step, but I've had a case where we utilized the Texas Divisive State Merger in a case called Fieldwood where we used it to get the company out of bankruptcy, so that is -- that's my touchpoint with the Texas Two Step. 04:18 04:21 04:26 04:30 04:32 04:34

Just a bit of housekeeping admin. As Judge Jones said, you know, feel free to ask questions during the panel. We also have up here I think comments that we're getting I think virtually for folks who are dialed in by Zoom, but I think also you can send in questions and we'll do our best and I'll do my best to keep my eye on this and incorporate those questions in the panel as we get going. So, feel free to interrupt us at any time with questions and keep it a healthy back and forth. 04:38 04:41 04:47 04:50 04:52 04:55 04:58 05:01 05:04 05:04

So, just to kick us off, sort of just going through what is -- who would like to describe what is the Texas Two Step and what is the Divisive State Merger? 05:10 05:13 05:17 05:18

JUDGE JONES: Greg, why don't you start? If you get it wrong, I am right here watching (inaudible) watching. 05:21 05:22 05:23

MR. GORDON: I'll -- I'll try to remember what 05:25

it's about. So, the -- it's interesting, because the 05:30
Texas Divisional Merger Statue's actually been on 05:33
the books for a long time. I think it dates back to 50:35
1989. It's not a statute, however, even though I 05:38
practice in Texas that I was aware of until 2016 05:43
when we were starting to look at ways to potentially 05:46
proceed with a corporate restructuring for Georgia 05:50
Pacific prior to a bankruptcy filing. 05:53
But in its essence, it's a statute that basically 05:56
permits a -- acompany to divide. To me, it's a bit of 06:02
an oxymoron to say it's a -- it's a divisive merger. 06:05
That doesn't seem right to me, but it literally 06:08
allows a company to divide and allows it to basically 06:13
-- it provides full flexibility for the company to 06:17
allocate assets and liabilities any way it wants. 06:20
And -- 06:21
JUDGE JONES: Greg, let me ask you. I mean, 06:22
that -- that -- that concept's been around for 06:24
hundreds of years. Why -- why -- why do you need a 06:26
statute to do what can already be done? 06:29
MR. GORDON: Well, because this statute allows 06:32
it to be -- allows this allocation of assets and 06:35
liabilities to be done in a way that's much simpler. 06:37
It's done by operation of law. As a result, you 06:40
don't have to worry about consent to assignment 06:43

issues and contracts. They're not deemed to be any any transfers for contractual purposes. 06:47 06:50

It's sort of been blown out of proportion in the sense that people look at it and say this is brand new. This allows companies to do things they could never do before. That's really not true. Companies could do these types of things before. I mean, you could spin out assets, move assets otherwise, have intercompany transfers. It was just a lot more complicated, and this allowed it to be done in a way where literally you had full flexibility to make the assignments, allocate liabilities where you wanted, split your assets the way you wanted. 06:54 06:56 06:59 07:01 07:05 07:07 07:10 07:13 07:15 07:18 07:20

And the important thing is that once that transaction occurred, you -- you would have two new entities each responsible for their own liabilities. There's no secondary liability, and then the original company disappears. It's gone. You've created two new companies. 07:23 07:25 07:28 07:31 07:34 07:35

JUDGE JONES: So, Greg, what happens if you forget something? Because we all make mistakes, right? What -- what happens if you forget a liability or you forget an asset? What happens under the statute? 07:37 07:39 07:42 07:45 07:45

GORDON: Well, first of all, I would -- first of 07:47

all, I would say that at Jones Day we don't make mistakes. 07:49 07:50

JUDGE JONES: Never makes a mistake. Absolutely. 07:51

MR. GORDON: That's a question I don't have an answer to, because as far as I know, we've never forgotten anything. 07:54 07:56 07:57

JUDGE JONES: Got it. So, I actually think the statute addressed that. I -- I just assumed you would know that. 07:58 08:02 08:02

MR. GORDON: Well, I'm -- 08:01

JUDGE JONES: But actually -- 08:03

MR. GORDON: I'm sorry to disappoint you. 08:05

JUDGE JONES: But I actually think there's an allocation mechanism in the statute for either unidentified or either assets or liabilities that splits between the new entities. 08:06 08:09 08:14 08:17

MS. TSIOURIS: Yeah. I think -- I think it'll go pro rata to the surviving entities, right? And -- 08:20 08:22

JUDGE JONES: Pro rata based on what? 08:25

MS. TSIOURIS: That is a little confusing in the statute to me to be honest, but it's pro rata I think to the surviving entities and it splits the assets and liabilities that way. But I -- I don't pro rata based on what to be honest. 08:26 08:29 08:33 08:35 08:37

JUDGE JONES: Hmm. 08:37

MS. TSIOURIS: I don't know if -- 08:38

MR. GLEIT: I -- yeah. Actually, I don't know -- 08:39

MS. TSIOURIS: -- (inaudible). Something -- 08:41

MR. GLEIT: Your Honor, do you know? 08:43

JUDGE JONES: My memory of it, and I often get the Delaware Statute mixed -- mixed up with the Texas. I know that they both have provisions. I think one of them was -- one of them was just simply a -- just simply a split and I think the other one was based upon allocated value. 08:46 08:48 08:51 08:55 08:57 08:58

MR. GLEIT: Okay. 08:59

JUDGE JONES: But I -- I may be wrong about that. 09:03

MS. TSIOURIS: So, this is a -- a little bit of a set-up question for our panelists because the legislative history. And -- and Greg did touch on this. But just curious why, you know, if folks on the panel want to venture what sort of the original purpose of the Texas State Law was, and -- and why it was enacted this way? 09:05 09:07 09:10 09:14 09:16 09:19 09:22

MR. GLEIT: I'll start which is -- my belief is and what I read from the legislative history and, you know, from what I've seen in practice, it just it makes it a -- a faster, easier way to -- to -- to do a spinoff. And -- and as Greg touched upon, instead of getting consents and certain permissions 09:25 09:27 09:30 09:34 09:37 09:39

that you might need if you were not relying under the statute, it -- it's a more cost-effective means of effectuating a spin-off or a split of two companies. And then earlier also, Judge Jones had mentioned when we were preparing that there's even like a tax benefit so you don't have to do a stamp -- pay a stamp tax I believe. 09:41 09:46 09:49 09:52 09:56 09:57 09:58

JUDGE JONES: Yeah, in the old days there -- there were certain types of asset transfers for which there was a tax obligation, and it was my understanding that when they did that, they wanted to make it totally neutral which is why you see the no transfer provision in that statute as well as giving the ability to deal with your lenders and -- and other outstanding contracts. 10:00 10:02 10:05 10:08 10:11 10:15 10:18 10:20

MR. GLEIT: Yeah. And I would just say more generally, Texas has tried for a long time to be a very business-friendly state, and this was legislation consistent with that objective. The idea was just to basically make it easier for companies to do the types of things that companies were already doing but in a manner that was much simpler and more straightforward. 10:22 10:25 10:28 10:31 10:32 10:35 10:37 10:40

JUDGE JONES: But I do want to pose a question as we think through this. You've got that very simple 10:43 10:45

provision that in the statute that just says that there's not a transfer. And there's been an awful lot of discussion and an awful lot written about that. But I want to pose the question, you know, who genuinely believes that a state can define a transfer for purposes of Federal fraudulent transfer law? 10:49 10:52 10:54 10:58 11:02 11:06

Yeah, I -- you know, I don't think that that's possible but I've certainly read an awful lot about it and I've certainly heard it argued an awful lot. But I -- I just find that interesting. Anybody have thoughts about that? 11:10 11:12 11:16 11:19 11:20

MS. KIELSON: Well, what -- 11:21

JUDGE JONES: I'm totally going off -- unfair (inaudible). I do not take -- 11:22 11:23

MS. KIELSON: So, what do you think -- 11:24

JUDGE JONES: -- instructions very well, so it's -- I'm totally off script here. 11:25 11:27

MS. KIELSON: What do you think then of them including that language, or -- 11:28 11:31

JUDGE JONES: Well, I think it was really done to deal with the fact that let me think about it. If you had to get consents from 29 different lenders because -- or you had to do on-sale clauses or any of that. 11:32 11:35 11:38 11:40 11:41

MS. KIELSON: Mm-hmm. 11:41

JUDGE JONES: And again, sort of the tax angle that back in 1989 existed with respect to some asset transfers. 11:42 11:47 11:47

JUDGE JONES: So, basically, it's a non-issue beyond -- you're saying it's a non-issue beyond that (inaudible). 11:50 11:52 11:52

JUDGE JONES: That's Jones' opinion. I'm -- I'm sure other folks have -- have different views on that. 11:53 11:56

MR. GORDON: Well, my -- my -- my read of it is that it wasn't -- they -- they weren't saying it's not a transfer for fraudulent transfer purposes. I think it was for the more limited purpose of allowing these transactions to take place. And the reason I conclude that is because they made clear that the divisional mergers remain subject to state fraudulent transfer law, and it seemed to me -- I don't know, in my mind it seems inconsistent to suggest that they were saying there's no transfer which would potentially undermine the fact that -- -- that the -- at the same time they were saying these transactions can be and should be tested by fraudulent transfer law. 11:58 12:01 12:02 12:05 12:08 12:11 12:13 12:17 12:19 12:20 12:24 12:25 12:29 12:31

JUDGE JONES: I'm learning just from -- from a bankruptcy perspective, if you could have 50 different views of what constituted a transfer, I mean, that 12:32 12:35 12:38

would be -- that would just be borderline ridiculous. I mean, I think a transfer for purposes of 548, it's federal law. I got the 544 analysis, totally understand that, I -- I would -- I could see that argument. But for 548 I just -- I just can't imagine that a particular state can define what constitutes a transfer under 548. 12:40 12:43 12:48 12:52 12:54 12:58 13:01

MR. GORDON: Yeah. And I -- I'm not disagreeing with 13:02 you. I'm just saying it wouldn't have occurred to me to argue in a 548 case that there's no basis for it because the Texas statute says it's not a transfer. 13:01 13:04 13:08 13:11 13:12

MR. GLEIT: Yeah. And I actually -- I believe the legislative history, and I think one of the authors of the statute even said Crittenden rights are preserved and it's not an intent to -- to eliminate them, so -- 13:13 13:15 13:18 13:21 13:22

MS. TSIOURIS: Yeah. So, I want to -- I want to go there next because obviously, I mean, just going over the purpose of the statute I think it -- you know, it seems pretty clear that there was a good, sound reason and a good justification for putting in place the divisive merger concept into the Texas statute, and we've even seen obviously other states follow suit. There's similar divisive merger statutes 13:24 13:27 13:29 13:33 13:37 13:40 13:43 13:47

in California, Pennsylvania, Arizona, Delaware now. 13:51

So, I think legislatures are seeing the -- the 13:55

purpose and that, you know, there is some reason to 13:57

put it in place. But obviously, not everybody agrees 13:59

with that, and people are challenging some of these 14:03

Texas Two Step cases and the purpose of the divisive 14:06

state merger. 14:07

So, just moving to that a little bit and getting 14:09

to these questions about what is a transfer? How can 14:11

these be attacked? Maybe Greg could just sort of 14:14

kick, it off. If you can describe how the Texas Two 14:17

Step was used in the recent LTL matter, and then we 14:22

can kind of take it -- take it from there. 14:24

MR. GORDON: Sure. So, many of you may know 14:27

this, but the idea actually emanated from the -- as I 14:31

said earlier, the Bestwall case where Georgia Pacific 14:36

decided to move forward with this strategy, and then 14:40

it went through two other cases in Charlotte. We've 14:44

filed three cases there, and then we put it in place 14:51

for LTL. 14:52

But, you know, the LTL situation of all of them 14:56

in some -- some respects was the worst -- sorry -- in 15:00

some respects was the worst from the standpoint of 15:02

for many years I've been involved with companies with 15:07

asbestos liability. And -- and those liabilities are 15:09

very difficult for companies to deal with because of the thousands of claims they would get every year. And just the inability, frankly, to defend themselves and ended up settling those cases just to save defense costs was literally impossible to litigate the cases. But at least with asbestos, you had a situation where it was recognized that asbestos was a dangerous product.

Now for a lot of the companies, they had very strong defenses in the sense that, well, asbestos per se might be dangerous but it's a matter of sufficient exposure, and -- and our products were encapsulated or there are other reasons why the exposure should have been far more limited than what they were seeing in terms of the litigation.

But when J&J came to us, I mean, their situation was far worse from the perspective of both the company and the claimants because in only about five years they had ramped up from virtually zero cases, and these are cases based on an argument that Johnson's Baby Powder causes disease. From literally nothing to they had almost 40,000 cases pending at the time of the filing. And that -- that's just an unbelievable scenario to me.

And their costs went up correspondingly. I mean,

they -- they went from virtually nothing in cost to paying about four and a half billion dollars in that five -- five-year period, about a billion of which was defense costs. And they were actually to the point of incurring about 10,000 new claims a year. They had 12,500 I think just in the first part of 2021 alone. 16:32 16:37 16:40 16:42 16:46 16:49 16:51

So, from the company's perspective, completely unmanageable. How do you litigate 40,000 cases? How do you deal with the fact you're getting 10,000 more per year and they're anticipated to continue for the next 50 years? What do you do about that as a company no matter how big you are? 16:54 16:57 16:59 17:01 17:04 17:07

But then look at it from the standpoint of the claimants. It was awful from their perspective too because it was literally -- and this gets reported in the press, but I think it's true, it was literally like a lottery for the claimants. The large majority of the claimants lost, and they lost on science issues based on the fact that the juries just didn't believe that the product caused disease, either ovarian cancer or mesothelioma, or they would win and then the case would get reversed on appeal. 17:09 17:12 17:14 17:17 17:20 17:23 17:26 17:29 17:34 17:37

So, the large majority of these claimants who were actually moving forward weren't getting anything. 17:38 17:42

And then periodically there would be these gigantic, gigantic verdicts. 17:45 17:47

One verdict was four and a half billion dollars for 22 people. There were several verdicts of hundreds of millions of dollars. And so, if you put it like on a -- on a graph, you would just see it was just this ridiculous thing. There was just a few dots up into the billions or hundreds of millions, and then all the other ones would be along the bottom at zero. 17:49 17:53 17:57 17:59 18:02 18:06 18:08

JUDGE JONES: So, was the company self-funded on all of these claims? 18:10 18:12

MR. GORDON: Largely, yes. 18:13

JUDGE JONES: What does that mean, yes? 18:14

MR. GORDON: Well, I mean, they had a -- they had a self-insuring. They had their own insurance entity and they had some insurance. 18:16 18:19 18:21

JUDGE JONES: Does -- okay. 18:22

MR. GORDON: But in any event, it was, you know, very untenable for the company and not working well for the claimants. 18:24 18:27 18:29

And so, we talked to them about this strategy, and they wanted to do it in a way -- and all these companies to their credit wanted to -- to -- to file bankruptcy in a way where they could not subject the entirety of their enterprise to the filing. But at 18:33 18:38 18:41 18:44 18:48

the same time, they didn't want to be criticized for having harmed the claimants in any way. 18:50 18:53

So, in all of these cases including J&J, the divisional merger was done in a way where the liability was allocated to the entity that filed. So, in the J&J case, it was the talc liability. There were operating assets put into that entity although they were put into a subsidiary. 18:56 18:58 19:02 19:06 19:09 19:11

But the most important thing is, and it's often overlooked in the press, is that there was a funding agreement that was put in place between the entities that it split. It's a little more complicated than this. I'm simplifying. But the entity that received the the larger segment of the assets agreed to provide funding unlimited, you you know, basically, capped only by its ability to pay to back step -- back stop the obligation of the entity that filed to pay the claims. 19:13 19:16 19:19 19:21 19:24 19:27 19:30 19:33 19:37 19:39

And the idea was, and these companies all felt the same way, was we don't even want to have an argument. We -- we would like to avoid an argument that there was any kind of fraudulent transfer here. So, we're not interested in putting a cap on the funding agreement. We're not interested on just allocating certain assets and putting all the other 19:41 19:45 19:47 19:48 19:54 19:55 19:57

ones there and not having a funding agreement. We'd like to do it in a way where we can say to the claimants and say to court, look, the same assets that were available before the Chapter 11 to support the payment of these claims are available post the Chapter 11. 20:00 20:02 20:05 20:09 20:12 20:13

JUDGE JONES: How -- how has that worked out for you so far? 20:14 20:15

MR. GORDON: That's not worked out too well. That's not worked out too well. 20:15 20:18

JUDGE JONES: I do have a question. So, when you're making -- when you're making that decision as to the allocation, why it is important that the company that has the perspective tort liability also have operating assets? Why wouldn't you just -- why wouldn't you just dump a bunch of cash in there and say there you go? 20:20 20:22 20:25 2 0:30 20:33 20:36 20:38

MR. GORDON: Well, from our -- you know, we've always felt -- you know, we've tried to look forward into these cases and think through what do you need to have? What position do you need to be in order to ultimately confirm a plan? And it's been our view for a long time that you have to have an operation. You -- you need to have something to reorganize at the end of the day. 20:39 20:40 20:45 20:47 20:50 20:52 20:55 20:56

And you may be aware of the fact that in some of the earlier asbestos cases, companies actually had to to literally buy a business or bring in an operating business in order to meet the requirements under the code to confirm a plan. So, we just did that all from the beginning. We -- we just said to these companies, look, it makes sense to put in an operating business, something that we can reorganize around at the end of the day. 20:58 21:02 21:05 21:07 21:11 21:13 21:15 21:19 21:20

MS. KIELSON: So, is the potential recovery then if the funding is unlimited, the potential recovery would be the same as if the entire J&J went in? Is that (crosstalk) now? 21:21 21:25 21:29 21:30

MR. GORDON: Well, no. See, that's another important point I should make. The -- the plaintiff's bar likes to argue about J&J, the ultimate parent, and they like to talk about the net worth of the ultimate parent. But what they ignore is that the -- the entity that filed is the product of a split of an indirect subsidiary of J&J which is where the liability actually sat. 21:31 21:35 21:38 21:40 21:44 21:48 21:53 21:55

Now, it's also a very large company called Johnson and Johnson Consumer, Inc., but that's the entity that split. The entirety of its assets remain available. But the other thing that was done in 21:57 22:00 22:04 22:07

J&J which it wasn't done in any of the other cases, J&J itself agreed to become a co-obligor on the funding agreement to the extent of the value of that indirect subsidiary we refer to as JJCI. And that was just to provide further comfort that assets -- the assets would be available. 22:09 22:14 22:17 22:23 22:26 22:28

Because one of the criticisms we've had from the plaintiff's bar in the other cases is well, there's nothing to stop the entity that didn't file from dividending all its assets away. And so, we said okay, well we're -- we're gonna solve that problem by having the ultimate parent actually be a co-obligor. So, if you're worried about assets being dividended up, the ultimate parent is also there and agreeing to be a co-obligor to the extend of the value of that entity. 22:30 22:32 22:36 22:38 22:41 22:44 22:48 22:51 22:53 22:56

MS. TSIOURIS: So, I just want to unpack a little bit for the audience for folks who aren't as familiar with these cases, because you may be hearing from us. At least I think that's the way the panelists are going which is the statute provides for a very sort of orderly separation of assets between two or more entities that would otherwise be allowed. It just sort of provides more for a short-cut and allowing it to be done by statute and through a 22:58 23:01 23:02 23:06 23:10 23:14 23:18 23:21 23:21

single plan of merger as opposed to multiple conveyances and contractual agreements. 23:26 23:28

So, that is a concept that sort of already existed. What was novel and unprecedented there was just really sort of making it one single much easier sort of contractual process in terms of doing it through a plan of merger. Too, you're hearing in the J&J case that there was there was this funding agreement that was put in place to fund all the claims, not to leave behind an insolvent entity. So, you might be thinking sort of well, what's, what's the issue here? What is the big sort of hullabalu? What are people raising in the J&J case? 23:30 23:33 23:39 23:41 23:44 23:46 23:50 23:53 23:56 23:59 24:03

And I think that there is really sort of two issues that people are bringing up with the Texas Two Step, that one, it is a fraudulent conveyance still, so I want to get people's thoughts. And we've talked a little bit about the transfer issue. Get panelist's thoughts on what -- how strong of an argument is it when you're hearing that there is a funding agreement? How strong of an argument is it that it's a fraudulent transfer, one? And two, is it really more just a case of bad faith that you're abusing the bankruptcy system in some way, and something here is untoward, and you are supplanting other systems that exist for dealing 24:05 24:08 24:13 24:15 24:18 24:22 24:23 24:27 24:30 24:34 24:37 24:41

with these types of claims with the bankruptcy code and this shouldn't be allowed? 24:44 24:46

So, I want to take those in turn. One, on the fraudulent conveyance arguments. Brya or Jeff, do you want to kind of give thoughts on -- on how strong those are, and then we'll turn to the bad faith arguments people are raising? 24:49 24:53 24:55 24:58 25:00

MR. GLEIT: Yes, no. I'm happy. Is it all right if I start? 25:02 25:02

MS. KIELSON: No, yeah -- yeah, go. 25:03

MR. GLEIT: Yeah oh. So, when I first looked at the issue, and I'm ready for Judge Jones to come at me now with -- with a question or two. You know, to me it appeared like it would be an obvious fraudulent conveyance unless the funding agreement really is, you know, backs it up and provides sufficient value to -- to turn it into a viable transaction. Earlier today, we were talking about whether that's the right vehicle to -- to file a fraudulent conveyance complaint, you know, who the defendant would be. 25:06 25:10 25:14 25:17 25:19 25:22 25:26 25:30 25:33 25:35 25:36

I would take the position that you would sue J&J and try to unwind the transaction. Others on this panel think that that's not the right way to go about it. But in my mind, what -- what -- when you first 25:38 25:41 25:44 25:50

look at the Texas Two Step and you look at J&J, you say hey, this is problematic. It's really trying to force all these claimants into a bankruptcy court where they don't want to be. 25:54 25:56 25:59 26:01

And then when you dive deeper into it and really start looking at it, it's really more of a forum of -- a forum for like negotiation, right? So, you -- you argue bad faith. You argue fraudulent conveyance. And it's really just coming down to what we all deal with on a daily basis. It's money, right? We -- we are bankruptcy lawyers. We split up a pie. 26:04 26:07 26:10 26:12 26:15 26:18 26:19

And -- and it -- it enables a company to -- to deal with the fraudulent conveyance issue because you -- you then value the, you know, the -- the amount of claims at issue. You see whether J&J can back it up. And assuming they can, you know, I don't believe it would be a fraudulent conveyance. And if they can't, I would file a complaint which Judge Jones might dismiss because I didn't name the right defendant, but I would name Johnson and Johnson and try to unwind the transaction. 26:23 26:26 26:29 26:33 26:35 26:38 26:40 26:44 26:47 26:48

JUDGE JONES: So, we -- we were having a little bit of fun before -- before the -- before the presentation. And so, I -- I -- I said tell me -- tell me who the plaintiff is. Tell me who the 26:50 26:53 26:56 26:58

defendants are. Tell me what the transfer is that you're seeking to avoid. Because I've never heard a really good start to finish answer to that question. And in all fairness, I will tell you Jones' personal view. I think it's absolutely the wrong claim. 27:01 27:05 27:08 27:11 27:14 27:16

I think it's where all of the discussion is right now. I think that there is a much scarier claim out there that I'm waiting to see brought. And someone's gonna say, well what it is, and I'm gonna tell you that that's the one question I won't answer today because then it becomes, well Jones said. And that's I get in trouble for that all the time. 27:17 27:21 27:24 27:27 27:28 27:31 27:34

But I -- I actually do think that the fraudulent transfer issue's the wrong claim if what you're trying to do is you're trying to reach all the way back. Because think about it. From the debtor's perspective, just 548, what transfer of assets did the debtor make? They didn't make any, right? So, you've gotta look at the other side of 548 and you gotta look at the occurrence of the obligation. 27:37 27:41 27:45 27:48 27:54 27:58 28:00 28:02

Who are you gonna sue? An entity that doesn't exist? And what's what gonna get you? You know, are you now reaching into 550 and trying to make creative use of 550 to get there? And what's the 28:05 28:11 28:13 28:16

ultimate result of that? And again, I think you come back to, I mean, all of these are unrelated, you know. What does that funding agreement really say? 28:20 28:22 28:24 28:25

You know, in Jones' mind that's not the scary lawsuit that if this really is a negotiation where you get people at the table. But that's -- that's just my view. 28:29 28:31 28:33 28:34

MR. GORDON: Yeah, and I -- and I would just say that when we've seen these fraudulent conveyance allegations be made or even when there have been some lawsuits filed, typically when you read the complaints or you hear the allegations, the -- the way they get there is they just ignore the funding agreement. It's as if it doesn't exist. 28:36 28:40 28:44 28:47 28:49 28:52 28:54

And so, they -- they -- they -- there's a bunch of pejorative terms that are typically used, but one we often hear is that, you know, bad co and a good co. 28:57 29:00 29:04

And they just talk about how the bad co has been left with very limited assets and, you know, all the good assets were sent to the other entity. But with absolutely no discussion, no disclosure about the funding agreement. And from our perspective, the funding agreement's key and it's so important that in our cases in our first day declarations, we've 29:05 29:09 29:12 29:16 29:18 29:21 29:25

attached that as an exhibit just to sort of say to the -- the judge or the court right off the bat, look, this was done. It just -- we don't want you to be confused about it. This is what we -- we've done. Then the argument turned to well, it's a loser. 29:29 29:31 29:34 29:38 29:40

MS. TSIOURIS: Greg, sorry to interrupt you. 29:41

MR. GORDON: Yeah. 29:41

MS. TSIOURIS: Could it be that people are worried that the funding agreement is illusory? And how do you combat those arguments? 29:42 29:46 29:47

MR. GORDON: Well, that's what I was just gonna say. 29:47 29:47

MS. TSIOURIS: Okay. Go for it. 29:48

MR. GORDON: Yeah. All right. That's -- that's good. We're in sync, yeah. So, I was gonna say then the argument turned to it's illusory. Well, how it is illusory? Well, because it's not the same as the claimants having a direct claim to the assets. Like if the entire company had filed, they would have a direct claim. Everything would be there. 29:50 29:52 29:54 29:59 30:03 30:04 30:07 30:08

And my view on that is that's sort of a form of resubstance in a way, and I ever heard -- I've -- I've heard judges say that, you know, the problem is that you've got the affiliates, and the debtor is 30:11 30:14 30:17 30:20

never going to enforce the funding agreement. So, 30:22
that -- that's the problem. You have the funding 30:24
agreement but the claimants are now a step removed. 30:27
The debtor isn't going to enforce it. 30:28
And -- and my reaction to that is that's kind of 30:30
an insult to the bankruptcy judge. So, we're -- 30:33
we're There in the bankruptcy court. We're a debtor 30:36
in possession. We're a fiduciary. We elect not -- 30:39
the other side breaches, we elect not to enforce? 30:40
Is the bankruptcy judge gonna let us get away with 30:42
that? You -- 30:44
JUDGE JONES: So, let me -- let me -- 30:45
MR. GORDON: What would you do? 30:46
JUDGE JONES: I try all sorts of things, but 30:47
that's certainly (inaudible). So, -- so, could I ask 30:50
you the finding agreement. Executed pre-petition? 30:53
Post-petition? 30:54
GORDON: Pre-petition. 30:55
JUDGE JONES: What do you view that agreement 30:57
is? Is it an executory contract that must be assumed? 31:00
MR. GORDON: Ah. 31:00
JUDGE JONES: Is it something else? What's -- 31:01
what -- what does all that mean? 31:04
MR. GORDON: That's a very complicated issue 31:05
which -- 31:07

JUDGE JONES: I have lots of time. 31:10

MR. GORDON: Yes, but this audience doesn't have lots of time. I'm -- I'm not gonna answer that question. 31:12 31:15 31:16

JUDGE JONES: Is there a United States Marshall in the room? 31:18 31:20

MR. GORDON: So -- 31:22

MS. KIELSON: Is there -- is there any negotiation in the funding agreement? I assume that with any of the plaintiff's bar or -- 31:24 31:27 31:31

MR. GORDON: Well, you know, that -- again, that -- that's an argument we hear all the time. This is an agreement. It wasn't negotiated. It's between affiliates. And we don't deny that. I mean, it's not like affiliates negotiate with each other in that sense. 31:32 31:34 31:37 31:40 31:44 31:45

To me, the question is is it a -- is it a fair agreement? It is beneficial to the estate or not? That's all open. I mean, we're -- you know, we're there. We've tried to be open in all these cases. We are here. We are disclosing everything. This is what we've done. We described in detail every step of these transactions. We turned over all the documents for these transactions, and we said it's -- it's completely open and, you know, we'll 31:47 31:50 31:54 31:56 31:59 32:02 32:05 32:08 32:11

answer any questions. 32:11

And, you know, we -- what we get back are a lot of very generalized, negative statements. It's a bad co. It's a fraud. It's -- it harmed claimants, but there's never any real specifics. And even with the funding agreements, it's been frustrating because we'll hear this is an illusory contract that has all kinds of problems, and we'll say okay, what are the problems? Because we'll listen to your concerns and we'll try to address them, and that's a dialogue we generally have not had in many cases. 32:38

JUDGE JONES: So, I want to come back to my question. 32:39

MR. GORDON: Yeah. 32:40

JUDGE JONES: So, what -- what is it? What do you do with it? Do you get it approved by the court? Does it just -- 32:44

MR. GORDON: We did not get them approved by the court, no, because they were in place when the filing occurred. 32:50

JUDGE JONES: So, -- so, you must take the position that they're not executory, right? 32:54

MR. GORDON: I'm not going to reduce my -- my flexibility on that issue. 32:59

FEMALE SPEAKER: Go (inaudible). 33:01

MR. GLEIT: You know, I actually have a question which is, you know, we're talking about the funding agreement and constructive fraudulent conveyance. You know, at one point I thought maybe an intentional fraudulent conveyance could be a stronger argument with like intent to hinder, delay creditors. Now, how'd you tackle that, Greg? 33:02 33:03 33:05 33:07 33:09 33:14 33:15

MR. GORDON: Well, I think -- I think to me, the one -- the one big problem with an intentional fraudulent conveyance, it seems to me as a practical matter you have to be able to show that you were hurt. There has to be some kind of damage. 33:18 33:20 33:22 33:25 33:27

So, I would submit you can't even get out of the starting gates with that because you haven't been -- you -- you just haven't been hurt by it. 33:29 33:31 33:35

MS. TSIOURIS: So, Jeff, just that was my -- gonna be my second question. Do we think that actual fraudulent transfer claims here are stronger? And it sounds like, you know, Greg's view is, you know, there's no -- you have to show that you're hurt and there's no harm shown yet. 33:38 33:39 33:43 33:46 33:48 33:50

MR. GORDON: Well, that's one thing. And I -- I -- I think the other thing is if you're trying to make a hinder or delay case, that to me is based on the fact that there was a bankruptcy filing. And if 33:51 33:54 33:57 34:00

that's the basis for an intentional fraudulent conveyance claim or actual fraudulent conveyance claim, it seems to me any time any company files for bankruptcy you could make that argument. And that, to me, doesn't make -- make sense either. 34:03 34:04 34:08 34:10 34:12

JUDGE JONES: So, I also I just want to make sure that we don't forget that, you know, we talk about this in broad terms and even while -- even though I think it's the wrong claim as I've said before, I -- every one of these is going to be slightly different. 34:14 34:17 34:20 34:22 34:28 34:28

And so, I do think that there are degrees based upon all sorts of factors that you could reach different conclusions about a particular transaction. And I don't -- I don't think that any of us should leave with the notion that well, this is always good or this is always bad. I -- actually think that there's so many moving parts to this that you have to look at the entirety of the structure before you start deciding what to do about it. I -- I just don't think it's one of those black and white issues. 34:31 34:35 34:39 34:42 34:45 34:48 34:51 34:55 34:57 34:59

MR. GORDON: So, -- so, I completely agree with that. And one of the frustrations I've had -- 35:02 35:04

JUDGE JONES: And -- and then we can move to the executory (inaudible), huh? 35:05 35:07

MR. GORDON: And -- and one of the frustrations I've had is the other side I think always tries to make it just this black and white thing, and from their -- what -- what I hear from their arguments is any divisional merger that's done prior to a bankruptcy is a problem. It -- it -- it -- it -- it -- it leads to a conclusion definitively that it was a bad faith filing. It's definitely a fraudulent conveyance, and I've said in some of these arguments we've had, that -- that just can't right. 35:09 35:11 35:13 35:16 35:19 35:24 35:27 35:30 35:33 35:34

It can't be that every divisional merger no matter how it's done, no matter how assets or liabilities are allocated, whether there's a funding agreement or there's not a funding agreement, it can't that they're all bad. And so, that -- that's why I strongly agree with what you're saying. 35:38 35:40 35:42 35:45 35:48 35:50

I -- I do agree they need to be evaluated, and you can certainly envision ways that a divisional merger would be done that would be a problem. But the question is is -- is the transaction before the court? And, you know, its various indicia, is that a problem or not? 35:52 35:54 35:57 36:01 36:04 36:05

MS. TSIOURIS: So, just touching on the bad faith argument for a bit, and understanding that, you know, these cares are nuanced. But how strong 36:08 36:12 36:16

do you think, Brya, the bad faith argument is in these Texas Two Step cases where it seems that the clear purpose is taking advantage of either 524G, the channeling provisions that were put in place after the asbestos litigation, and/or just dealing with these, you know, MDL litigations that, you know, J&J is dealing with? 36:19 36:22 36:26 36:29 36:33 36:36 36:38

MS. KIELSON: I think -- I think like we just said, it's very case specific. I think I can see a situation where a company intentionally -- I mean, it's extreme but right, intentionally creates a product that they know is poisonous. There's all these claimants, and they put it into bankruptcy with this Texas Two Step. 36:40 36:43 36:47 36:50 36:53 36:55

And so, I think that there definitely are degrees and it's very fact specific, and I think that we can't lose sight of, as we just said, that -- that -- that for sure is a possibility. 36:59 37:02 37:05 37:07

MS. TSIOURIS: Okay. And so, we've talked a lot from the company's perspective about the pros of a company putting itself through this Texas Two Step plan. Maybe does anybody want to take, you know, the side of there's some pros here for claimants or creditors in terms of having these types of claims estimated and run through and paid through the 37:10 37:15 37:17 37:22 37:24 37:28 37:30

bankruptcy process as opposed to staying outside of the bankruptcy court? 37:33 37:34

MR. GLEIT: Yeah, I'm happy to start with that. Look, when I first read about J&J I was offended. I thought it was outrageous and it was harming claimants and creditors. And as I delved into it more, and, you know, in looking through the Purdue case as well actually, I -- I believe that the pro for the claimants would be that it leads to a more equitable distribution. 37:36 37:41 37:43 37:45 37:49 37:53 37:55 37:56

So, Greg had mentioned, if you're the first claimant and you get 4-billion-dollar judgment, you're not happy about this Texas Two Step. But if you're number 40,000 online and waiting for the remaining assets to be distributed to you, you're never gonna see a dime. 37:58 38:02 38:05 38:08 38:10 38:12

What -- what -- what this does is it creates a forum where everyone can file their claims, and on a more judicial, equitable basis you will provide a benefit, you know, to all claimants. And I -- I actually truly do believe that. And is it a perfect system? No. We all know that, but -- but it is one way of -- of -- of -- of protecting claimants. 38:14 38:18 38:22 38:26 38:29 38:33 38:36

And -- and when you see some of these cases, I mean, whether it's Purdue or Johnson and Johnson, 38:38 38:41

sometimes like a lot of the objectives in the bar or in, you know, the plaintiff's bar, it's really just political, you know, to get your name in the press. And if you really think about it, a fair process where 76 percent of the creditors, you know, have a -- have to sign onto, it's a fair process with an imperfect world. So --

MS. KIELSON: It does seem though that which I just realized or remembered that you had mentioned the MDL. Is this -- is this a situation where bankruptcy potentially is going to supplant that?

MS. TSIOURIS: That process.

MS. KIELSON: That process? And is that politically or otherwise something that, you know, we collectively can get behind? Is that -- is that where this is going and maybe it's just in certain situations? But I think that definitely is an interesting issue, because from their perspectives who are we to say that this is the best thing for the claimants?

But then to analogize it to preferences, it -- it's a similar type of a situation. Yes, you were beneficial. You know, you were benefited by being paid first, but shouldn't it really be in the spirit of the code that it's all pooled together and everyone

is treated equally? So, it's -- it's something that I kind of go back and forth with with regard to that. 39:48 39:51

MS. TSIOURIS: Yeah. 39:51

JUDGE JONES: So, and I'm sorry. If we could go back in history just a bit that you all are way too young. But if we go back to the asbestos world if you remember what that was like in its heyday, you had a lot of the same reactions from the plaintiff's bar, and you had -- you had a pull and a tug going on. And there -- there was a balance of we want to pay, we, you know, we have to pay claims. We want to be able to go forward. You're -- you're trying to balance that with the right of everyone to have their day in court whatever that means. 39:54 39:58 40:02 40:06 40:09 40:12 40:16 40:18 40:20 40:24 40:28

And you saw over time that a process developed. And I think that most folks today would tell you that that process ended up in a really good place although it took some time. 40:32 40:35 40:39 40:41

And I think you also, and this is just the different environment at least from my point of view, what you saw back then was you saw Congress saying what does the judiciary need in order to become efficient in the administration of these types of cases and claims. And it gets me to if you've read the legislation as I'm sure that you all have, 40:43 40:46 40:50 40:54 40:58 41:01 41:05

there's been a entirely different tone. 41:08

It's -- and I have all the respect in the world 41:10

for -- for those folks who sit in Congress and -- and 41:13

-- and deal with what they with and -- and put forth 41:15

legislation. But it's changed to now we're gonna 41:20

tell you what you need and what you can and can't do, 41:23

and it really bothers -- it really bothers me that 41:27

we're now gonna define a class that we're gonna say 41:30

if you fall in this class you can't have access to 41:34

the bankruptcy process. I mean, that just really 41:36

bothers me from an open court's prospective. 41:38

Do I think that we're at the right place with 41:42

respect to the Texas Two Step? Of course, I don't. 41:45

I mean, we've had four cases. I do think as -- as 41:48

we see more cases filed, and I do think that you will, 41:53

I think you'll see the process that has worked so well 41:56

over so many years is that we'll find the right place 41:59

for those claims to get handled. I -- I hope that at 42:03

some point Congress will say judges already have a 42:07

host of tools. Maybe we need to expand 524G which 42:11

is something I've advocated for a really long time. 42:14

No one listens. 42:16

But I -- I do think that eventually it'll get 42:20

to the right place. Because as you said, this is all 42:22

about money and I -- I know you said it kind of 42:24

tongue in check, but economics -- if you assume that economic actors act in their own self interest which is something so easy to predict and it's something that keeps everything fair and open, that we'll end up in a process that just makes sense. 42:27 42:30 42:33 42:37 42:39

And again, I, you know, I don't have one of these, but I've been thinking about it an awful lot, and my belief is I have a whole tool chest of things that I can do to push the A case in my mind in the right direction, you know, whatever -- whatever that might be. That was way longer than it was inside my head and I apologize. 42:43 42:47 42:51 42:57 42:59 43:01 43:03

MR. GORDON: So, I -- so, -- so, I would just add a couple of things. The -- you know, the MDLs can't do what a bankruptcy case can do. And, you now, we -- we shouldn't underestimate what can be accomplished in bankruptcy, but an MDL, for example, can't do anything with future claims. 43:06 43:09 43:13 43:15 43:18 43:21

And so, in the LTL case, I mean, you've got literally projections of another 50 years of tens of thousands of claims being filed. An MDL can't do anything with that. MDL is a very limited utility. It's basically at best a settlement vehicle. It provides some information to the parties to try to help them settle, but it can't do anything for future 43:24 43:29 43:32 43:35 43:40 43:42 43:45

claims.

In -- in addition, it's kind of undisputed by everyone I think that the tort system doesn't work for mass tort claims. It just doesn't work. And the J&J case again is a -- is a great example. J&J has been able to -- to litigate only 10 cases per year. So, think about that. You have 40,000 pending cases. You can do the math. What's that, 4,000 years? I mean, it's just -- it's just not the answer.

And, there's been other attempts to try to figure out ways to overcome the tort system. You may -- well, I can remember because I've been around for a while, but there are efforts to do it by class action settlements, and those were ultimately rejected by the Supreme Court. Supreme Court said you can't do it this way.

And, you know, Congress has recognized in the past that the -- the tort system doesn't work for mass torts. And companies like the situation with J&J, unless you're just willing to put yourself in a position where you have a completely untenable situation, unmanageable litigation, bankruptcy is really the only option. And if you really want to get a permanent resolution of the liability that allows you to deal with all current claims and all

future claims, that offers the only option. And then the question is how do you do it? 45:05 45:08

And in these cases, these companies decided that this was the best way for them. The feeling was that this -- this reduced their risks. It reduced potential value loss for the business, but at the same time, it was done in a way where the claimants were essentially in the exact same position. Yeah, their litigation has stayed. They don't like that. I get that. But their litigation would've been stayed if the entire company filed. 45:12 45:14 45:17 45:19 45:22 45:25 45:29 45:30 45:33

So, you know, from our perspective, there's just the -- the status quo was an untenable situation. Bankruptcy presented the only option. And bankruptcy you can -- you can get to a resolution that solves the problem, and it solves it in a way that I believe is fair to everyone. 45:37 45:41 45:44 45:47 45:50 45:52

MS. TSIOURIS: So, we have a couple questions here. I think we've answered them. Greg's answered them in his latest response, but -- 45:55 45:58 46:00

MR. GORDON: Well, I wonder. There's one other thing I wanted to come back to if I could. 46:00 46:02

MS. TSIOURIS: Oh, please, yeah. 46:02

MR. GORDON: And that was the bad faith -- 46:04

MS. TSIOURIS: Okay. 46:04

MR. GORDON: -- question. So, I mean obviously, the -- the -- the other big issue here besides fraudulent transfer, and to my mind is the bigger issue, is whether filing a bankruptcy like this after a divisional merger is bad faith. Whether the case should be dismissed as a bad faith filing. 46:06 46:09 46:11 46:15 46:18 46:20

And to me again, going back to what Judge Jones says, it's a matter of what the facts and circumstances are and whether the case was -- was handled properly. And in the Third Circuit, you know, the standards are basically, did the case have a proper purpose? Judge Kaplan found that it did because the -- the purpose is to permanently resolve a very difficult liability that was incapable of being resolved in the tort system. 46:25 46:27 46:31 46:34 46:38 46:43 46:46 46:49 46:50

Was the purpose of the bankruptcy just a litigation strategy? Some kind of strategy to get an advantage in a litigation, in a lawsuit? And I think Judge Kaplan correctly found that's not the situation here. It's not like there was a lawsuit or a small handful of lawsuits and you were trying to change the relative positions of the parties in that litigation. 46:54 46:56 47:01 47:03 47:06 47:09 47:12 47:13

And the other component is, is the company in financial distress? Was there really a need for a 47:16 47:19

bankruptcy filing? And Judge Kaplan again found that there was financial distress. And I -- I submit that in the -- the LTL situation, that was a -- that was a relatively easy determination to make given what I described before with the thousands of lawsuits, the billions of dollars being paid, the prospect of decades of additional litigation, the -- the potential for massive verdicts at any time. That -- that's -- if that's not financial distress, I don't know what financial distress is. 47:22 47:25 47:28 47:31 47:35 47:38 47:41 47:45 47:48 47:49

So, the reason I -- I wanted to come back to that is, again, to Judge Jones' point, it's not like every one of these cases could survive a -- a bad faith attack. In fact, you know, this case is on appeal. Maybe it'll get reversed. I -- I -- I don't know. But you can envision other situations where companies couldn't make -- you know, could not overcome these standards. Maybe they can't really show they're in financial distress because the litigation is manageable. Or -- or, you know, or maybe it really was a litigation tactic if you look at it more closely. Or maybe there really wasn't a a proper purpose. Maybe their -- their aim was to do something else. 47:51 47:54 47:58 48:01 48:03 48:06 48:09 48:12 48:14 48:17 48:19 48:23 48:25 48:26

So, there are safeguards built in not only in 48:28

the code itself, but in the, you know, judicial gloss that's been put on the code that seems to me protects against the parade of horribles that we hear about from the other side in all these cases. 48:31 48:34 48:37 48:39

MS. TSIOURIS: So, Greg, so there -- we have a set of questions. I think one you answered, but it's basically if the funding agreement is rock solid, then what's the purpose of the divisional transaction? I think you answered that in your previous questions. 48:41 48:45 48:48 48:51 48:54

The second -- previous answers. The second question is does J&J differ from Tronox based on the existence of the funding agreement? I don't know how familiar you are with Tronox off the top of your head if there was a funding agreement there or not? 48:57 49:02 49:05 49:06 49:10

MR. GORDON: I don't know that detail of Tronox. 49:12

MS. TSIOURIS: Yeah, I'm trying to (crosstalk) -- 49:13

MR. GLEIT: I don't think there was one, and I think that was the -- the big issue in the case. It was spinoff. They literally just put a bunch of bad assets in the subsidiary and then the case was unwound. 49:14 49:15 49:18 49:21 49:22

FEMALE SPEAKER: There was no funding agreement. 49:23

MR. GLEIT: Okay. 49:24

MS. TSIOURIS: No funding agreement. Thank you to the audience member. So, I want to shift a little 49:2 49:29

bit more to kind of where we see this going, and yes? 49:33

MALE SPEAKER: I -- was wondering if the -- if 49:34

the panel could address. There's at least two cases 49:38

in -- in North Carolina where the tort committee has 4 9:45

started a (inaudible) consolidation as a way to bring 49:49

in the -- all the assets of the parent company that 49:51

divided. I was wondering what the panel thinks about 49:53

that tactic. 49:55

MR. GORDON: Well, I'm not a fan of that. I 50:01

mean, honestly -- well, first of all, Judge Whitley 50:05

who I have a great deal of respect for, he's allowed 50:09

that litigation to proceed. We moved to dismiss 50:11

those lawsuits, and we thought we had good arguments 50:16

on the motion to dismiss. He -- he denied those 50:19

motions. But to me, it -- it's not a good fit for 50:21

this. It doesn't make sense. 50:23

If you look at the standards for substantive 50:26

consolidation, they can't -- they can't be met in my 50:29

view. There's no facts that really support 50:31

substantive consolidation. And that's putting aside 50:34

the threshold issue that personally I can't get past 50:37

which is I've never understood, and I know there's 50:39

some courts in the Ninth Circuit that disagree with 50:41

me. I've never understood that you could literally 50:44

substantively consolidate a non-debtor into a debtor. 50:47

That, to me, is effectively an involuntary petition against a non-debtor. That -- that just makes no sense to me. 50:50 50:53 50:54

I don't believe those lawsuits will ever have any real legs even though we didn't prevail on -- on dismissal. But -- but even from the standard itself, you know, as you know, generally you've got to show that either the assets are so mixed they -- they can't be separated, or that the company's basically engaged in some sort of fraudulent shell game or misrepresented their, you know, corporate status and the like. And there's no facts related that the divisional mergers in my judgement that support any of that. 50:57 51:01 51:03 51:06 51:08 51:12 51:14 51:17 51:19 51:22 51:24

So, we're disappointed with the result, but at the end of the day, I don't lose sleep over -- over those lawsuits. 51:26 51:28 51:30

JUDGE JONES: So, let me add to that. And -- and could the gentleman just raise his hand again so I can -- I'm sorry. I just I lost track of you. I -- I got you. 51:33 51:35 51:38 51:38

I've only read the complaints. I don't know any of the other facts other than what's in the papers. With what's in the papers, it doesn't make sense to me. As I told you before, I actually think there is 51:44 51:47 51:51 51:55

a scary lawsuit out there. That's not -- that's --

MALE SPEAKER: (Inaudible).

JUDGE JONES: Nope, that's not it. But I -- I applaud you for really narrowing that down. But again, if again just what's in the papers it doesn't make sense to me that that's -- that that's a direction that's gonna bear fruit. But obviously, I could -- I could be wrong.

You know, the fact that it survived a motion to dismiss in today's world doesn't mean very much to me. I think one of the next steps to take place we may all learn something at least with respect to one judge's view of -- of the claims. But I, you know, I think there are better ways to spend time.

MALE SPEAKER: I've got a question for Greg. (Inaudible). You had said earlier, I think, that the Texas (inaudible) for a long time going back to 1989, and that you hadn't really thought about it until 2016.

Can you share with us was there a moment where it dawned on you that that was the tool that you wanted to use? In Bestwall what made you decide to go that route when we'd seen other (inaudible) exercised in previous mass tort (inaudible)?

MR. GORDON: Yeah. All -- all I can say about that is we considered a lot of different options for preceding with a corporate restructuring. And after looking at the options and thinking through what the issues the company would likely face in a bankruptcy, we viewed that to be the best option. 53:17 53:22 53:26 53:29 53:34 53:36

JUDGE JONES: At some point will we get to meet the young man or woman that actually came up with the idea? 53:39 53:41 53:42

MR. GORDON: Which idea? 53:44

JUDGE JONES: I was just having -- I'm -- I'm going back to the whole executory comment. That was -- it was a circle. I see you do have a couple of other questions. 53:46 53:49 53:52 53:53

MS. TSIOURIS: Oh, yes. 53:54

MALE SPEAKER: A quick question regarding constructive (inaudible). The assets, even if you argue that through the funding agreement the average will be part of the (inaudible). The other other side of the arragement is the liability. When the company is coming to the court with a petition, these tort (inaudible) are unliquidated. 53:55 54:00 54:06 54:09 54:12 54:16 54:18

How do you address the fact? What is the value of (inaudible) liability and whether the assets are (inaudible)? 54:22 54:24 54:27

MR. GORDON: Well, I -- I would say that first of all, to do a -- a standard constructive fraudulent conveyance analysis, you would need to estimate the liability. But I would say that's all irrelevant in these divisional mergers the way they've bee done, because all the assets that were available before remain available, so it doesn't matter whether the company was technically insolvent before or not. It has the same ability to pay as it did before, so in my mind that just makes that issue irrelevant.

JUDGE JONES: So, if -- if I could just take a slightly different approach to that is that there are professionals out there whose entire careers are built upon estimating, you know, the average claim in a mass tort case. And those are the, you know -- it just becomes a -- a sort of war of the experts if you will.

But I -- there are folks out there who give -- who can -- you know, they've go this model already built. They can plug it in. They can change the assumptions, and they can -- they can give you -- they can give you their best estimate based upon whatever set of input you give them.

If -- if I were doing it, that's what I would do. I mean, and that's what I would expect to be shown if it came to me in the context of litigation.

Is that helpful at all? 55:49

MALE SPEAKER: Yeah. Thank you. 55:51

JUDGE JONES: Okay. 55:51

MS. TSIOURIS: I saw a second hand. Yeah? 55:52

MALE SPEAKER: I'm still confused, I guess. If all of these assets remain available, I'm having a hard time understanding the purpose of the additional transaction and why you just don't put the entire entity into bankruptcy and then propose the same sort of mass tort resolution scheme as part of the class both present and future. What's the purpose of the divisional transaction if everything is still available? 55:56 56:02 56:05 56:08 56:12 56:16 56:20 56:22 56:22

MR. GORDON: Well, the -- the purpose is that you avoid having the entire company and all it's other stakeholders subjected to a bankruptcy filing. 56:26 56:30 56:33

So, imagine with a Georgia Pacific or a -- this Johnson and Johnson and subsidiary, how much more complex and difficult the bankruptcy case would be. I mean, you'd have all other manner of stakeholders you would have to deal with, much larger company subjected to, you know, all the -- the obligations of a bankruptcy filing. Far more complicated, and for -- from my perspective for no real -- for no real purpose. 56:37 56:41 56:46 56:50 56:55 56:59 57:02 57:05 57:06

And -- and I would submit that the claimants are actually better off by companies that do it this way. Because from their perspective, they -- they don't have the worry that the entity that's a backstop for the funding is subjected to the risk of a bankruptcy filing and the potential loss in value. But -- but that's the reason to avoid the complexity, the cost, the impact on customers, suppliers, and others, and just instead focusing on the liability that needs to be addressed. 57:08 57:14 57:16 57:20 57:23 57:25 57:30 57:33 57:36 57:37

MALE SPEAKER: And is the funding agreement just one secured obligation of the entity? So, in other words -- 57:40 57:44 57:44

MR. GORDON: It is. 57:44

MALE SPEAKER: -- that you know that -- that -- that entity that is free of the liabilities goes out into the marketplace but it could in theory encumber all of its assets and that funding agreement would be subordinate to all that secure net? 57:46 57:50 57:54 57:58 57:59

MR. GORDON: Theoretically it could do that. 58:00

MALE SPEAKER: That might be a reason why you'd want the (inaudible) go in. 58:02 58:03

MR. GORDON: Well, and I -- that -- that's an argument that's been made on the other -- on the other side. I mean, from my perspective, it -- it 58:05 58:07 58:10

wouldn't make sense. 58:12
It's always to me been impractical and illogical 58:15
for people to argue that a company would go through 58:17
this process for the purpose of resolving its 58:21
liabilities, then would take steps to basically 58:24
undermine the whole purpose of the transaction. 58:27
Because then you could imagine well-founded 58:30
fraudulent conveyance suits. You could imagine the 58:32
case being dismissed as a bad faith filing or 58:35
dismissed for other -- on other grounds. And I -- 58:38
that just seems very impractical. To me, in -- in 58:40
all of these cases, there's never been a default 58:43
under the funding agreements. The payments are being 58:45
made regularly to support the funding of the 58:48
professional fees which are substantial in the cases. 58:52
JUDGE JONES: So, I if -- if I could just add to 58:54
that just a bit to try to take your question in a 58:57
little different direction. 58:58
There aren't any rules that I'm aware of as to 59:02
what a funding agreement has to say, what it has to 59:05
be, what it is comprised of. And I do think that all 59:09
of those issues -- and again, coming back around to 59:12
the executory nature of the obligation if it is one, 59:16
I think there are a whole host of things that can be 59:19
done if there's a concern about the relative strengths 59:23

or weaknesses of that funding agreement. Haven't really seen that play out. I mean, it's -- we haven't gotten to the point yet where we've really started to test what -- to test the composition of those agreements. 59:25 59:28 59:31 59:34 59:36

But I also want to come back to where you started why do it? I'm gonna come back to a prior comment I made where every single one of these is different. And let me pick an example which I hope pertains to nothing that's pending. 59:37 59:42 59:45 59:49 59:51

You know, think about if you -- if you had a situation where you had a mass tort liability but your business model included relationships with foreign governments. I mean, you could -- and, you know, when you -- when a governmental entity, and I've had a couple of these, when they find out that there is a U.S. bankruptcy, there is a horrible reaction to that concept. 59:54 59:56 60:00 60:03 60:06 60:09 60:14 60:15

So, I mean, there could be all sorts of strategic reasons both driven by business as well as ultimate resolution that you could make that decision. And I don't think that there's a -- there's a simple answer as to why do it. I think you have to say which case, what the issues are, what's trying to be accomplished because I think that they will vary. 60:17 60:20 60:23 60:26 60:30 60:33 60:36

I -- I certainly think there could be a well, I went to this seminar and I saw Texas Two Step and, you know, that just seems really fun. Which since -- since we're almost done, I have to share with you. I was -- I was speaking -- I was speaking to the New York TMA earlier this week, and we were talking about the Texas Two Step and I got asked a lot of questions. And again, you guys do realize I don't have one of these, so it's just an opinion.

And I -- I continue to talk to a lot of -- a lot of the folks that I came up with who are doing these transactions, have done them for years, and it's really interesting. Because I came out of -- I came out of (inaudible). I know that's not surprising given where I live. And I talk to a lot of the folks that do these transactions and they go, well, you know, it's all funny. The Texas Two Step is, you know, we're all laughing at that, you know. We do, you know -- we use the Pennsylvania statute, and we have in an effort to follow suit, we have named it the Pennsylvania Polka. That -- that's -- that's all the wisdom I got today.

MS. TSIOURIS: All right. We're past the hour. I saw one more hand, but I feel free for folks who have questions to come up the panelists. I just want

to thank the panelists very much for all their time today, and the audience (crosstalk) --

JUDGE JONES: No, thank you guys. Really appreciate it.

CERTIFICATE

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I, Wendy Letner, Transcriptionist, do hereby certify that I was authorized to and did listen to and transcribe the foregoing recorded proceedings and that the transcript is a true record to the best of my professional ability.

Dated this 25th day of May, 2022.

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Wendy Letner

EXHIBIT 3 - 2019 ANNUAL REPORT + FORM 10-K

MRHFM'S MOTION TO DIMISS

Focusing for the Future

Trane Technologies 2019 Annual and ESG Report

TRANE TECHNOLOGIES™

The capital and credit markets are important to our business.

Instability in U.S. and global capital and credit markets, including market disruptions, limited liquidity and interest rate volatility, or reductions in the credit ratings assigned to us by independent rating agencies could reduce our access to capital markets or increase the cost of funding our short and long term credit requirements. In particular, if we are unable to access capital and credit markets on terms that are acceptable to us, we may not be able to make certain investments or fully execute our business plans and strategies.

Our suppliers and customers are also dependent upon the capital and credit markets. Limitations on the ability of customers, suppliers or financial counterparties to access credit at interest rates and on terms that are acceptable to them could lead to insolvencies of key suppliers and customers, limit or prevent customers from obtaining credit to finance purchases of our products and services and cause delays in the delivery of key products from suppliers.

In addition, changes in regulatory standards or industry practices, such as the transition away from LIBOR as a benchmark for short-term interest rates, could create incremental uncertainty in obtaining financing or increase the cost of borrowing for us, our suppliers or our customers.

Currency exchange rate fluctuations and other related risks may adversely affect our results.

We are exposed to a variety of market risks, including the effects of changes in currency exchange rates. See Part II Item 7A, "Quantitative and Qualitative Disclosure About Market Risk."

We have operations throughout the world that manufacture and sell products in various international markets. As a result, we are exposed to movements in exchange rates of various currencies against the U.S. dollar as well as against other currencies throughout the world.

Many of our non-U.S. operations have a functional currency other than the U.S. dollar, and their results are translated into U.S. dollars for reporting purposes. Therefore, our reported results will be higher or lower depending on the weakening or strengthening of the U.S. dollar against the respective foreign currency.

We use derivative instruments to hedge those material exposures that cannot be naturally offset. The instruments utilized are viewed as risk management tools, involve little complexity and are not used for trading or speculative purposes. To minimize the risk of counter party non-performance, derivative instrument agreements are made only through major financial institutions with significant experience in such derivative instruments.

We also face risks arising from the imposition of exchange controls and currency devaluations. Exchange controls may limit our ability to convert foreign currencies into U.S. dollars or to remit dividends and other payments by our foreign subsidiaries or businesses located in or conducted within a country imposing controls. Currency devaluations result in a diminished value of funds denominated in the currency of the country instituting the devaluation.

Material adverse legal judgments, fines, penalties or settlements could adversely affect our results of operations or financial condition.

We are currently and may in the future become involved in legal proceedings and disputes incidental to the operation of our business or the business operations of previously-owned entities. Our business may be adversely affected by the outcome of these proceedings and other contingencies (including, without limitation, contract claims or other commercial disputes, product liability, product defects and asbestos-related matters) that cannot be predicted with certainty. Moreover, any insurance or indemnification rights that we may have may be insufficient or unavailable to protect us against the total aggregate amount of losses sustained as a result of such proceedings and contingencies. As required by generally accepted accounting principles in the United States, we establish reserves based on our assessment of contingencies. Subsequent developments in legal proceedings and other events could affect our assessment and estimates of the loss contingency recorded as a reserve and we may be required to make additional material payments, which could have a material adverse impact on our liquidity, results of operations, financial condition, and cash flows.

Item 3. Legal Proceedings

In the normal course of business, we are involved in a variety of lawsuits, claims and legal proceedings, including commercial and contract disputes, employment matters, product liability and product defect claims, asbestos-related claims, environmental liabilities, intellectual property disputes, and tax-related matters. In our opinion, pending legal matters are not expected to have a material adverse impact on our results of operations, financial condition, liquidity or cash flows.

ASBESTOS-RELATED MATTERS

Certain of our wholly-owned subsidiaries and former companies are named as defendants in asbestos-related lawsuits in state and federal courts. In virtually all of the suits, a large number of other companies have also been named as defendants. The vast majority of those claims allege injury caused by exposure to asbestos contained in certain historical products, primarily pumps, boilers and railroad brake shoes. None of our existing or previously-owned businesses were a producer or manufacturer of asbestos.

See also the discussion under Part II, Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations," "Contingent Liabilities," and also Note 22 to the Consolidated Financial Statements.

Item 4. Mine Safety Disclosures

Not applicable.

Loss Contingencies: Liabilities are recorded for various contingencies arising in the normal course of business. The Company has recorded reserves in the financial statements related to these matters, which are developed using input derived from actuarial estimates and historical and anticipated experience data depending on the nature of the reserve, and in certain instances with consultation of legal counsel, internal and external consultants and engineers. Subject to the uncertainties inherent in estimating future costs for these types of liabilities, the Company believes its estimated reserves are reasonable and does not believe the final determination of the liabilities with respect to these matters would have a material effect on the financial condition, results of operations, liquidity or cash flows of the Company for any year.

Environmental Costs: The Company is subject to laws and regulations relating to protecting the environment. Environmental expenditures relating to current operations are expensed or capitalized as appropriate. Expenditures relating to existing conditions caused by past operations, which do not contribute to current or future revenues, are expensed. Liabilities for remediation costs are recorded when they are probable and can be reasonably estimated, generally no later than the completion of feasibility studies or the Company's commitment to a plan of action. The assessment of this liability, which is calculated based on existing remediation technology, does not reflect any offset for possible recoveries from insurance companies, and is not discounted.

Asbestos Matters: Certain of the Company's wholly-owned subsidiaries and former companies are named as defendants in asbestos-related lawsuits in state and federal courts. The Company records a liability for actual and anticipated future claims as well as an asset for anticipated insurance settlements. Asbestos-related defense costs are excluded from the asbestos claims liability and are recorded separately as services are incurred. None of the Company's existing or previously-owned businesses were a producer or manufacturer of asbestos. The Company records certain income and expenses associated with asbestos liabilities and corresponding insurance recoveries within discontinued operations, net of tax, as they relate to previously divested businesses, except for amounts associated with Trane U.S. Inc.'s asbestos liabilities and corresponding insurance recoveries which are recorded within continuing operations.

Product Warranties: Standard product warranty accruals are recorded at the time of sale and are estimated based upon product warranty terms and historical experience. The Company assesses the adequacy of its liabilities and will make adjustments as necessary based on known or anticipated warranty claims, or as new information becomes available. The Company's extended warranty liability represents the deferred revenue associated with its extended warranty contracts and is amortized into Revenue on a straight-line basis over the life of the contract, unless another method is more representative of the costs incurred. The Company assesses the adequacy of its liability by evaluating the expected costs under its existing contracts to ensure these expected costs do not exceed the extended warranty liability.

Income Taxes: Deferred tax assets and liabilities are determined based on temporary differences between financial reporting and tax bases of assets and liabilities, applying enacted tax rates expected to be in effect for the year in which the differences are expected to reverse. The Company recognizes future tax benefits, such as net operating losses and tax credits, to the extent that realizing these benefits is considered in its judgment to be more likely than not. The Company regularly reviews the recoverability of its deferred tax assets considering its historic profitability, projected future taxable income, timing of the reversals of existing temporary differences and the feasibility of its tax planning strategies. Where appropriate, the Company records a valuation allowance with respect to a future tax benefit.

Revenue Recognition: Revenue is recognized when control of a good or service promised in a contract (i.e., performance obligation) is transferred to a customer. Control is obtained when a customer has the ability to direct the use of and obtain substantially all of the remaining benefits from that good or service. A majority of the Company's revenues are recognized at a point-in-time as control is transferred at a distinct point in time per the terms of a contract. However, a portion of the Company's revenues are recognized over time as the customer simultaneously receives control as the Company performs work under a contract. For these arrangements, the cost-to-cost input method is used as it best depicts the transfer of control to the customer that occurs as the Company incurs costs. See Note 13 to the Consolidated Financial Statements for additional information regarding revenue recognition.

Research and Development Costs: The Company conducts research and development activities for the purpose of developing and improving new products and services. These expenditures are expensed when incurred. For the years ended December 31, 2019, 2018 and 2017, these expenditures amounted to $237.0 million, $228.7 million and $210.8 million, respectively.

EXHIBIT 4 - 2017 ANNUAL REPORT / 2018 NOTICE & PROXY STATEMENT

MRHFM'S MOTION TO DIMISS

Transforming Everyday Life

2017 ANNUAL REPORT
2018 NOTICE AND PROXY STATEMENT

Ingersoll Rand

Our suppliers and customers are also dependent upon the capital and credit markets. Limitations on the ability of customers, suppliers or financial counterparties to access credit at interest rates and on terms that are acceptable to them could lead to insolvencies of key suppliers and customers, limit or prevent customers from obtaining credit to finance purchases of our products and services and cause delays in the delivery of key products from suppliers.

Currency exchange rate fluctuations and other related risks may adversely affect our results.

We are exposed to a variety of market risks, including the effects of changes in currency exchange rates. See Part II Item 7A, "Quantitative and Qualitative Disclosure About Market Risk."

We have operations throughout the world that manufacture and sell products in various international markets. As a result, we are exposed to movements in exchange rates of various currencies against the U.S. dollar as well as against other currencies throughout the world.

Many of our non-U.S. operations have a functional currency other than the U.S. dollar, and their results are translated into U.S. dollars for reporting purposes. Therefore, our reported results will be higher or lower depending on the weakening or strengthening of the U.S. dollar against the respective foreign currency.

We use derivative instruments to hedge those material exposures that cannot be naturally offset. The instruments utilized are viewed as risk management tools, involve little complexity and are not used for trading or speculative purposes. To minimize the risk of counter party non-performance, derivative instrument agreements are made only through major financial institutions with significant experience in such derivative instruments.

We also face risks arising from the imposition of exchange controls and currency devaluations. Exchange controls may limit our ability to convert foreign currencies into U.S. dollars or to remit dividends and other payments by our foreign subsidiaries or businesses located in or conducted within a country imposing controls. Currency devaluations result in a diminished value of funds denominated in the currency of the country instituting the devaluation.

Material adverse legal judgments, fines, penalties or settlements could adversely affect our results of operations or financial condition.

We are currently and may in the future become involved in legal proceedings and disputes incidental to the operation of our business or the business operations of previously-owned entities. Our business may be adversely affected by the outcome of these proceedings and other contingencies (including, without limitation, contract claims or other commercial disputes, product liability, product defects and asbestos-related matters) that cannot be predicted with certainty. Moreover, any insurance or indemnification rights that we may have may be insufficient or unavailable to protect us against the total aggregate amount of losses sustained as a result of such proceedings and contingencies. As required by generally accepted accounting principles in the United States, we establish reserves based on our assessment of contingencies. Subsequent developments in legal proceedings and other events could affect our assessment and estimates of the loss contingency recorded as a reserve and we may be required to make additional material payments, which could have a material adverse impact on our liquidity, results of operations, financial condition, and cash flows.

Our reputation, ability to do business and results of operations could be impaired by improper conduct by any of our employees, agents or business partners.

We are subject to regulation under a wide variety of U.S. federal and state and non-U.S. laws, regulations and policies, including laws related to anti-corruption, export and import compliance, anti-trust and money laundering, due to our global operations. We cannot provide assurance our internal controls will always protect us from the improper conduct of our employees, agents and business partners. Any violations of law or improper conduct could damage our reputation and, depending on the circumstances, subject us to, among other things, civil and criminal penalties, material fines, equitable remedies (including profit disgorgement and injunctions on future conduct), securities litigation and a general loss of investor confidence, any one of which could have a material adverse impact on our business prospects, financial condition, results of operations, cash flows, and the market value of our stock.

We may be subject to risks relating to our information technology systems.

We rely extensively on information technology systems, some of which are supported by third party vendors including cloud services, to manage and operate our business. We are also investing in new information technology systems that are designed to continue improving our operations. If these systems cease to function properly, if these systems experience security breaches or disruptions or if these systems do not provide the anticipated benefits, our ability to manage our operations could be impaired, which could have a material adverse impact on our results of operations, financial condition, and cash flows.

The locations by segment of our principal plant facilities at December 31, 2017 were as follows:

Climate		
Americas	**Europe and Middle East**	**Asia Pacific and India**
Arecibo, Puerto Rico	Barcelona, Spain	Bangkok, Thailand
Charlotte, North Carolina	Bari, Italy	Penang, Malaysia
Clarksville, Tennessee	Charmes, France	Taicang, China
Columbia, South Carolina	Essen, Germany	Zhongshan, China
Curitiba, Brazil	Galway, Ireland	
Fairlawn, New Jersey	Golbey, France	
Fort Smith, Arkansas	King Abdullah Economic City, Saudi Arabia	
Grand Rapids, Michigan	Kolin, Czech Republic	
Hastings, Nebraska		
La Crosse, Wisconsin		
Lexington, Kentucky		
Lynn Haven, Florida		
Macon, Georgia		
Monterrey, Mexico		
Pueblo, Colorado		
Rushville, Indiana		
St. Paul, Minnesota		
Trenton, New Jersey		
Tyler, Texas		
Vidalia, Georgia		
Waco, Texas		

Industrial		
Americas	**Europe and Middle East**	**Asia Pacific and India**
Augusta, Georgia	Fogliano Redipuglia, Italy	Changzhou, China
Buffalo, New York	Logatec, Slovenia	Guilin, China
Campbellsville, Kentucky	Oberhausen, Germany	Naroda, India
Dorval, Canada	Sin le Noble, France	Sahibabad, India
Kent, Washington	Vignate, Italy	Wujiang, China
Mocksville, North Carolina	Wasquehal, France	
Sarasota, Florida		
Southern Pines, North Carolina		
West Chester, Pennsylvania		

ITEM 3. LEGAL PROCEEDINGS

In the normal course of business, we are involved in a variety of lawsuits, claims and legal proceedings, including commercial and contract disputes, employment matters, product liability and product defect claims, asbestos-related claims, environmental liabilities, intellectual property disputes, and tax-related matters. In our opinion, pending legal matters are not expected to have a material adverse impact on our results of operations, financial condition, liquidity or cash flows.

ASBESTOS-RELATED MATTERS

Certain of our wholly-owned subsidiaries and former companies are named as defendants in asbestos-related lawsuits in state and federal courts. In virtually all of the suits, a large number of other companies have also been named as defendants. The vast majority of those claims allege injury caused by exposure to asbestos contained in certain historical products, primarily pumps, boilers and railroad brake shoes. None of our existing or previously-owned businesses were a producer or manufacturer of asbestos.

See also the discussion under Part II, Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations," "Contingent Liabilities," and also Note 19 to the Consolidated Financial Statements.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

(Ex. 4, 2017 ANNUAL REPORT / 2018 NOTICE & PROXY STATEMENT, page 133)

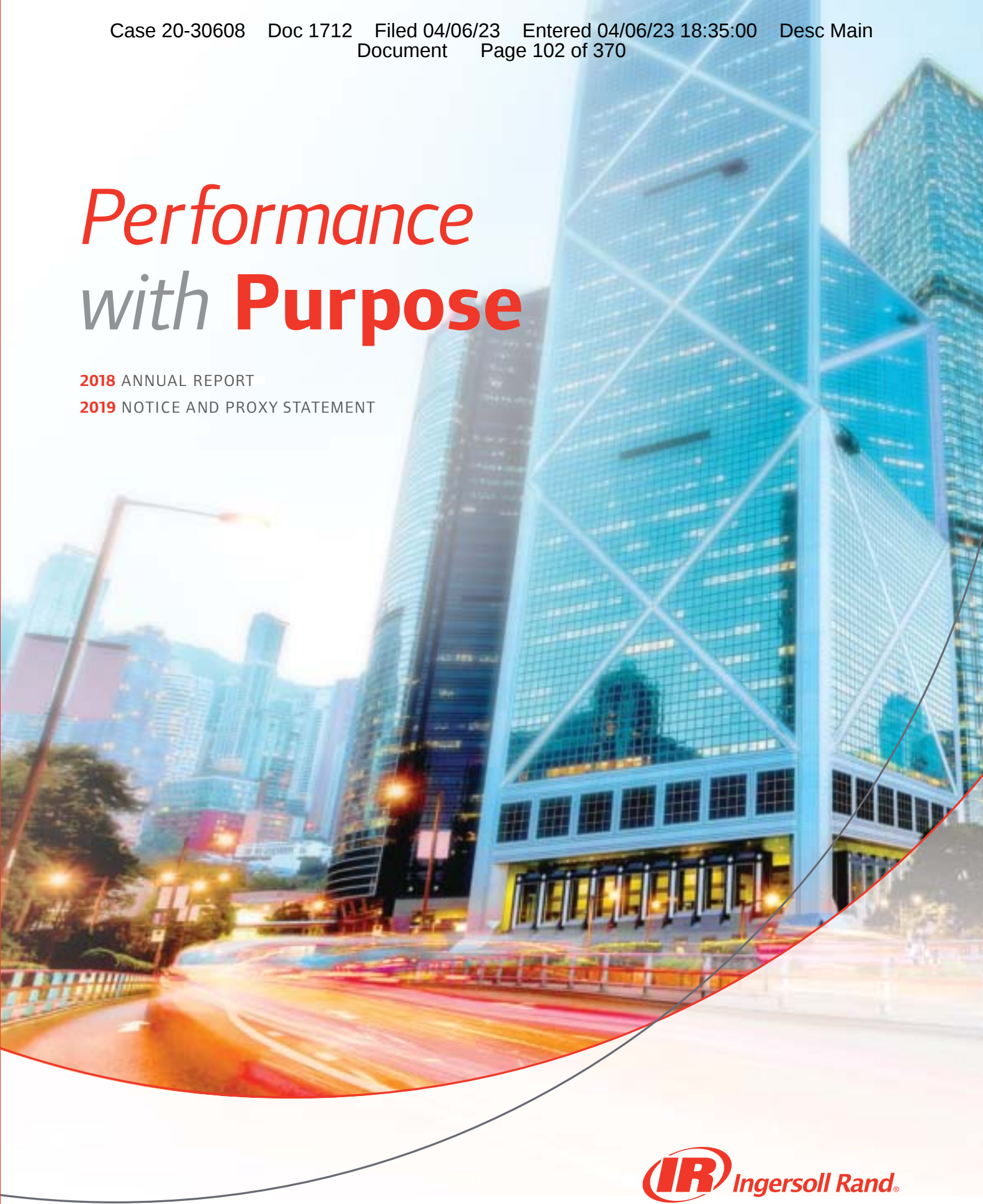
EXHIBIT 5 - 2018 ANNUAL REPORT & 2019 NOTICE / PROXY STATEMENT, FORM 10-K

MRHFM'S MOTION TO DIMISS

Performance with **Purpose**

2018 ANNUAL REPORT

2019 NOTICE AND PROXY STATEMENT



Ingersoll Rand

Currency exchange rate fluctuations and other related risks may adversely affect our results.

We are exposed to a variety of market risks, including the effects of changes in currency exchange rates. See Part II Item 7A, "Quantitative and Qualitative Disclosure About Market Risk."

We have operations throughout the world that manufacture and sell products in various international markets. As a result, we are exposed to movements in exchange rates of various currencies against the U.S. dollar as well as against other currencies throughout the world.

Many of our non-U.S. operations have a functional currency other than the U.S. dollar, and their results are translated into U.S. dollars for reporting purposes. Therefore, our reported results will be higher or lower depending on the weakening or strengthening of the U.S. dollar against the respective foreign currency.

We use derivative instruments to hedge those material exposures that cannot be naturally offset. The instruments utilized are viewed as risk management tools, involve little complexity and are not used for trading or speculative purposes. To minimize the risk of counter party non-performance, derivative instrument agreements are made only through major financial institutions with significant experience in such derivative instruments.

We also face risks arising from the imposition of exchange controls and currency devaluations. Exchange controls may limit our ability to convert foreign currencies into U.S. dollars or to remit dividends and other payments by our foreign subsidiaries or businesses located in or conducted within a country imposing controls. Currency devaluations result in a diminished value of funds denominated in the currency of the country instituting the devaluation.

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We are currently and may in the future become involved in legal proceedings and disputes incidental to the operation of our business or the business operations of previously-owned entities. Our business may be adversely affected by the outcome of these proceedings and other contingencies (including, without limitation, contract claims or other commercial disputes, product liability, product defects and asbestos-related matters) that cannot be predicted with certainty. Moreover, any insurance or indemnification rights that we may have may be insufficient or unavailable to protect us against the total aggregate amount of losses sustained as a result of such proceedings and contingencies. As required by generally accepted accounting principles in the United States, we establish reserves based on our assessment of contingencies. Subsequent developments in legal proceedings and other events could affect our assessment and estimates of the loss contingency recorded as a reserve and we may be required to make additional material payments, which could have a material adverse impact on our liquidity, results of operations, financial condition, and cash flows.

Our reputation, ability to do business and results of operations could be impaired by improper conduct by any of our employees, agents or business partners.

We are subject to regulation under a wide variety of U.S. federal and state and non-U.S. laws, regulations and policies, including laws related to anti-corruption, anti-bribery, export and import compliance, anti-trust and money laundering, due to our global operations. We cannot provide assurance our internal controls will always protect us from the improper conduct of our employees, agents and business partners. Any violations of law or improper conduct could damage our reputation and, depending on the circumstances, subject us to, among other things, civil and criminal penalties, material fines, equitable remedies (including profit disgorgement and injunctions on future conduct), securities litigation and a general loss of investor confidence, any one of which could have a material adverse impact on our business prospects, financial condition, results of operations, cash flows, and the market value of our stock.

We may be subject to risks relating to our information technology systems.

We rely extensively on information technology systems, some of which are supported by third party vendors including cloud services, to manage and operate our business. We are also investing in new information technology systems that are designed to continue improving our operations. If these systems cease to function properly, if these systems experience security breaches or disruptions or if these systems do not provide the anticipated benefits, our ability to manage our operations could be impaired, which could have a material adverse impact on our results of operations, financial condition, and cash flows.

EXHIBIT 6 - 2016 ANNUAL REPORT & 2017 NOTICE/PROXY STATEMENT

MRHFM'S MOTION TO DIMISS

Sustaining Global Leadership

2016 ANNUAL REPORT
2017 NOTICE AND PROXY STATEMENT

Our suppliers and customers are also dependent upon the capital and credit markets. Limitations on the ability of customers, suppliers or financial counterparties to access credit at interest rates and on terms that are acceptable to them could lead to insolvencies of key suppliers and customers, limit or prevent customers from obtaining credit to finance purchases of our products and services and cause delays in the delivery of key products from suppliers.

Currency exchange rate fluctuations and other related risks may adversely affect our results.

We are exposed to a variety of market risks, including the effects of changes in currency exchange rates. See Part II Item 7A, "Quantitative and Qualitative Disclosure About Market Risk."

We have operations throughout the world that manufacture and sell products in various international markets. As a result, we are exposed to movements in exchange rates of various currencies against the U.S. dollar as well as against other currencies throughout the world.

Many of our non-U.S. operations have a functional currency other than the U.S. dollar, and their results are translated into U.S. dollars for reporting purposes. Therefore, our reported results will be higher or lower depending on the weakening or strengthening of the U.S. dollar against the respective foreign currency.

We use derivative instruments to hedge those material exposures that cannot be naturally offset. The instruments utilized are viewed as risk management tools, involve little complexity and are not used for trading or speculative purposes. To minimize the risk of counter party non-performance, derivative instrument agreements are made only through major financial institutions with significant experience in such derivative instruments.

We also face risks arising from the imposition of exchange controls and currency devaluations. Exchange controls may limit our ability to convert foreign currencies into U.S. dollars or to remit dividends and other payments by our foreign subsidiaries or businesses located in or conducted within a country imposing controls. Currency devaluations result in a diminished value of funds denominated in the currency of the country instituting the devaluation.

Material adverse legal judgments, fines, penalties or settlements could adversely affect our results of operations or financial condition.

We are currently and may in the future become involved in legal proceedings and disputes incidental to the operation of our business or the business operations of previously-owned entities. Our business may be adversely affected by the outcome of these proceedings and other contingencies (including, without limitation, contract claims or other commercial disputes, product liability, product defects and asbestos-related matters) that cannot be predicted with certainty. Moreover, any insurance or indemnification rights that we may have may be insufficient or unavailable to protect us against the total aggregate amount of losses sustained as a result of such proceedings and contingencies. As required by generally accepted accounting principles in the United States, we establish reserves based on our assessment of contingencies. Subsequent developments in legal proceedings and other events could affect our assessment and estimates of the loss contingency recorded as a reserve and we may be required to make additional material payments, which could have a material adverse impact on our liquidity, results of operations, financial condition, and cash flows.

Our reputation, ability to do business and results of operations could be impaired by improper conduct by any of our employees, agents or business partners.

We are subject to regulation under a wide variety of U.S. federal and state and non-U.S. laws, regulations and policies, including laws related to anti-corruption, export and import compliance, anti-trust and money laundering, due to our global operations. We cannot provide assurance our internal controls will always protect us from the improper conduct of our employees, agents and business partners. Any violations of law or improper conduct could damage our reputation and, depending on the circumstances, subject us to, among other things, civil and criminal penalties, material fines, equitable remedies (including profit disgorgement and injunctions on future conduct), securities litigation and a general loss of investor confidence, any one of which could have a material adverse impact on our business prospects, financial condition, results of operations, cash flows, and the market value of our stock.

We may be subject to risks relating to our information technology systems.

We rely extensively on information technology systems, some of which are supported by third party vendors including cloud services, to manage and operate our business. We are also investing in new information technology systems that are designed to continue improving our operations. If these systems cease to function properly, if these systems experience security breaches or disruptions or if these systems do not provide the anticipated benefits, our ability to manage our operations could be impaired, which could have a material adverse impact on our results of operations, financial condition, and cash flows.

EXHIBIT 7 - 2015 ANNUAL REPORT AND 2016 NOTICE/PROXY STATEMENT

MRHFM'S MOTION TO DIMISS

Ingersoll Rand
Inspiring Progress™

Working Together *for* Enduring Results

2015 ANNUAL REPORT
2016 NOTICE AND PROXY STATEMENT

Currency exchange rate fluctuations and other related risks may adversely affect our results.

We are exposed to a variety of market risks, including the effects of changes in currency exchange rates. See Part II Item 7A, "Quantitative and Qualitative Disclosure About Market Risk."

We have operations throughout the world that manufacture and sell products in various international markets. As a result, we are exposed to movements in exchange rates of various currencies against the U.S. dollar as well as against other currencies throughout the world.

Many of our non-U.S. operations have a functional currency other than the U.S. dollar, and their results are translated into U.S. dollars for reporting purposes. Therefore, our reported results will be higher or lower depending on the weakening or strengthening of the U.S. dollar against the respective foreign currency.

We use derivative instruments to hedge those material exposures that cannot be naturally offset. The instruments utilized are viewed as risk management tools, involve little complexity and are not used for trading or speculative purposes. To minimize the risk of counter party non-performance, derivative instrument agreements are made only through major financial institutions with significant experience in such derivative instruments.

We also face risks arising from the imposition of exchange controls and currency devaluations. Exchange controls may limit our ability to convert foreign currencies into U.S. dollars or to remit dividends and other payments by our foreign subsidiaries or businesses located in or conducted within a country imposing controls. Currency devaluations result in a diminished value of funds denominated in the currency of the country instituting the devaluation.

Material adverse legal judgments, fines, penalties or settlements could adversely affect our results of operations or financial condition.

We are currently and may in the future become involved in legal proceedings and disputes incidental to the operation of our business or the business operations of previously-owned entities. Our business may be adversely affected by the outcome of these proceedings and other contingencies (including, without limitation, product liability and asbestos-related matters) that cannot be predicted with certainty. Moreover, any insurance or indemnification rights that we may have may be insufficient or unavailable to protect us against the total aggregate amount of losses sustained as a result of such proceedings and contingencies. As required by generally accepted accounting principles in the United States, we establish reserves based on our assessment of contingencies. Subsequent developments in legal proceedings and other events could affect our assessment and estimates of the loss contingency recorded as a reserve and we may be required to make additional material payments, which could have a material adverse impact on our liquidity, results of operations, financial condition, and cash flows.

Our reputation, ability to do business and results of operations could be impaired by improper conduct by any of our employees, agents or business partners.

We are subject to regulation under a wide variety of U.S. federal and state and non-U.S. laws, regulations and policies, including laws related to anti-corruption, export and import compliance, anti-trust and money laundering, due to our global operations. We cannot provide assurance our internal controls will always protect us from the improper conduct of our employees, agents and business partners. Any violations of law or improper conduct could damage our reputation and, depending on the circumstances, subject us to, among other things, civil and criminal penalties, material fines, equitable remedies (including profit disgorgement and injunctions on future conduct), securities litigation and a general loss of investor confidence, any one of which could have a material adverse impact on our business prospects, financial condition, results of operations, cash flows, and the market value of our stock.

We may be subject to risks relating to our information technology systems.

We rely extensively on information technology systems, some of which are supported by third party vendors, to manage and operate our business. We are also investing in new information technology systems that are designed to continue improving our operations. If these systems cease to function properly, if these systems experience security breaches or disruptions or if these systems do not provide the anticipated benefits, our ability to manage our operations could be impaired, which could have a material adverse impact on our results of operations, financial condition, and cash flows.

Ex. 7, 2015 ANNUAL REPORT AND 2016 NOTICE/PROXY STATEMENT, page 155

Goodwill - Under the income approach, we assumed a forecasted cash flow period of five years with discount rates ranging from 11.0% to 14.0% and terminal growth rates ranging from 3.0% to 3.5%. Under the guideline company method, we used an adjusted multiple ranging from 7.0 to 11.0 of projected earnings before interest, taxes, depreciation and amortization (EBITDA) based on the market information of comparable companies. Additionally, we compared the estimated aggregate fair value of our reporting units to our overall market capitalization.

For all reporting units, the excess of the estimated fair value over carrying value (expressed as a percentage of carrying value) was a minimum of 37%. A significant increase in the discount rate, decrease in the long-term growth rate, or substantial reductions in our end markets and volume assumptions could have a negative impact on the estimated fair value of these reporting units.

Other Indefinite-lived intangible assets - In testing our other indefinite-lived intangible assets for impairment, we assumed forecasted revenues for a period of five years with discount rates ranging from 10.8% to 12.5%, terminal growth rate of 3.0%, and royalty rates ranging from 1.0% to 4.5%. For all tradenames, the excess of the estimated fair value over carrying value (expressed as a percentage of carrying value) was a minimum of 24%, with the exception of one tradename with a carrying value of approximately $28 million as December 31, 2015, which had an excess of the estimated fair value over carrying value (expressed as a percentage of carrying value) of approximately 7%.

A significant increase in the discount rate, decrease in the long-term growth rate, decrease in the royalty rate or substantial reductions in our end markets and volume assumptions could have a negative impact on the estimated fair values of any of our tradenames.

- Long-lived assets and finite-lived intangibles – Long-lived assets and finite-lived intangibles are reviewed for impairment whenever events or changes in business circumstances indicate that the carrying amount of an asset may not be fully recoverable. Assets are grouped with other assets and liabilities at the lowest level for which identifiable cash flows can be generated. Impairment in the carrying value of an asset would be recognized whenever anticipated future undiscounted cash flows from an asset are less than its carrying value. The impairment is measured as the amount by which the carrying value exceeds the fair value of the asset as determined by an estimate of discounted cash flows. We believe that our use of estimates and assumptions are reasonable and comply with generally accepted accounting principles. Changes in business conditions could potentially require future adjustments to these valuations.
- Loss contingencies – Liabilities are recorded for various contingencies arising in the normal course of business, including litigation and administrative proceedings, environmental and asbestos matters and product liability, product warranty, worker's compensation and other claims. We have recorded reserves in the financial statements related to these matters, which are developed using input derived from actuarial estimates and historical and anticipated experience data depending on the nature of the reserve, and in certain instances with consultation of legal counsel, internal and external consultants and engineers. Subject to the uncertainties inherent in estimating future costs for these types of liabilities, we believe our estimated reserves are reasonable and do not believe the final determination of the liabilities with respect to these matters would have a material effect on our financial condition, results of operations, liquidity or cash flows for any year.
- Asbestos matters – Certain of our wholly-owned subsidiaries are named as defendants in asbestos-related lawsuits in state and federal courts. We record a liability for our actual and anticipated future claims as well as an asset for anticipated insurance settlements. Asbestos related defense costs are excluded from the asbestos claims liability and are recorded separately as services are incurred. None of our existing or previously-owned businesses were a producer or manufacturer of asbestos. We record certain income and expenses associated with our asbestos liabilities and corresponding insurance recoveries within discontinued operations, net of tax, as they relate to previously divested businesses, except for amounts associated with Trane U.S. Inc.'s asbestos liabilities and corresponding insurance recoveries which are recorded within continuing operations. Refer to Note 18 to the Consolidated Financial Statements for further details of asbestos-related matters.
- Revenue recognition – Revenue is recognized and earned when all of the following criteria are satisfied: (a) persuasive evidence of a sales arrangement exists; (b) the price is fixed or determinable; (c) collectability is reasonably assured; and (d) delivery has occurred or service has been rendered. Delivery generally occurs when the title and the risks and rewards of ownership have substantially transferred to the customer. Both the persuasive evidence of a sales arrangement and fixed or determinable price criteria are deemed to be satisfied upon receipt of an executed and legally binding sales agreement or contract that clearly defines the terms and conditions of the transaction including the respective obligations of the parties. If the defined terms and conditions allow variability in all or a component of the price, revenue is not recognized until such time that the price becomes fixed or determinable. At the point of sale, we validate that existence of an enforceable claim that requires payment within a reasonable amount of time and assess the collectability of that claim. If collectability is not deemed to be reasonably assured, then revenue recognition is deferred until such time that collectability becomes probable or cash is received. Delivery is not considered to have occurred until the customer has taken title and assumed the risks and rewards of ownership. Service and installation revenue are recognized when earned. In some instances, customer acceptance provisions are included in sales arrangements to give the buyer the ability to ensure the delivered product or service meets the criteria established in the order. In these instances, revenue recognition is deferred until the acceptance terms specified in the arrangement are fulfilled through customer acceptance or a demonstration that established criteria have been satisfied. If uncertainty exists about customer acceptance, revenue is not recognized until acceptance has occurred.

EXHIBIT 8 - Dkt. 29, Decl. of A. Tananbaum

MRHFM'S MOTION TO DIMISS

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re	:	Chapter 11
ALDRICH PUMP LLC, *et al.*,[1]	:	Case No. 20-_____ (__)
Debtors.	:	(Joint Administration Requested)
ALDRICH PUMP LLC and MURRAY BOILER LLC,	:	
Plaintiffs,	:	
v.	:	Adv. Pro. No. 20-_____ (__)
THOSE PARTIES TO ACTIONS LISTED ON APPENDIX A TO COMPLAINT and JOHN AND JANE DOES 1-1000,	:	
Defendants.	:	

DECLARATION OF ALLAN TANANBAUM IN SUPPORT OF DEBTORS' COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF, RELATED MOTIONS, AND THE CHAPTER 11 CASES

Allan Tananbaum, being first duly sworn, deposes and states as follows:

1. I am the Chief Legal Officer of Aldrich Pump LLC, a North Carolina limited liability company ("Aldrich") and Murray Boiler LLC, a North Carolina limited liability company ("Murray"). Aldrich and Murray are the debtors and debtors in possession in the above-captioned chapter 11 cases (together, the "Debtors") and the plaintiffs in the

[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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above-captioned adversary proceeding. I have been the Chief Legal Officer for each of the Debtors since their formation on May 1, 2020.

2. I am employed by Trane Technologies Company LLC ("New Trane Technologies"). I have been seconded full-time from New Trane Technologies to the Debtors. During my secondment, I effectively serve as a full time employee of the Debtors, taking direction from their respective officers and board of managers.

3. Since April 2020, I have been Vice President and Deputy General Counsel for Product Litigation to the former Trane Technologies Company LLC, successor by merger to Ingersoll-Rand Company (a former New Jersey corporation) ("Old IRNJ"). From February 2010 to April 2020, I was the Vice President, Compliance and Deputy General Counsel to Old IRNJ, and during part of this period, I also held the role of Vice President and Deputy General Counsel for Litigation at Old IRNJ. From June 2008 to February 2010, I was the Deputy General Counsel (and later during that same period, Vice President and Deputy General Counsel) for Litigation at Old IRNJ. From January 2005 to June 2008, I headed the Litigation function in the Legal Department of Trane Inc.—the parent company of the former Trane U.S. Inc. ("Old Trane")—which was acquired by the former parent company of Old IRNJ in June 2008.

4. I earned a bachelor's of arts degree from Brown University in 1984. I received my Juris Doctorate degree from Columbia University School of Law in 1989. Following a judicial clerkship, I entered private practice until 1994, and then served as an Assistant U.S. Attorney in the U.S. Attorney's Office for the District of New Jersey from 1994 until 2001.

5. During my career at Old Trane and Old IRNJ, or affiliates thereof, one of my primary responsibilities has been to manage asbestos-related personal injury litigation

pending in jurisdictions throughout the United States against Old Trane, Old IRNJ, and certain companies acquired by these entities.

6. As the Chief Legal Officer of each of the Debtors, I am responsible for overseeing the defense and resolution of asbestos-related litigation involving the Debtors. I have experience with and knowledge of the asbestos-related claims that have been or could have been asserted against the Debtors, Old IRNJ, or Old Trane (collectively, the "Aldrich/Murray Asbestos Claims").[2]

7. On the date hereof (the "Petition Date"), the Debtors filed voluntary petitions with this Court for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"), as well as certain motions and other pleadings (the "First Day Pleadings") in their chapter 11 cases (the "Chapter 11 Cases"), and commenced the above-captioned adversary proceeding by filing a complaint and certain related motions (collectively, the "Adversary Pleadings"). In addition to the First Day Pleadings and the Adversary Pleadings, the Debtors have filed the *Informational Brief of Aldrich Pump LLC and Murray Boiler LLC* (the "Informational Brief") in the Chapter 11 Cases to provide additional information about their asbestos litigation, related costs, and plans to address these matters in the Chapter 11 Cases.

8. I submit this Declaration in support of the relief requested in the Chapter 11 Cases and in the Adversary Pleadings, in particular, (a) the *Complaint for Injunctive and Declaratory Relief (I) Preliminarily Enjoining Certain Actions Against Non-Debtors, or*

[2] Aldrich/Murray Asbestos Claims include all asbestos personal injury claims and other asbestos-related claims allocated to, respectively, Aldrich from Old IRNJ or Murray from Old Trane in the documents implementing the 2020 Corporate Restructuring (as defined below). The Aldrich/Murray Asbestos Claims do not include asbestos-related claims for which the exclusive remedy is provided under workers' compensation statutes and similar laws.

(II) Declaring That the Automatic Stay Applies to Such Actions, and (III) Granting a Temporary Restraining Order Pending a Final Hearing (the "Complaint") and (b) the *Motion of the Debtors for an Order (I) Preliminarily Enjoining Certain Actions Against Non Debtors, or (II) Declaring that the Automatic Stay Applies to Such Actions, and (III) Granting a Temporary Restraining Order Pending a Final Hearing* (the "Injunction Motion").[3] I have reviewed each of the Adversary Pleadings, and it is my belief and opinion that the relief sought is necessary to (x) avoid immediate and irreparable harm to the Debtors, (y) enable the Debtors to achieve the purpose for which they commenced the Chapter 11 Cases, and (z) maximize and preserve the value of the Debtors' chapter 11 estates.

9. The facts and statements set forth in this Declaration are based on: (a) my personal knowledge; (b) information supplied to me by other members of management, professionals, and employees; (c) my review of relevant documents; and (d) my opinion based upon my experience and knowledge regarding Old IRNJ, Old Trane, the Debtors, and the Aldrich/Murray Asbestos Claims. If called upon to testify orally, I could and would testify to the facts and opinions set forth in this declaration.

Summary of the Debtors' Relevant Corporate and Product History

10. The Debtors[4] did not mine or use asbestos in manufacturing products. Rather, the Debtors made industrial equipment that, in some instances, incorporated certain asbestos-containing components manufactured and designed by third parties.

11. Aldrich's historical operations date back to 1905. Aldrich created or acquired certain entities that manufactured, sold, or distributed products—primarily pumps and

[3] Capitalized terms not defined herein have the meanings given to them in the Injunction Motion.

[4] When discussing historical matters preceding the 2020 Corporate Restructuring (as defined below), the terms "Aldrich," "Murray," and "the Debtors" refer to the Debtors herein and their historical predecessors.

compressors—that in some cases incorporated asbestos-containing component parts manufactured and designed by third parties. The principal brand names involved in the asbestos claims brought against Aldrich include Cameron Steam Pump ("Cameron Pump"), acquired in the early 1900s, the Aldrich Pump Company, acquired in 1961, and Ingersoll-Rand Company.

12. Asbestos-related claims brought against Aldrich have most commonly alleged exposure to asbestos from sealing products (*i.e.*, gaskets and, to a lesser degree, packing) used in pumps and compressors located on U.S. Navy ships or in industrial facilities or other commercial buildings. Aldrich manufactured a variety of pumps, from large boiler feed pumps to smaller motor pumps, as well as reciprocating, centrifugal, and rotary compressors. In its defense of claims involving these pumps and compressors, Aldrich generally shows that, in substantially all cases, any asbestos used in sealing product components incorporated into Aldrich equipment was the chrysotile form of asbestos and that it was non-friable. Aldrich also typically establishes that these components were fixed between metal surfaces and were generally inaccessible outside of removal and replacement. As disclosed in discovery, Aldrich's operations generally eliminated the use of asbestos-containing products by the mid-1980s.

13. Two separate corporate histories—historic Murray and American Standard, Inc. ("American Standard")—are relevant to debtor Murray's historical asbestos liabilities.

14. Murray's operations date back to 1913. Its principal business was the design and manufacture of climate control, or HVAC, equipment. Some of this HVAC and related equipment included asbestos-containing internal component parts—primarily gaskets—manufactured and designed by third parties. The vast majority of claims asserted against historic Murray allege exposure to asbestos-containing gaskets in connection with servicing commercial

and industrial HVAC compressors and related equipment. Murray defends these cases, in part, by demonstrating that gaskets incorporated into this HVAC equipment were contained within the unit and that to the extent these gaskets contained asbestos, it typically was chrysotile and bound in a matrix. Many historic Murray operations that once incorporated asbestos-containing products were either shut down or sold, or largely eliminated the use of asbestos-containing sealing products, during the 1970s and 1980s.

15. In 1984, Murray merged with American Standard, which traced its roots back to the 1890s. For most of its history, American Standard's primary business included the manufacture and sale of hydronics equipment, such as boilers and ancillary products, certain of which incorporated asbestos-containing component parts purchased from third parties. Most of Murray's asbestos litigation spending has related to various brands of American Standard boilers. Lawsuits involving these boilers often contend that American Standard incorporated certain asbestos-containing sealing products (*e.g.*, gaskets) as internal components or that some of these boilers, from before the mid-1950s, were insulated externally with standard asbestos-containing insulation of that time period. Murray defends these suits, in part, by arguing that American Standard did not participate in the design or manufacture of any of these asbestos-containing products and that internal components were contained within the equipment unit and generally inaccessible during day-to-day use. Further, where internal components contained asbestos, the asbestos typically was chrysotile and bound in a matrix. As outlined in discovery in the tort cases, American Standard no longer made boilers as of the mid-1970s.

Asbestos Litigation Against the Debtors

16. The Debtors' involvement in asbestos litigation began after the 1982 bankruptcy of Johns-Manville, the largest asbestos company in the world. Aldrich and Murray were served with their first asbestos complaints in 1983 and 1986, respectively. Until the early

2000s, the Debtors were not material asbestos defendants. The primary payors of mesothelioma claims were the miners, sellers, and manufacturers of asbestos and asbestos-containing products, particularly the "big dusty" thermal insulation manufacturers. These defendants reportedly paid hundreds of millions of dollars a year to resolve mesothelioma and other asbestos claims against them in the tort system. By contrast, Aldrich and Murray paid approximately $2.5 million and $1 million, respectively, to settle mesothelioma claims in the tort system from the mid-1980s through 2000. During this time, Aldrich and Murray were dismissed without payment or resolved over 100,000 non-malignant claims, with an average cost of less than $400 per claim.

17. Beginning in 2000, however, the bulk of the remaining primary defendants initiated bankruptcy filings, an event known in the industry as the "Bankruptcy Wave." These bankruptcies precipitated dozens of others. Almost all of the primary defendants that had been miners or manufacturers of asbestos-containing products eventually filed for bankruptcy protection. As those mounting bankruptcies removed the primary defendants from the tort system, the Debtors saw a swift and significant spike in their defense and indemnity costs. Those costs would not recede.

18. Mesothelioma claims were the largest driver of these increased costs. After the primary defendants exited the tort system, there was a substantial increase in both the number of mesothelioma claims asserted against the Debtors and the cost to resolve them. Between 2001 and 2002, mesothelioma claims against both Aldrich and Murray more than doubled. In 2002, approximately 2,000 mesothelioma claims were asserted against the Debtors. By the late 2000s, that number had jumped to over 2,500 mesothelioma claims annually. In 2019, Aldrich was pursued in roughly 80% and Murray was pursued in almost 60% of all mesothelioma claims estimated to have been made in the United States.

19. By 2004, Aldrich's and Murray's payments on account of mesothelioma claims were running approximately $30 million and $15 million per year, respectively. Over the last four years, Aldrich and Murray paid on average, approximately $40 million and $20 million per year, respectively, to resolve the mesothelioma claims. The Debtors pay more than 80% of all settlement dollars on account of mesothelioma claims. These yearly amounts are over 15 times what the Debtors paid during the entire, roughly 15 year period prior to the Bankruptcy Wave.

The Costs and Burdens of Defending Asbestos Claims

20. Given the substantial number of new claims filed every year against the Debtors, litigating each of the asbestos claims individually to trial is not feasible. The Debtors are named in approximately 2,500 mesothelioma claims every year. This number essentially doubles to 5,000 claims per year when you include claims involving lung cancer and other diseases. Currently, the Debtors remain defendants in over 8,200 mesothelioma claims. That is in addition to approximately 90,000 non-mesothelioma claims pending on various dockets in courts around the country.[5]

21. To defend this volume of claims, the Debtors engage the services of over thirty outside defense firms who then employ, among other service providers, a large team of attorneys, legal assistants, support staff, testifying experts, consulting experts, investigators, court reporters, and document management firms. In total, Aldrich and Murray have paid almost

[5] In addition to the above, there are approximately 39,000 claims that are either on formal inactive dockets created in some jurisdictions or have been designated as inactive by counsel.

$2 billion in asbestos-related indemnity and defense costs (over $1.3 billion in indemnity and nearly $600 million in defense costs) since the inception of the litigation against them.[6]

22. Given the high cost of litigating literally thousands of claims, the most cost-effective approach for the Debtors has been to settle cases that cannot be quickly dismissed. The Debtors paid more than $250,000 in roughly 1% of mesothelioma cases where they have been named. Contrasted with the potential $1 million it may cost to defend a case through trial, these settlements represent the Debtors' most cost-effective option in the tort system. Despite their efforts to resolve claims in a cost-efficient manner, the Debtors are still paying nearly $100 million annually (roughly $70 million in indemnity payments and $25 million in defense costs) to defend and resolve asbestos suits filed against them.

23. Even though substantially all asbestos products have been removed from the market for decades, the expected decline in new mesothelioma lawsuits has not occurred. With new claims projected for years to come, the Debtors, absent some change, are likely to be mired in this system into a seventh decade.

The Aldrich/Murray Asbestos Claims

24. The Debtors became solely responsible for the Aldrich/Murray Asbestos Claims pursuant to corporate restructurings that Old IRNJ and Old Trane each completed on May 1, 2020 (together, the "2020 Corporate Restructuring"), which is described in greater detail in the *Declaration of Ray Pittard in Support of First Day Pleadings* (the "First Day Declaration") filed contemporaneously in the Chapter 11 Cases.

[6] Some of these amounts are reimbursed to the Debtors under various insurance arrangements. Recently, on average, only approximately half of the Debtors' indemnity and defense costs are reimbursed by insurance.

25. The Injunction Motion seeks to stay the prosecution of Aldrich/Murray Asbestos Claims against the Protected Parties. The Protected Parties include: (a) Old IRNJ; (b) Old Trane; (c) the Debtors' non-debtor affiliates set forth on Appendix B to the Complaint (the "Non-Debtor Affiliates"), including, without limitation, New Trane Technologies and Trane U.S. Inc. ("New Trane"); (d) entities that are not affiliates of the Debtors set forth on Appendix B to the Complaint, whom Aldrich or Murray contractually has indemnified or for whose asbestos-related liabilities Aldrich or Murray otherwise is responsible (the "Indemnified Parties"); and (e) insurance entities set forth on Appendix B to the Complaint, who have or have had insurance related agreements, or rights thereunder, with Aldrich or Murray for asbestos-related liabilities (the "Insurers").

26. As explained below, Aldrich/Murray Asbestos Claims filed and prosecuted against the Protected Parties would be the same claims that have been asserted or may be asserted against the respective Debtors. They involve the same plaintiffs, the same products, the same time periods, and the same liability and damage allegations.

The Indemnified Parties

27. The Indemnified Parties are entities that Aldrich or Murray have indemnified contractually for any liability on account of the Aldrich/Murray Asbestos Claims or with respect to which Aldrich or Murray otherwise has agreed to be responsible for any such liability. Aldrich and Murray were allocated their respective indemnification and related obligations in the 2020 Corporate Restructuring.

28. The majority of the litigation against the Indemnified Parties on account of Aldrich/Murray Asbestos Claims results from transactions involving two joint ventures Ingersoll-Dresser Pump Company ("IDP") and Dresser-Rand Company ("Dresser-Rand"). These joint ventures were formed in 1992 and 1986, respectively, and were sold by Aldrich in 2000 and

2004, respectively. In December 1999, Aldrich acquired 100% ownership of IDP and, in February 2000, Aldrich sold IDP to third parties Flowserve Corporation and Flowserve Red Corporation (together, "Flowserve"). As part of that transaction (the "Flowserve Transaction"), Aldrich indemnified Flowserve, its affiliates (including IDP), and various related parties, for any liability on account of Aldrich/Murray Asbestos Claims arising from product lines or businesses of IDP before the closing of the Flowserve Transaction.

29. Dresser-Rand was a partnership formed between Aldrich and Dresser on December 31, 1986. In December 1999, Aldrich or affiliates acquired 100% ownership of Dresser-Rand, and in August 2004, Aldrich and its then-parent company sold their interests in Dresser-Rand to third party FRC Acquisitions LLC ("FRC"). As part of that transaction (the "FRC Transaction"), Aldrich indemnified FRC, its affiliates (including Dresser-Rand), and various related parties, for any liability on account of Aldrich/Murray Asbestos Claims arising from product lines or businesses of Dresser-Rand before the closing of the FRC Transaction.

30. In the 2020 Corporate Restructuring, Aldrich and Murray were allocated various other contractual indemnities and obligations to additional transaction counterparties, together with affiliated parties, for liability arising from Aldrich/Murray Asbestos Claims as a result of transactions in addition to those described above. Such counterparties and related parties are listed as Protected Parties on Appendix B to the Complaint. The number of Aldrich/Murray Asbestos Claims historically tendered by such parties, however, is substantially less than the Aldrich/Murray Asbestos Claims tendered as a result of indemnities provided in connection with the Flowserve Transaction and FRC Transaction.

The Insurers

31. The Insurers provide, or have provided, insurance to either of the Debtors covering Aldrich/Murray Asbestos Claims. Over the years, the resolution of coverage claims

and litigation thereon have resulted in certain reimbursement payments to Aldrich and Murray for defense and indemnity costs incurred in respect of Aldrich/Murray Asbestos Claims. That resolution also has left both Debtors with certain contractual indemnity obligations owed to their respective Insurers.

The Debtors' Need for the Requested Injunctive and Declaratory Relief

32. As discussed in more detail in the First Day Declaration and the Informational Brief, the Debtors commenced the Chapter 11 Cases to resolve, finally and fairly, all current and future Aldrich/Murray Asbestos Claims and intend to pursue a plan of reorganization that includes the establishment of a section 524(g) trust. The relief sought by this adversary proceeding—injunctive and declaratory relief prohibiting present and future claimants from commencing or continuing prosecution of Aldrich/Murray Asbestos Claims against the Protected Parties—is critical to the Debtors' ability to achieve that purpose.

33. Permitting current and future asbestos claimants (the Defendants in this adversary proceeding) to continue or commence Aldrich/Murray Asbestos Claims against the Protected Parties while the Debtors simultaneously work to resolve the same claims in their Chapter 11 Cases would: (a) defeat the purpose of the Debtors' bankruptcy cases; (b) result in irreparable harm to the Debtors' estates; (c) undermine and circumvent what I understand are the purposes and spirit of the automatic stay; and (d) divert the Debtors from their reorganization efforts.

34. Since New Trane Technologies' and New Trane's formation on May 1, 2020, Defendants have asserted approximately 65 Aldrich/Murray Asbestos Claims against New Trane Technologies or New Trane and, in some cases, other Protected Parties. In certain of these cases, Defendants have sought to recover on Aldrich/Murray Asbestos Claims against New Trane Technologies or New Trane by attacking the 2020 Corporate Restructuring as a fraudulent

conveyance. At least two actions to recover on Aldrich/Murray Asbestos Claims have been asserted against a Protected Party alleging alter ego claims.

35. Given this experience to date, absent (a) an injunction or a declaration that enjoins the filing or continued prosecution of Aldrich/Murray Asbestos Claims against the Protected Parties and (b) the immediate entry of an order temporarily restraining such filing or continued prosecution, I believe the following actions will increasingly occur:

(a) Many Defendants who already have asserted Aldrich/Murray Asbestos Claims against the Protected Parties will attempt to continue prosecuting such claims against the Protected Parties outside of the Chapter 11 Cases;

(b) Many Defendants who have sued only the Debtors will seek to amend their complaints to name one or more of the Protected Parties;

(c) Many Defendants will seek to amend their complaints to add new causes of action against the Protected Parties; and

(d) Defendants John and Jane Does 1-1000 will file Aldrich/Murray Asbestos Claims against the Protected Parties, but not the Debtors.

36. The Debtors have the ability to fully fund a section 524(g) trust and the administrative costs of their Chapter 11 Cases. The Debtors' aggregate value (not including insurance assets) is approximately $70-$75 million, not including additional cash amounts above minimum thresholds, which additional cash amounts as of the Petition Date were approximately $3-$5 million, and, to the extent their assets, including insurance, are insufficient, they have access to additional uncapped funds through the Funding Agreements (as defined in the First Day Declaration).

37. Continued prosecution of the Aldrich/Murray Asbestos Claims against the Protected Parties in the tort system would irreparably harm the Debtors. First, the Debtors have various indemnification obligations to the Protected Parties. In particular, the respective Debtors

have (a) contractual obligations to indemnify the Non-Debtor Affiliates if those companies are held liable for Aldrich/Murray Asbestos Claims; (b) contractual obligations to indemnify the Insurers in certain circumstances; and (c) contractual indemnification obligations with, or other obligations to, the Indemnified Parties relating to products formerly sold by or otherwise associated with the Debtors. These indemnification obligations and insurance render the Debtors the real-party defendant in any suit against a Protected Party.

38. Additionally, if allowed to pursue the Aldrich/Murray Asbestos Claims against the Protected Parties, the Defendants would litigate the same key facts—involving the same products, the same time periods, and the same alleged injuries—related to the asbestos liabilities of Old IRNJ and Old Trane that are at issue with respect to the Debtors. Any rulings or findings regarding the Aldrich/Murray Asbestos Claims asserted against the Protected Parties could bind the Debtors with respect to those same claims. The Debtors could not stand by as liability is potentially established against them in collateral proceedings. Rather, the Debtors would be required to actively participate and defend the litigation, even as they attempt to resolve the very same claims in this proceeding. Beyond the potential consequences of collateral estoppel and *res judicata*, litigation of the Aldrich/Murray Asbestos Claims against the Protected Parties will allow Defendants to attempt to use statements, testimony, and other evidence generated in those proceedings to try to establish Aldrich/Murray Asbestos Claims against the Debtors.

39. To protect against these harms, the Debtors would be compelled to participate in the defense of Aldrich/Murray Asbestos Claims brought against the Protected Parties. Participation would include formulating defense strategies, attending depositions, reviewing documents, preparing witnesses, and engaging in any number of other litigation

related tasks. Because the Debtors are in possession or control of documents and other materials relating to the Aldrich/Murray Asbestos Claims, the Debtors would be called upon to produce such documents.

40. Personnel who I expect will play key roles in the Debtors' reorganization, including myself, would be required to spend substantial time managing and directing the activities involved in the day to day defense of these lawsuits. I anticipate these activities would consume my and possibly others' time during the pendency of the Chapter 11 Cases if the litigation is not stayed as to all Protected Parties. Thus, permitting asbestos litigation against the Debtors to continue through tort suits against the Protected Parties outside of this Court would divert me and possibly the Debtors' other personnel from pursuing the reorganization process, impair the Debtors' ability to effectively pursue a plan of reorganization pursuant to section 524(g) of the Bankruptcy Code, and effectively deprive the Debtors of the "breathing spell" that I understand is afforded by the automatic stay.

41. Plaintiffs in asbestos-related tort suits typically name multiple parties as defendants. Such tort suits will continue against the remaining defendants even if litigation of the Aldrich/Murray Asbestos Claims is enjoined or stayed as to the Debtors and the Protected Parties.

42. The Debtors' data indicate that many of the asbestos-related claims pending against Aldrich and Murray have been pending for substantial periods of time. As of the Petition Date, nearly 80% of the Debtors' approximately 100,000 asbestos claims had been filed more than 10 years ago, resulting in claims remaining open in the tort system for years or even decades.

The Debtors' Need for Limited Notice to the Defendants in Relation to the Issuance of a Temporary Restraining Order

43. Absent immediate injunctive relief through a temporary restraining order, I expect that claims against the Protected Parties, by existing and new asbestos claimants alike, are likely to increase after the commencement of the Chapter 11 Cases and imposition of the automatic stay. As more cases are filed, the risks to, and the burden on, the Debtors will grow. The Debtors require immediate injunctive relief to prevent the significant harm to their estates that would be caused by continued litigation of the Aldrich/Murray Asbestos Claims outside of the Chapter 11 Cases.

44. The Debtors are requesting a temporary restraining order on limited notice because they cannot realistically provide effective notice to the many named plaintiffs who have sued or may sue the Protected Parties in the short period of time in which this Court's action is needed. Moreover, notice of the Chapter 11 Cases, the Injunction Motion, and the other Adversary Pleadings may themselves precipitate the very rush-to-the-courthouse that a temporary restraining order is necessary to prevent. Further, Defendants John and Jane Does 1-1000 are putative plaintiffs for future asbestos actions against the Protected Parties. Nonetheless, the Debtors will provide notice of the Adversary Pleadings via e-mail, facsimile, hand delivery or overnight carrier as soon as practicable to counsel for the known Defendants in their respective underlying asbestos lawsuits.

45. The Debtors also have requested special procedures to serve the Complaint, the related summons, and the other Adversary Pleadings on the Defendants in care of their counsel of record (collectively, the "Asbestos Firms"). As further described below, serving the Asbestos Firms will continue the Debtors' past practice of communicating directly with counsel to asbestos plaintiffs, rather than with the plaintiffs directly, and will avoid the confusion

that undoubtedly would arise from sending notices directly to the asbestos claimants. Further, to the extent the Debtors have or are able to obtain address information for each of the thousands of known Defendants, that information is likely to be outdated and/or unreliable. By contrast, for any pending lawsuit that has had activity in the last decade, the Debtors almost certainly will have current addresses for the Asbestos Firms. Accordingly, serving the Adversary Pleadings in accordance with the service procedures proposed in the *Motion of the Debtors for Approval of Service Procedures for Summons, Complaint, and Other Pleadings* will be more efficient and reliable than serving Defendants directly.

First Day Pleadings

46. On the Petition Date, the Debtors filed First Day Pleadings requesting various forms of relief, including (a) the *Motion of the Debtors for an Order: (I) Authorizing the Filing of (A) Consolidated Master List of Creditors and (B) Consolidated List of 20 Law Firms With Significant Asbestos Cases Against the Debtors in Lieu of the Lists of 20 Largest Unsecured Creditors; (II) Approving Certain Notice Procedures for Asbestos Claimants; and (III) Approving the Form and Manner of Notice of Commencement of These Cases* (the "First Day Motion") and (b) the *Application of the Debtors for an Order Authorizing the Retention and Employment of Kurtzman Carson Consultants as Claims, Noticing, and Ballot Agent* (the "KCC Retention Application").[7]

[7] Capitalized terms used below and not otherwise defined herein have the meanings given to them in the First Day Motion or the KCC Retention Application, as applicable. Certain of the other First Day Pleadings are discussed in the First Day Declaration.

Consolidated Master List of Creditors, Consolidated List of 20 Law Firms With Significant Asbestos Cases Against the Debtors in Lieu of the List of the 20 Largest Unsecured Creditors, and Notice Procedures for Asbestos Claimants

47. Given the affiliated nature of the Debtors and the fact that the primary creditors of each Debtor are asbestos personal injury claimants represented by a largely overlapping group of plaintiff's counsel, the Debtors will seek authority to file a list identifying their creditors and other parties in interest on a consolidated basis. Requiring the Debtors to provide two separate Debtor-specific creditor matrices would create unnecessary administrative inefficiency and result in duplicate mailings.

48. I understand that any Top 20 List primarily would be used by the Bankruptcy Administrator to understand the types and amounts of unsecured claims against the Debtors and thus evaluate prospective candidates to serve on an official committee in the Debtors' cases. I further understand that, in these Chapter 11 Cases, where the overwhelming majority of the Debtors' creditors are asbestos claimants, an Asbestos Committee is expected to be appointed and a separate general unsecured creditors' committee is not expected to be formed. Because an Asbestos Committee typically consists of asbestos plaintiff law firms acting on behalf of individual asbestos-related claimants, the Debtors seek authority to file and provide the Bankruptcy Administrator with a consolidated list of 20 law firms with significant representations of parties with asbestos claims against the Debtors (the "Top Asbestos Counsel List"), in lieu of lists of the creditors that hold the 20 largest unsecured claims against each Debtor.

49. The Top Asbestos Counsel List consists of the 20 law firms representing the largest number of claimants in asbestos lawsuits in which the Debtors are defendants according to the Debtors' records. Collectively, the law firms on the Top Asbestos Counsel List represent claimants in over 80% of those lawsuits. These law firms represent claimants across

the various types of alleged harms asserted by asbestos claimants. In addition, 16 of the 20 law firms that represent the most asbestos claimants in lawsuits against Aldrich, and 17 of the 20 law firms that represent the most asbestos claimants in lawsuits against Murray, appear on the Top Asbestos Counsel List. Moreover, recent filing data reflects ongoing overlap in claims asserted against both Debtors. That is, according to the Debtors' records, over 80% of the asbestos claims asserted against Murray in the last two calendar years also named Aldrich. Finally, in light of the unliquidated and disputed nature of the asbestos personal injury claims against the Debtors, and the limited information available in regard to many of those claims, it is impossible to determine which claims are the largest. Accordingly, the Debtors believe that the Top Asbestos Counsel List will provide the Bankruptcy Administrator with the information necessary to evaluate and form an Asbestos Committee representative of the claimants of each of the Debtors in these Chapter 11 Cases.

50. The Debtors also will seek Court approval for certain notice procedures relating to Asbestos Claimants in the Chapter 11 Cases, including to (a) serve all notices, mailings, filed documents, and other communications relating to their Chapter 11 Cases on Asbestos Claimants in care of their counsel at such counsel's address, as further described in the Motion; and (b) list the names, addresses, and other contact information, as applicable, of the Asbestos Firms in any creditor or service lists, including the creditor matrix provided to the Court or filed in these cases, in lieu of listing the contact information of individual Asbestos Claimants. To date, the Debtors have communicated solely with the Asbestos Firms regarding the Debtors' asbestos claims. The Debtors in many cases cannot be sure that they have the current addresses for the Asbestos Claimants, but, for any pending lawsuit that has had activity in the last decade, the Debtors almost certainly will have current addresses for the Asbestos

Firms. Further, I understand that, consistent with the rules of professional conduct, communicating with an adversary in litigation generally is conducted through counsel. The Debtors therefore believe that providing notice to Asbestos Claimants through the Asbestos Firms, in accordance with past practice, is much more reliable and consistent with the rules of professional conduct.

51. The Debtors believe that the notice procedures proposed in the First Day Motion provide for an effective and appropriate noticing process for the Asbestos Claimants. Further, implementing the proposed notice procedures would alleviate the administrative burden and expense of gathering current contact information for each of the Asbestos Claimants, which, in many cases, is not readily available or is difficult to verify. The Debtors have access to the current names and addresses of virtually all counsel for the Asbestos Claimants (including counsel of record in pending lawsuits), but the names and addresses of a significant number of individual Asbestos Claimants themselves are not readily available. It would be extremely burdensome, costly, and time-consuming for the Debtors to attempt to obtain this information. In addition, any contact information for the individual Asbestos Claimants the Debtors have or are able to obtain may be outdated and unreliable. Consequently, providing notice in these Chapter 11 Cases in accordance with the Notice Procedures will be more efficient and reliable than providing notice to the individual Asbestos Claimants directly.

52. For all the reasons set forth above, it is my view that the relief sought in the Adversary Pleadings and the First Day Motion is critical to the Debtors' ability to proceed with and achieve the purpose for which they commenced their Chapter 11 Cases.

Appointment of Claims, Noticing, and Ballot Agent

53. Pursuant to the KCC Retention Application, the Debtors will seek the entry of an order appointing Kurtzman Carson Consultants LLC ("KCC") as claims, noticing,

and ballot agent in these Chapter 11 Cases. I understand that KCC may, among other things: (a) prepare and serve all notices required in these Chapter 11 Cases, including the notice of the commencement of these cases and the meeting of creditors pursuant to section 341 of the Bankruptcy Code; (b) maintain the official claims register for each Debtor; and (c) assist with the mailing and tabulation of ballots in connection with any vote to accept or reject any plan or plans proposed in these Chapter 11 Cases. The Debtors believe that the retention of KCC as the claims, noticing, and ballot agent in these Chapter 11 Cases is in the best interests of the Debtors, their estates, and parties in interest. The Debtors further believe that KCC's rates are competitive and reasonable given KCC's quality of services and expertise.

I declare under penalty of perjury that the foregoing is true and correct to the best of my information, knowledge and belief.

EXECUTED on this 18th day of June, 2020.

/s/ Allan Tananbaum
Allan Tananbaum

EXHIBIT 9 - 2020 ANNUAL REPORT & 2021 NOTICE/PROXY STATEMENT

MRHFM'S MOTION TO DIMISS

Bold Action for a Sustainable Future

2020 Annual Report
2021 Notice and Proxy Statement

TRANE TECHNOLOGIES

We launched more than 50 new solutions in 2020 to do just that. In transport refrigeration, our new Advancer trailer unit cools faster, requires 30% less fuel per trip and uses 60% less energy to manufacture. And, the new Sintesis Balance, a fully electric HVAC unit, offers zero emission heating and cooling when paired with a renewable energy source. We continue to accelerate digital connectedness to enhance system performance and energy efficiency, reaching more than 20,000 connected buildings and over 1 million pieces of connected equipment in 2020.

STRONG PERFORMANCE CULTURE

We delivered resilient financial performance in a challenging year, demonstrating the strength of our sustainability strategy. Strong execution, transformation actions and cost-containment enabled us to expand profitability on a modest revenue decline. Revenue was $12.5 billion, and adjusted EBITDA margins* expanded by 20 basis points, delivering exceptional free cash flow* of $1.7 billion, or 158% of adjusted net earnings* and $507 million in dividends.

Underlying our strong financials is an operational flywheel, where relentless, high levels of business reinvestment enable continuous outperformance over the long-term. In 2020, we added significant fuel to this flywheel by reimagining the company. Our business transformation will deliver $300 million in annualized savings by 2023, which fundamentally improves our cost structure and our margin profile, while enabling us to accelerate investment in market-leading innovation to further outgrow our end markets—consistently. As a climate innovator with a focused sustainability strategy, outstanding cash flow generation, and balanced capital deployment, we are well positioned to continue delivering long-term value to our shareholders.

> **“As a climate innovator with a focused sustainability strategy, outstanding cash flow generation, and balanced capital deployment, we are well positioned to continue delivering long-term value to our shareholders.”**

OPTIMISTIC FUTURE

At Trane Technologies, we want to create a better world. We are challenging the status quo and taking decisive action now to create a sustainable future where communities thrive, where equality is foundational, and where the environment is protected for future generations.

It’s this type of passion and purpose that sets Trane Technologies apart, and is how we will change the industry, and ultimately change the world.

Thank you for joining us. Please stay safe.

Michael W. Lamach
Chairman and CEO

*These are non-GAAP financial measures. Reconciliation of non-GAAP financial measures can be found preceding the 2021 Notice and Proxy Statement.

2020 Financial Performance

-5% Organic Revenue Growth*

+20 bps Adjusted EBITDA Margin Expansion*

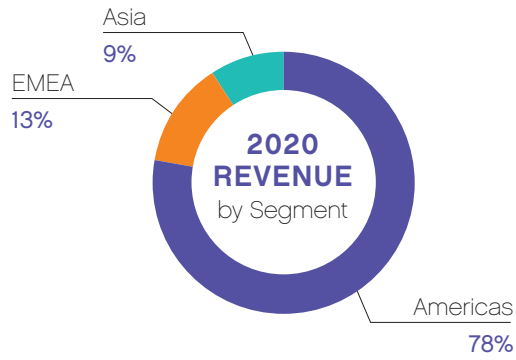
-8% Adjusted Continuing EPS Growth*

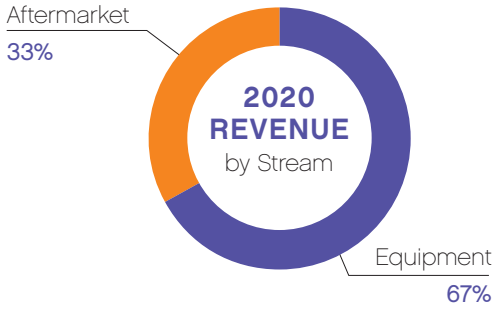
158% Free Cash Flow Conversion*

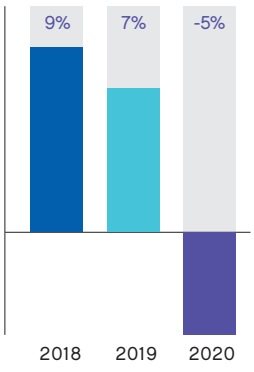
34.5% Cash Flow Return on Invested Capital (CROIC)*

BALANCED CAPITAL DEPLOYMENT

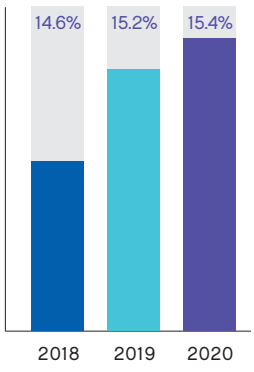
$507M	$250M	$183M	$146M	$300M
Dividends	Share Repurchases	Acquisitions	CapEx	Debt Retirement



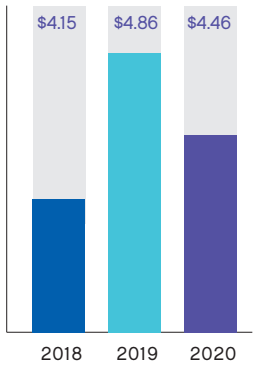




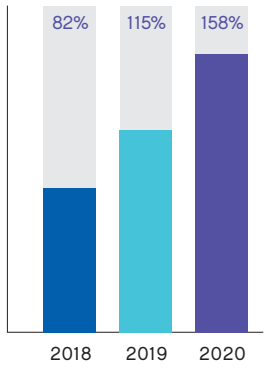
Organic Revenue Growth



Adjusted EBITDA Margin

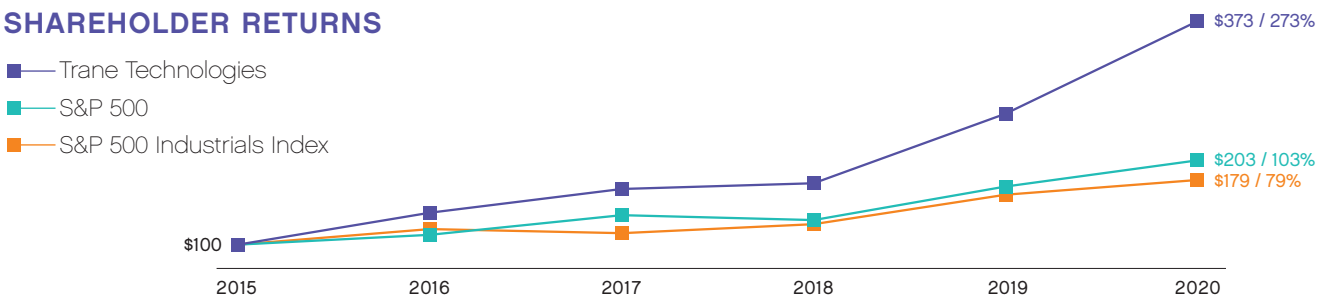


Adjusted Continuing Earnings Per Share



Free Cash Flow Conversion

SHAREHOLDER RETURNS



*These are non-GAAP financial measures. Reconciliation of non-GAAP financial measures can be found preceding the 2021 Notice and Proxy Statement.

b. the allotment (otherwise than pursuant to sub-paragraph (a) above) of equity securities up to an aggregate nominal value of $13,180,219 (13,180,219 shares) (being equivalent to approximately 5% of the aggregate nominal value of the issued ordinary share capital of the Company as of April 8, 2021 (the latest practicable date before this proxy statement)) and the authority conferred by this resolution shall expire 18 months from the passing of this resolution, unless previously renewed, varied or revoked; provided that the Company may make an offer or agreement before the expiry of this authority, which would or might require any such securities to be allotted after this authority has expired, and in that case, the Directors may allot equity securities in pursuance of any such offer or agreement as if the authority conferred hereby had not expired."

ITEM 6

Determine the Price at which the Company Can Re-Allot Shares Held as Treasury Shares

The Board of Directors recommends that shareholders vote **FOR** the proposal to determine the price at which the Company can re-allot shares held as treasury shares.

Our open-market share repurchases (redemptions) and other share buyback activities may result in ordinary shares being acquired and held by the Company as treasury shares. We may reissue treasury shares that we acquire through our various share buyback activities including in connection with our executive compensation program and our director programs.

Under Irish law, our shareholders must authorize the price range at which we may re-allot any shares held in treasury. In this proposal, that price range is expressed as a minimum and maximum percentage of the closing market price of our ordinary shares on the NYSE the day preceding the day on which the relevant share is re-allotted. Under Irish law, this authorization expires 18 months after its passing unless renewed.

The authority being sought from shareholders provides that the minimum and maximum prices at which an ordinary share held in treasury may be re-allotted are 95% and 120%, respectively, of the closing market price of the ordinary shares on the NYSE the day preceding the day on which the relevant share is re-issued, except as described below with respect to obligations under employee share schemes, which may be at a minimum price of nominal value. Any re-allotment of treasury shares will be at price levels that the Board considers in the best interests of our shareholders.

As required under Irish law, the resolution in respect of this proposal is a special resolution that requires the affirmative vote of at least 75% of the votes cast.

The text of the resolution in respect of this proposal is as follows:

"As a special resolution, that the re-allotment price range at which any treasury shares held by the Company may be re-allotted shall be as follows:

a. the maximum price at which such treasury share may be re-allotted shall be an amount equal to 120% of the "market price"; and

b. the minimum price at which a treasury share may be re-allotted shall be the nominal value of the share where such a share is required to satisfy an obligation under an employee share scheme or any option schemes operated by the Company or, in all other cases, an amount equal to 95% of the "market price"; and

c. for the purposes of this resolution, the "market price" shall mean the closing market price of the ordinary shares on the NYSE the day preceding the day on which the relevant share is re-allotted.

FURTHER, that this authority to re-allot treasury shares shall expire at 18 months from the date of the passing of this resolution unless previously varied or renewed in accordance with the provisions of Sections 109 and 1078 of the Companies Act 2014."

EXHIBIT 10 - Dividend History

MRHFM'S MOTION TO DIMISS

DIVIDEND HISTORY

Dividend Information

The tax treatment of Trane Technologies' (formerly Ingersoll Rand) distribution (dividends vs. return of capital) is reported to U.S. shareholders on Form 1099. This form is mailed to U.S. shareholders in February for the previous year. The tax treatment of the distribution (dividends vs. return of capital) for the current year is not determined until after the end of the fiscal year. For U.S. tax purposes only, Trane Technologies' 2021 distribution to shareholders is classified under the U.S. Tax Code as follows:

- 100% is a dividend pursuant to Section 301(c) of the U.S. Tax Code.

You should consult your tax advisor regarding the applicable tax consequence to you in connection with this distribution under the laws of the United States (federal, state and local), Ireland, and any other applicable non-U.S. jurisdiction.

Dividend and Stock Split Information

DIVIDEND HISTORY

Trane Technologies (NYSE:TT), formerly Ingersoll Rand, has paid consecutive quarterly cash dividends on its common shares since 1919 and annual dividends since 1910. Here is the recent history of dividends paid by the company.

Year	Amount
2021	$2.36 per common share of stock
2020	$2.12 per common share of stock
2019	$2.12 per common share of stock

Year	Amount
2018	$1.96 per common share of stock
2017	$1.70 per common share of stock
2016	$1.36 per common share of stock
2015	$1.16 per common share of stock
2014	$1.00 per common share of stock
2013	.84 per common share of stock
2012	.64 per common share of stock
2011	.43 per common share of stock
2010	.28 per common share of stock
2009	.50 per common share of stock
2008	.72 per common share of stock
2007	.72 per common share of stock
2006	.68 per common share of stock
2005	.57 per common share of stock
2004	.44 per common share of stock
2003	.36 per common share of stock
2002	.34 per common share of stock
2001	.34 per common share of stock
2000	.34 per common share of stock
1999	.32 per common share of stock
1998	.30 per common share of stock
1997	.29 per common share of stock

Year	Amount
1996	.26 per common share of stock
1995	.25 per common share of stock
1994	.24 per common share of stock
1993	.24 per common share of stock
1992	.23 per common share of stock

Adjusted for stock splits

STOCK SPLIT INFORMATION

Date	Ratio
10/6/1925	4-1
6/8/1948	2-1
12/13/1954	3-1
7/8/1964	2-1
7/13/1987	5-2
6/2/1992	2-1
9/3/1997	3-2
9/1/2005	2-1

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Trane Technologies is a diverse and inclusive environment. We are an equal opportunity employer and are dedicated to hiring qualified protected veterans and individuals with disabilities.

Some information on these pages may relate to historical data for Trane Technologies plc (formerly known as Ingersoll-Rand plc) as a combined company operating with two business segments: Climate and Industrial. In the first quarter 2020, we completed a spin-off of our Industrial business which was subsequently combined with Gardner Denver Holdings, Inc. (“GDI”). GDI was subsequently renamed Ingersoll-Rand, Inc.

EXHIBIT 11 - 2021 ANNUAL REPORT & 2022 NOTICE/PROXY STATEMENT

MRHFM'S MOTION TO DIMISS

Transform Tomorrow, Today

2021 Annual Report
2022 Notice and Proxy Statement

TRANE TECHNOLOGIES™

Reconciliation of GAAP to NON-GAAP

ADJUSTED EBITDA
($ IN MILLIONS)
UNAUDITED

	For the year ended December 31, 2021		For the year ended December 31, 2020	
	As Reported	Margin	As Reported	Margin
Total Company				
Net revenues	$14,136.4		$12,454.7	
Operating Income	$ 2,023.3	14.3%	$ 1,532.8	12.3%
Restructuring/Other	45.5	0.3%	107.8	0.9%
Adjusted Operating Income	$ 2,068.8	14.6%	$ 1,640.6	13.2%
Depreciation and Amortization	299.4	2.1%	294.3	2.4%
Other Income/(Expense), net	(4.5)	—%	(16.6)	(0.2%)
Adjusted EBITDA	$ 2,363.7	16.7%	$ 1,918.3	15.4%

ADJUSTED EBITDA / NET EARNINGS RECONCILIATION
($ IN MILLIONS)
UNAUDITED

	Year ended December 31, 2021	Year ended December 31, 2020
Total Company		
Adjusted EBITDA	$2,363.7	$1,918.3
Less: items to reconcile adjusted EBITDA to net earnings attributable to Trane Technologies plc		
Depreciation and amortization	(299.4)	(294.3)
Interest expense	(233.7)	(248.7)
Provision for income taxes	(333.5)	(296.8)
Restructuring	(27.0)	(75.7)
Transformation costs	(16.7)	(32.1)
M&A transaction costs	(1.8)	—
Charges related to certain entities deconsolidated under Chapter 11	(7.2)	—
Gain on release of a pension indemnification liability	12.8	—
Legacy legal liability adjustment	—	17.4
Gain from deconsolidation of certain entities under Chapter 11	—	0.9
Gain on M&A transaction	—	2.4
Discontinued operations, net of tax	(20.6)	(121.4)
Net earnings from continuing operations attributable to noncontrolling interests	(13.2)	(14.2)
Net earnings from discontinued operations attributable to noncontrolling interest	—	(0.9)
Net earnings attributable to Trane Technologies plc	$ 1,423.4	$ 854.9

EXHIBIT 12 - Trane Press Release, Feb. 3, 2022

MRHFM'S MOTION TO DIMISS

NEWS RELEASE DETAILS

View all news

Trane Technologies Declares Quarterly Dividend and Announces New $3 Billion Share Repurchase Program

FEB 03, 2022

SWORDS, Ireland--(BUSINESS WIRE)-- The Board of Directors of Trane Technologies plc (NYSE:TT), a global climate innovator, declared a quarterly dividend of $0.67 per ordinary share, or $2.68 annualized. The dividend is payable March 31, 2022, to shareholders of record on March 4, 2022. The declaration was consistent with the company's previously announced intention to increase the dividend by 14%. When combined with the dividend increase of 11% in the first quarter of 2021, the annual dividend is up 26% since launching as a company focused on climate innovation in March of 2020.

The Board of Directors also authorized a new share repurchase program of up to $3 billion, to commence upon the completion of the company's 2021 $2 billion program. The 2021 program had approximately $1.05 billion remaining as of Jan 31, 2022.

"Today's announcements reflect our strong balance sheet, liquidity position and continued confidence in our ability to generate strong future free cash flow," said Dave Regnery, chair and CEO of Trane Technologies. "We remain committed to deploying 100% of excess cash over time through our balanced capital allocation strategy, which includes maintaining a competitive dividend that grows with earnings and repurchasing shares when they trade below the company's calculated intrinsic value."

The timing of the program will be dependent on the company's available liquidity and cash flow, and general market conditions. The repurchase program may be executed through various methods, including open market repurchases.

Trane Technologies has paid consecutive quarterly cash dividends on its common shares since 1919 and annual dividends since 1910.

About Trane Technologies

Trane Technologies is a global climate innovator. Through our strategic brands Trane® and Thermo King®, and our environmentally responsible portfolio of products and services, we bring efficient and sustainable climate solutions to buildings, homes and transportation. Learn more at TraneTechnologies.com.

This news release includes "forward-looking statements," which are statements that are not historical facts, including statements that relate to the timing and execution of the Company's new share repurchase program and the amount of shares to be repurchased (if any). These forward-looking statements are based

on our current expectations and are subject to risks and uncertainties, which may cause actual results to differ materially from our current expectations. Such factors include, but are not limited to, the impact of the global COVID-19 pandemic on our business, our suppliers and our customers, global economic conditions taking into account the global COVID-19 pandemic, disruption and volatility in the financial markets due to the COVID-19 pandemic, commodity shortages, supply chain constraints and price increases, the outcome of any litigation, risks and uncertainties associated with the Chapter 11 proceedings for our deconsolidated subsidiaries Aldrich Pump LLC and Murray Boiler LLC, demand for our products and services, and tax audits and tax law changes and interpretations. Additional factors that could cause such differences can be found in our Form 10-K for the year ended December 31, 2020, as well as our subsequent reports on Form 10-Q and other SEC filings. We assume no obligation to update these forward-looking statements.

View source version on businesswire.com: https://www.businesswire.com/news/home/20220203005252/en/

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EXHIBIT 13 - Tr. of Emergency Hr'g on First Day Pleadings, 6/22/2020

MRHFM'S MOTION TO DIMISS

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

IN RE:	:	Case No. 20-30608-JCW (Jointly Administered)
ALDRICH PUMP LLC, ET AL.,	:	
Debtors,	:	Chapter 11
	:	Charlotte, North Carolina
	:	Monday, June 22, 2020 2:14 p.m.
	:	
ALDRICH PUMP LLC and MURRAY BOILER LLC,	:	AP 20-03041-JCW
Plaintiffs,	:	
v.	:	
THOSE PARTIES TO ACTIONS LISTED ON APPENDIX A TO COMPLAINT and JOHN AND JANE DOES 1-1000,	:	
Defendants.	:	

TRANSCRIPT OF EMERGENCY HEARING ON FIRST DAY PLEADINGS
BEFORE THE HONORABLE J. CRAIG WHITLEY,
UNITED STATES BANKRUPTCY JUDGE

Audio Operator: COURT PERSONNEL

Transcript prepared by: JANICE RUSSELL TRANSCRIPTS
1418 Red Fox Circle
Severance, CO 80550
(757) 422-9089
trussell31@tdsmail.com

Proceedings recorded by electronic sound recording; transcript produced by transcription service.

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Washington, D.C. 20001

Jones Day
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JAMES M. JONES, ESQ.
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New York, NY 10281

Jones Day
BY: BRAD B. ERENS, ESQ.
MARK A. CODY, ESQ.
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Chicago, IL 60601

Evert Weathersby Houff
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Atlanta, GA 30326

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	Essex Richards, P.A. BY: HEATHER W. CULP, ESQ. 1701 South Boulevard Charlotte, NC 28203
	Winston & Strawn LLP BY: DAVID NEIER, ESQ. 200 Park Avenue New York, NY 10166-4193
For _____:	Windels Marx BY: ANDREW CRAIG, ESQ. One Giralda Farms Madison, NJ 07940
For Trane Technologies Company LLC and Trane U.S. Inc.:	McCarter & English, LLP BY: GREGORY J. MASCITTI, ESQ. 825 Eighth Avenue, 31st Floor New York, NY 10019
	Burt & Cordes, PLLC BY: STACY C. CORDES, ESQ. 122 Cherokee Road, Suite 1 Charlotte, NC 28207
For Richard and Calvena Sisk:	JD Thompson Law BY: LINDA W. SIMPSON, ESQ. P. O. Box 33127 Charlotte, NC 28233
	Kazan McClain BY: STEVEN KAZAN, ESQ. 55 Harrison St. Suite 400 Oakland, CA 94607
For Bankruptcy Administrator:	SHELLEY ABEL 402 W. Trade Street, Suite 200 Charlotte, NC 28202-1669

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P R O C E E D I N G S

(Call to Order of the Court)

THE COURT: Have a seat.

We're -- for those who haven't met me, I'm Judge Whitley. We're here in Aldrich Pump and Murray Boiler for first day hearings. We're having to do this by a combination of videoconferencing and teleconferencing and I understand y'all've already had some technical issues. In addition to whatever the computer might do to everyone, let me also say that if you hear pumping in the background, it is neither your heart rate nor the computer, but instead, construction going on immediately behind us on the annex. The building staff decided today would be a good day to start running a jackhammer and we'll have some extraneous noise. So we'll do the best we can.

Let -- before we get going, let me see who we have appearing. If you're just listening in and don't need to announce, I don't need to hear from you. But otherwise, what I'd like to do is start with those who are appearing by video and ask those parties to announce not only their own appearances, but anyone else that is representing the same client. And then I'll go to those appearing telephonically and needing to announce and from there, if we miss anyone, then I'll call for others.

Ground rules, generally speaking, if you are not speaking -- I'm a little reluctant to say this considering the

problems that you were having a moment ago -- but if you are not speaking, generally, I want you to mute your, your microphones. Please don't put us on hold. Don't interrupt other speakers. I'll give everyone a full chance to, to speak today. And otherwise, if you get knocked off, try to get back on the line and if not, make a, a note of the time so that we know when you were missing and we'll try to do the best we can.

But the bottom line is if some of you have multiple attorneys in the case, we may have to go to your secondary attorney if we can't get you back on the line.

So with that, we'll give it a go.

Starting out, I understand, Mr. Miller, Jack Miller, you're here on behalf of, of the debtors in possession?

MR. MILLER: Yes, your Honor. Thank you.

THE COURT: All right.

Also, Mr. Rayburn, is he appearing?

(No response)

THE COURT: Mr. Gordon? Greg Gordon's on the line?

(No response)

THE COURT: No.

Brad Erens?

MR. ERENS: Yes, your Honor. Brad Erens, E-R-E-N-S, of Jones Day on behalf of the debtors. Thank you.

THE COURT: Okay. Thank you.

Let's see. We had Glenn Thompson? Mr. Thompson on

the line?

(No response)

THE COURT: Stacy Cordes?

MS. CORDES: Good afternoon, your Honor. I'm -- I'm --

THE COURT: I see you.

MS. CORDES: Yes.

THE COURT: Okay. Got anyone else that you need to announce for?

MS. CORDES: Stacy Cordes on behalf of Trane Technologies Company LLC and Trane U.S. Inc. and on the Zoom call with me is Greg Mascitti. I'm local counsel and he can announce for himself.

MR. MASCITTI: Greg Mascitti, McCarter & English, on behalf of Trane Technologies Company LLC and Trane U.S. Inc.

THE COURT: Okay. Thank you.

MR. MASCITTI: Good afternoon, your Honor.

THE COURT: All right.

I believe that -- anyone else on the videoconference that I don't have, already?

(No response)

THE COURT: Okay.

MS. SIMPSON: Linda Simpson.

THE COURT: Okay.

MS. SIMPSON: I'll be on behalf of the Sisks --

THE COURT: All right.

MS. SIMPSON: -- personal injury claimants --

THE COURT: Uh-huh (indicating an affirmative response).

MS. SIMPSON: -- and Steven Kazan is also on for, listening.

THE COURT: Okay.

Anyone else on the video?

All right. Appearing --

MS. ABEL: Shelley Abel, Bankruptcy Administrator.

THE COURT: Very good, thank you.

MR. CODY: Your Honor, Mark Cody here on behalf of the debtors as well from Jones Day.

MS. CAHOW: And good afternoon, your Honor. Caitlin Cahow, Jones Day, on behalf of the debtors.

THE COURT: Anyone else on the video?

(No response)

THE COURT: All right. Telephonically, I understood there were a number of other Jones Day attorneys on, on behalf of the debtor.

Mr. Torberg, are you with us? Torberg?

(No response)

THE COURT: Ms. Cahow has already said something.

Genna Ghaul? Ghaul? Ghaul?

MS. GHAUL: Yes, your Honor. Genna Ghaul of Jones

Day.

THE COURT: All right, very good.

And let's see. Mr. Evert, Michael Evert?

MR. EVERT: Yes, your Honor.

THE COURT: All right.

And Matthew Tomsic?

(No response)

THE COURT: All right.

And then other telephonics. I'm showing Steven Kazan

Mr. Kazan, who are you representing? You can unmute if --

MR. KAZAN: Your Honor, I'm with Linda Simpson on behalf of our clients, the Sisks.

THE COURT: Thank you.

Mr. Parrish, Felton Parrish?

(No response)

THE COURT: Mr. Parrish is not on.

Andrew Craig? Mr. Craig?

MR. CRAIG: I'm on the video, your Honor.

THE COURT: Okay. Sorry. I got these so quickly --

MR. CRAIG: Sorry about that.

THE COURT: -- I wasn't paying attention to who was announcing where, so.

Marcus Raichle?

(No response)

THE COURT: No.

MR. RAICHLE: I apologize. I had a little trouble turning off my mute.

I'm being repre -- my clients are represented by Natalie Ramsey and Kevin Maclay of Robinson & Cole and Caplin & Drysdale.

THE COURT: Okay, very good.

Chris McKean?

MR. RAICHLE: He's with me.

THE COURT: Okay.

Heather Culp?

MR. RAICHLE: Here as well.

THE COURT: Okay.

Mr. David McGonigle, K&L Gates? Mr. McGonigle?

(No response)

THE COURT: Ashley Surinak?

(No response)

THE COURT: No.

Jamie Edmonson?

MS. EDMONSON: Yes, your Honor. I represent Mr. Raichle's clients with Ms. Ramsey and Mr. Maclay.

THE COURT: All right. We got a lot of feedback. Could you try that one more time?

MS. EDMONSON: Yes, I'll try, your Honor. Jamie Edmonson, Robinson & Cole. I represent Mr. Raichle's clients

with Ms. Ramsey and Mr. Maclay.

THE COURT: Laurie Krepco, Krepto?

MS. KREPTO: Your Honor, this is Laurie Krepto and I'm with Jamie Edmonson and Natalie Ramsey with the Robinson & Cole firm.

THE COURT: Very good.

Rob Jordan?

MR. JORDAN: Yes, yes, your Honor. I'm here.

THE COURT: Okay. And, Mr. Jordan, are you with the same group?

MR. JORDAN: I am with KCC, the claims agent.

THE COURT: Very good, thank you.

Ms. Ramsey, we've already gotten you.

Mr. Maclay?

MR. MACLAY: Yes, your Honor. Obviously, I'm here from Caplin & Drysdale, along with, with Natalie and, and Dave Neier from Winston. With me on the phone, but he's muted so he can't speak up is Todd Phillips.

THE COURT: Okay, very good.

David Neier, Neier?

MR. NEIER: Good afternoon, your Honor. David Neier on behalf of the same clients as Ms. Ramsey and Mr. Maclay.

THE COURT: Okay, very good.

Ms. Abel, we already got.

James Jones?

MR. JONES: Here, your Honor. I'm with Jones Day as well.

THE COURT: Okay, very good.

And Michael Brockland?

(No response)

THE COURT: Okay.

Are there others on the line that need to announce appearances? If you're just listening to the, to the hearing and don't anticipate speaking or representing anyone, I don't need an announcement.

But are there any others on the telephone line?

MR. MILLER: Your Honor, this is Jack Miller. I know Mr. Torberg, you called his name and he didn't respond, but I do know he's on.

THE COURT: Okay, very good.

MR. TORBERG: Yes, I am on, your Honor.

THE COURT: Excellent.

MR. TORBERG: Can you hear me now?

THE COURT: Yes, sir.

MR. TORBERG: Okay, thank you.

THE COURT: Anyone else?

(No response)

THE COURT: Okay, very good.

First day motions. I suppose I ought to turn -- who's going to be speaking on behalf of the debtor, debtors, at this

moment in the case?

MR. MILLER: Your Honor, this is Jack Miller. I, I was going to start it off and then I'll hand things off to Mr. Erens, if that's okay with the Court.

THE COURT: Please.

MR. MILLER: All right. Afternoon, your Honor. Jack Miller, Rayburn Cooper & Durham, on behalf of the debtors, Aldrich Pump LLC and Murray Boiler LLC.

THE COURT: Uh-huh (indicating an affirmative response).

MR. MILLER: First off, thank you very, very much for the Court's accommodation this afternoon. I think the Court knows we always do appreciate the Court's flexibility in scheduling us in here.

THE COURT: Uh-huh (indicating an affirmative response).

MR. MILLER: Your Honor, as I said, the, the folks with Jones Day are going to be handling the first days. I think Mr. Erens is going to, is going to kick it off with a little bit of background and then turn it over to Mr. Cody and Ms. Cahow to, to handle the administrative first day pleadings and then it'll probably go back to Mr. Erens to deal with the adversary proceeding.

And so with that, your Honor, it's my pleasure to introduce those three to the Court and look forward to, to

working with them. Thank you, your Honor.

THE COURT: All right.

Mr. Erens?

MR. ERENS: Thank you, your Honor. Yes, Brad Erens, again, E-R-E-N-S, of Jones Day on behalf of the debtors.

As Mr. Miller indicated, we did want to give a little bit of background in this case before we got into the first day motions, in particular, the corporate history, some of the product history, the asbestos litigation that's led us to come to this Court, and then our ultimate plans for this chapter 11 proceeding.

If you don't mind, your Honor, I just wanted to pin the video so I can see, your Honor as well. Thank you. Okay.

As Mr. Miller indicated, there are two debtors, Aldrich Pump and Murray Boiler. The reason there are two debtors in this case is, historically, for this corporate family there were two legal entities that, that were the subject of asbestos claims in the tort system. Those two entities now today are Aldrich Pump and Murray Boiler. Both companies are indirect wholly-owned subsidiaries of Trane Technologies plc, that's a publicly traded company. The headquarters of Trane Technologies as well as the debtors, Aldrich and Murray, are in Davidson, North Carolina.

So again, it's not just Trane. The debtors' headquarters are up the road in Davidson, North Carolina. So

we're happy to be, your Honor, in the neighborhood in a local court and the companies' executives are, are nearby the Court. The debtors have filed these chapter 11 cases, your Honor, to address unrelenting burden of asbestos claims that have been pursued against them for many, many years at this point.

Let start off with some products history. The debtors, I think it's important to note, never used asbestos to manufacture a product. Rather, historically, going back a couple of decades now, more than a couple decades, the debtors made equipment that, in some instances, incorporated asbestos-containing components manufactured and designed by third parties. I should mention, your Honor, most, if not all, of what I'm going to say is in our Information Brief that we filed on the first day, but I wanted to do this to highlight some items for purposes of this court hearing.

So let's start with debtor, Aldrich. Aldrich's asbestos litigation history largely surrounds its manufacture of pumps and compressors that incorporated metal piping through which liquids or gases flowed. And I think it's important to understand the product, your Honor. I won't spend a lot of time on this, but where the pipes in the equipment connected to each other or to metal surfaces leaks could occur and as a result a ring-shaped sealing product known as a gasket was inserted into the connection between the pipes or between the pipes and the metal surfaces to avoid such leaks and to protect

against sealing failures that, your Honor, could be quite serious. If you have high temperature liquids or high volume liquids or gases, a leak could cause serious illness -- excuse me -- serious injury, death, or catastrophic losses. The gaskets, most importantly, spent their entire lives inserted between the two pieces of metal, either the pipes or the pipe and the metal surfaces, except when the equipment needed repair.

So that's the product, mostly, that Aldrich has been involved with. Until about, roughly, 30 years ago certain gaskets, not all gaskets, but certain gaskets available in the marketplace contained asbestos. In nearly all instances, the type of asbestos fiber used in the gaskets purchased by Aldrich, again from third parties, was chrysotile, a form of asbestos that I think is widely recognized as either incapable of causing, or certainly far less likely to cause disease than fibers such as amphiboles. And any asbestos fibers contained in the gaskets were fully encapsulated. So this was not a friable product.

So the gaskets were inserted between the pipes, the gaskets themselves were chrysotile, and the gaskets were encapsulated in terms of the asbestos contained. On rare occasions when the gaskets might be disturbed to conduct equipment repairs, any potential exposure to the asbestos fibers was well below government's permissible exposure levels

for asbestos. That's the basic history that we have with respect to Aldrich.

With respect to Murray, there's a significant amount of overlap. So Murray's asbestos claims primarily have arisen from the sale of heating and cooling equipment that also incorporated gaskets or other sealing products for the exact same reasons that Aldrich did, to prevent leaks. Various parts of Murray's operations that incorporated such sealing products were either shut down or sold or, largely, eliminated the use of asbestos-containing gaskets sometime during the 1970s or the 1980s. There is one other product that's relevant from Murray before, roughly, the mid-1950s. So, you know, almost 70 years ago now, your Honor. Murray also designed and sold some boilers that may have been insulated with external, external asbestos-containing insulation. Like the gaskets, Murray did not manufacture that insulation. It was manufactured by third parties. And again, this now goes back almost 70 years. So that's the basic product history.

I want to talk a little bit about mesothelioma claims in the tort system and what I think your Honor's probably familiar with, which is the bankruptcy wave that occurred now about 20 years ago, around 2000. Asbestos litigation today in the tort system is dominated by claims for individuals asserting mesothelioma. Exposure to certain types of friable amphibole asbestos, such as existed in certain insulation and

other asbestos-containing products manufactured mostly before the mid-1970s, can cause mesothelioma. However, whether mesothelioma can be caused by exposure to chrysotile asbestos at all and what, how much intensity or how much exposure really is, continues to be a source of scientific debate, but there is consensus, we believe, your Honor, that chrysotile is far less toxic than the amphiboles. Further, in many individuals, mesothelioma can occur without exposure to occupational products.

So, No. 1, mesothelioma can occur from exposure to friable amphibole asbestos products, but mesothelioma can also occur from exposure to other products and mesothelioma, frankly, can occur as a result to exposure to any products. In fact, there's a growing science that mesothelioma occurs in certain people for reasons that are, again, unrelated to occupational exposure and that's a, a greater, larger percentage today of mesothelioma cases.

So mesothelioma will continue in the future, your Honor, even though occupational exposures are now decades into the past.

In terms of the, the bankruptcy wave, through the 19, late 1990s the primary defendants in the tort system were the miners and sellers of raw asbestos and companies that used asbestos to manufacture other products, again like thermal insulation. And those primary defendants paid hundreds of

millions of dollars annually to resolve mesothelioma claims and other asbestos-related claims. What we think is very important to understand, your Honor, is during that same period, roughly the 15 years between the mid-80s when Aldrich and Murray started being sued and the beginning of the bankruptcy wave -- so roughly, 1985 to 19, up to 2000 -- excuse me -- Aldrich and Murray collectively paid during that period $4 million for 15 years to settle mesothelioma claims brought against them. Again, the primary defendants at that time were paying hundreds of millions of dollars.

But by the early 2000s, virtually all the primary defendants had filed for bankruptcy and exited the tort system. They would -- these defendants would establish trusts that would have tens of billions of dollars to pay claimants, but almost immediately, we believe, individual claims began to curtail disclosure in their tort cases of their overall asbestos exposures. Claims against the debtors, along with settlement and trial demands, began to be made as if the primary defendants had never existed, exposure to their products had never occurred, and recovery against the primary defendants, who were now in bankruptcy, was not available through the bankruptcy trusts.

Within a few years the number of claims against Aldrich and Murray skyrocketed and soon after the beginning of the bankruptcy wave Aldrich and Murray were receiving, roughly,

2500 mesothelioma claims per year.

And, your Honor, we throw out that number, it's just a number, but if you think about it, that's a claim every hour of every day of every week during the year. It is a deluge of mesothelioma claims. The debtors were now being named in the vast majority of all mesothelioma claims across the country which, in their mind, was sort of inconceivable, given the encapsulated nature of their chrysotile product and gaskets inserted between metal pipes in equipment and the fact that, of course, during the period of time prior to the 1970s there were thousands of asbestos-containing products in the marketplace. It wasn't just gaskets. It wasn't even just thermal insulation.

So that got, that gets us to a point where Aldrich and Murray are now in the tort system postbankruptcy. What did that mean for them? Well, one fact of the tort system is that every asbestos suit is an individual case. It's just the fact of life. There's no class action system in the tort system for asbestos claims. So defending a single mesothelioma claim can cost a defendant almost $1 million or sometimes more if taken fully to trial. If you think about the math, if Aldrich and Murray were getting 2500 claims per year, taking every case to trial, not that they would do that, but just doing the math, 2500 times 1 million would be billions of dollars in defense costs, obviously not something they could do. And again, the

claims against them had now undergone undeniable change. Before the primary defendants -- excuse me -- before the primary defendants' exodus from the tort system, ancillary defendants like the debtors could reliably expect that the asbestos claimants would identify exposures to amphibole products of the primary defendants. Juries would see that the products of the amphibole manufacturers were the primary cause of disease and now that evidence was largely gone from the tort system because the primary defendants had filed for bankruptcy.

We think, your Honor, Judge Hodges' seminal case in, or seminal decision in the Garlock case details all this history and detailed a widespread pattern on the part of plaintiffs not to divulge any longer the full exposures that they had had in their occupational periods. They would not any longer fully divulge the fact that they were exposed to amphibole insulation or other products of companies that were now in bankruptcy. While claimants would assert exposures only to the products of the defendants now in the tort system, that meant that the debtors -- excuse me -- the companies now in the tort system faced a very difficult situation. The primary defendants were no longer there to pay the lion's share of the liability and the court and the jury only saw the remaining non-bankrupt defendants.

We think, your Honor, that the debtors were subject to all the same practices, I'll call them, in the tort system that

came to light in the Garlock case and those cases were, you know, a complete picture of the claimants' exposure history was available, the inconsequential contribution of the debtors' equipment to the claimants' asbestos exposure was self-evident when compared to the claimants' exposures to friable thermal insulation that inevitably caused their disease. But again, the primary defendants were no longer available.

So the plaintiffs' failure to divulge that evidence left the debtors with the need to either incur staggering legal expenses to develop that, develop that exposure evidence, which is very difficult to do, or just simply resolve claims to avoid those legal fees and the risk at trial that there was an incomplete picture in front of the jury. The debtors do detail in the Information Brief that we filed cases where they have found, specific cases where we have found we've been subject to those practices just based on the Garlock outline. Discovery in this case could obviously produce many more examples.

So that was the situation that Aldrich and Murray would find themselves now in the post-bankruptcy wave in the tort system. So what became their defense strategy?

Well, cost of defense is, of course, of necessity, a critical factor when considering how to resolve a claim. On average, the debtors found that plaintiffs were willing to accept, roughly, on average, mid-five figures to resolve a mesothelioma claim. We think that's a recognition that

plaintiffs weren't asserting that Aldrich and Murray were truly the cause of mesothelioma because, as your Honor may be aware, actual liability for a mesothelioma claim can be a multi-million dollar affair. But the more important point, I suppose, your Honor, is mid-five figures is a small fraction of the cost of taking a case all the way to trial. Again, as indicated, taking one mesothelioma case to trial could cost a million dollars or more.

So a mid-five figure settlement obviously made sense in many circumstances for the debtor to avoid the cost of taking a case fully to trial and also to avoid the situation where you could be in front of the jury with an incomplete picture because the primary defendants were no longer in the tort system. All told, the debtors roughly resolved 99 percent of their claims where they actually made a payment for less than $250,000, an amount, again, that is still a small fraction of the cost that it would have taken in terms of the legal fees to get a case to trial.

So that was, overall, the debtors' defense strategy for a period of time and it seemed fine, your Honor, if at some point the process was going to end, but the problem that the debtors have today is even settlements in the mid-five figure range still mean the debtors are spending about a hundred million dollars a year in the tort system, roughly $70 million in indemnity and $25 million in defense costs. So that's,

roughly, a hundred million dollars per year. Given that the equipment that they manufactured decades ago or given that the equipment that had asbestos-containing products was manufactured decades ago, one would expect that the number of mesothelioma claims would go down over time. It would go down precipitously, but that just has not occurred. Instead, debtors continually get, roughly, 2500 claims, 2,000 to 2500 claims every year like clockwork, every hour of every day of every week, year after year. And as I said before, your Honor, mesothelioma is here to stay, even if it's not associated with occupational exposure. There will be mesothelioma cases going on for some period of time. If this high level of mesothelioma claims continue, it will remain cheaper for the debtors to pay modest settlements to resolve claims than to spend the very significant legal costs of taking those cases to trial and this process will go on year after year after year, many expect for at least three, maybe four more decades, at which point the debtors will have been involved in asbestos litigation for 70 years, your Honor. At this point they, the debtors, have paid, roughly, $1.3 billion in total indemnity for asbestos claims from inception and $600 million in defense costs. That's before insurance recoveries. They currently have pending 8200, roughly, mesothelioma claims and, roughly, 100,000 total claims, close to, maybe, 40 percent of which are actually on inactive dockets or in inactive cases.

So with that situation, where the debtors found that they were just receiving thousands of mesothelioma and other claims every year and were forced for the reasons mentioned to often just settle those claims because it was much more expensive to take them to trial or to otherwise deal with them, they decided it made sense to start thinking about a more rational, or a rational way to deal with what was, again, becoming a 70-year litigation. The debtors have filed these chapter 11 cases to instead achieve a rational resolution of the asbestos litigation through the statute that Congress created, section 524(g), to reach exactly that result. The tort system in many ways, your Honor, is not even beneficial for claimants. There have been studies shown that of the costs that defendants spend in the tort system, roughly, or I would at least say less than half the spending that was on the defense side actually goes to claimants. A lot of the money is spent on defense fees and other things. A lot of the money does not find its way into the hands of the actual claimants. Instead, 524(g)'s collective process provides the best mechanism to do a holistic and global resolution of the situation in front of us. The debtors intend to fund a section 524(g) asbestos trust in an amount that will fully compensate all legitimate claimants and the claimants will then have an administrative process rather than the tort system. They'll have access to a trust where they can file claims and quickly

receive compensation once they show sufficient medical and exposure criteria. They will avoid the cost and delay of litigation and will, hopefully, be able to recover much more quickly than they have been able to in the tort system to date. The debtors are committed to achieving this result as soon as possible, that is, a section 524(g) trust that has been negotiated with the representatives of the asbestos claimants.

With that, I do want to mention a couple other things and then get to the motions. As I think your Honor is aware, this is what we might call a divisional merger case, same type of situation as in DBMP. Once it was decided that a 524(g) result might be a better option than the tort system, two divisional mergers were accomplished on May 1, 2020. Two companies at the time had the asbestos claims asserted against them. Those two companies -- there's been a lot of name changes, but I'm going to give you the names that make the most sense. Trane Technologies Company LLC and Trane U.S. Inc. were two companies that had asbestos claims against them. Those two companies underwent divisional mergers. The companies ceased to exist and two new companies were created, the New Trane Technologies Company LLC and then debtor, Aldrich, became debtor Aldrich, and then Trane U.S. Inc. is the other company that had asbestos claims against it. It did a, it did a divisional merger. It ceased to exist and two new companies were created, Trane U.S. Inc., the New Trane U.S. Inc. and then

Murray which, again, became the debtor in this case. All this is spelled out in the declaration of Ray Pittard, the companies' Chief Restructuring Officer. There's also a corporate chart that lays this out a little bit more specifically.

In the divisional merger -- I'll take the Aldrich side as an example -- Aldrich was allocated a certain amount of cash, a hundred percent interest in an operating company, and a substantial amount of insurance. I haven't mentioned insurance to date, your Honor --

THE COURT: Uh-huh (indicating an affirmative response).

MR. ERENS: -- but both these companies have substantial insurance assets. In the case of Aldrich, insurance with a sort of a nominal amount, for lack of a better word, of $750 million. The asbestos liability was allocated to Aldrich. All the other assets and liabilities were allocated to New Trane Technologies Company.

Same situation on the Murray side. Murray is allocated a certain amount of cash, a substantial amount of insurance, and also a hundred percent interest in an operating subsidiary. It was allocated the asbestos liability and New Trane U.S. Inc. was allocated the other assets and liabilities.

Most importantly, as is the case in DBMP and the other divisional merger cases, each of the debtors was a recipient of

a funding agreement and there was an objection filed this morning by certain representatives of the plaintiffs that talk about the funding agreement. I think we'll be talking about that more when we get to the preliminary injunction phase of this proceeding, but I wanted to point out a couple of things.

So the funding agreements are uncapped obligations of the two relevant nondebtors to provide funding for the case and for a 524(g) asbestos resolution of the case, as set forth in the agreements. There are allocations [sic] in the pleadings that were filed this morning that provisions of the funding agreements in this case somehow divested the Court of jurisdiction for approval of that 524(g) result or otherwise had some untoward purpose. And I want to make it clear, your Honor, that is absolutely not the case. There were two provisions that were pointed to and I'll explain them quickly right now, but the facts I will talk about in the preliminary injunction.

One provision simply provides that at the end of the day when the non-debtor payor under the funding agreement funds whatever may be necessary based on the deal between the debtors and the claimants, that the funder will get a 524(g) injunction. Your Honor, that's the way all cases work. It would be illogical to believe that a deal would be cut where a third party would fund whatever was agreed to among the parties, would provide that money into a 524(g) trust, and then

after confirmation could still be chased for more money. That, that is illogical, not the way any of these cases have ever worked, and is simply a clarification of what everybody understands, which is once there's a deal the funder will pay the amount in and will get a 524(g) injunction.

Similarly, there was a statement that the funding agreement expires on, upon the effective date of the plan when the funding occurs. The same, same point, your Honor. Once a deal is reached, the, the party under the funding agreement will pay in whatever the deal is and then will be released from the funding obligation. There was a point that, well, that would prevent the defunding over time under the funding agreement. The parties, of course, could always agree that the funding will go in not all in the front of the case or at the beginning of the, the trust or at confirmation, but over a period of years thereafter. That can always be negotiated, your Honor. We would think the plaintiffs would actually want the money upfront but if they wanted it over time, that's simply something that can be discussed at the time.

So there was no attempt through those provisions, which I think are just clarifications, in the funding agreement to do anything other than what is typically done in funding agreements in other cases which is provide the exact same paying power to the asbestos claimants in these cases and the exact same assets available to them that they had prior to the

divisional mergers.

Finally, your Honor, I wanted to go quickly into the plan for the case. This is at the end of the Information Brief. I won't spend a lot of time on it. But, your Honor, most importantly, we're ready to deal. We want to get these cases moving. We want to get a result as soon as possible. There's allegations in the objections that were filed that we want to, that we want to drag out this case. Quite the contrary. We are ready to sit down with the representatives of the plaintiffs and talk about all issues as soon as possible.

The first step in the case, though, is the preliminary injunction and I won't go into the specifics, as I'm sure we'll be spending a lot of time on that later in the case. Soon, the ACC will be formed, the Asbestos Claimants' Committee. We will sit down immediately with them and talk about various issues, including information we'll need in the case and as well about how to reach resolution upon a future claims representative. We'll get a future claims representative appointed and then we'll have both the representatives of other claimants, current and future, to sit down and talk about how this case is going to proceed. Again, I'm sure they'll want lots of information and we're ready to proceed with them.

But we do, also, at the same time want to move the case forward, your Honor, and ultimately, these cases have a lot to do with just the determination of what the liability in

the case really is. That is, fundamentally, the big dispute in these cases and while we're willing to negotiate at any time with the current and future representatives, to the extent we're not able to reach a deal upfront, we would like to move the process to an estimation or some other type of liability determination process so that the case will not linger and we'll get promptly to some type of result on the backend. Once that process unfolds and is resolved or settled, however it comes out in the case, hopefully, there's a deal between the debtor and the representatives of the claimants. We can both negotiate, document, and solicit a plan and then we can exit your Honor's court.

So we would like to move the cases as quickly as possible. We know we've got a lot of work in front of us, but we are committed to doing so and we are committed to run this case as promptly as possible.

So with that, your Honor, unless you have any questions, I would turn to Mr. Cody to start the presentation on the motions to be heard today.

THE COURT: Hold on for --

MR. MACLAY: Your Honor?

THE COURT: Hold on for a moment. Let me see if anyone else wants to make an opening statement.

Mr. Maclay?

MR. MACLAY: Absolutely, your Honor. I certainly do.

And let me just clarify for your Honor as a convenience sort of the breakdown that you'll be hearing today from the Certain Asbestos Claimants.

THE COURT: Uh-huh (indicating an affirmative response).

MR. MACLAY: I will be addressing these overview comments that we've just heard from the debtor; my colleague, Natalie Ramsey, will be addressing the TRO/PI motion in detail; and my colleague, Dave Neier, will be handling the debtors' declarations and any cross-examinations that are necessary.

So that's how we have whacked it up, your Honor, to make this as efficient as possible, given, obviously, the short time that we've had to prepare.

THE COURT: Okay.

MR. MACLAY: So, so to start, your Honor, I am here, as are my colleagues, on behalf of the asbestos victims represented by 15 law firms identified in our papers and in the related joinder. Those firms are, would be familiar to your Honor as they also represent, in, in most cases, committee members in Kaiser, Bestwall, CertainTeed, or some combination of the three, and it is certainly clear, your Honor, that we're starting to see a pattern emerge in how cases that are being presented to your Honor in the workup before the bankruptcy filings. It's starting to have some similarities, although as we pointed out in our brief, also some important differences.

But before getting into that, your Honor, there are some basic points that were made by debtors' counsel that need to be discussed.

You heard from debtors' counsel about what I would characterize, your Honor, as the chrysotile defense and the encapsulation defense --

THE COURT: Uh-huh (indicating an affirmative response).

MR. MACLAY: -- arguments that, although they paid, by my count, $1.9 billion before this filing, somehow they're just not really that responsible. That's an argument that they make and lose in the state court system all the time and that's why they're here, but the reality is your Honor should not give credence to the concept that someone who has paid $1.9 billion, whom debtors' counsel just told you it's about a, a hundred million per year now, doesn't have substantial asbestos liability. Of course they do.

And, your Honor, it is not the, the province of this Court nor an appropriate use of bankruptcy to come into bankruptcy to argue that the state tort system is flawed, that it doesn't work, and that it's unfair. The state tort system is what it is. It is under our country's separation of powers the institution that deals with liabilities for mass torts. And so whatever the debtors' purposes of coming here were -- and we'll talk about those more -- certainly the idea that they

could ask this Court to ignore and wipe out state court results under the state laws is certainly inappropriate and would be unprecedented if accepted and the various arguments made about chrysotile and encapsulation defense, those are arguments, your Honor, properly made to the state courts, as they have been, again, as I mentioned, unsuccessfully.

Now, your Honor, they talk a bit, really, in two different, somewhat inconsistent ways about their vision of the case. On the one hand, they talk about how they're, they're willing to deal. They have come here to work something out with the claimants. Your Honor, a debtor that wants to work things out with the claimants -- and this is, you know, the subject of a whole lot of precedent out there -- does something that's called a prenegotiated or prepack plan. They reach out to the constituents, they get their respective experts together, and they analyze what the liability should be and if they work out a mutual understanding that's consistent with what they think would happen in the tort system, they file the case consensually.

What they have done here is quite different. They have engaged in what we have called for you before the "Texas two step," a very, frankly, transparent attempt to separate assets from liabilities in a way that numerous laws, we believe, would preclude being effectuated in bankruptcy. And so this is not a case in which the debtor has indicated in

their Information Brief, or otherwise, that this is an actual attempt to resolve their asbestos obligations in any sort of consensual fashion.

Instead, the other thing that they said, which, frankly, I would pay a lot more attention to, your Honor, it's a discussion of (inaudible) and, and how they would like this case to proceed with respect to an estimation if they can't get, presumably, whatever sweetheart deal they think they could get because of the leverage that they think they have gained through their corporate organizational package.

But as your Honor knows, first of all, as your Honor has said, the Garlock decision was written narrowly, but has been interpreted broadly and that's exactly what they're doing here, your Honor. They trying to interpret Garlock broadly. They're trying to take, you know, 15 out of hundreds of thousands of cases and try to ask you to draw conclusions from them, even though the underlying plaintiffs and their attorneys weren't even parties to that proceeding.

But even more fundamentally, your Honor, besides the unfairness of attempting to draw conclusions about the entire state tort system with respect to a different set of debtors and a different context, the other thing to keep in mind about Garlock was that case took seven years. It took hundreds of millions of dollars in professionals' fees. They had an estimation proceeding which was ultimately irrelevant to the

final settlement, which was, as your Honor knows, four times higher as much as, you know, the debtor was effectively capable of paying. And so the idea that is a useful path to take, an appropriate path to take, it isn't, your Honor. It has already been shown to not be an appropriate path to take.

And so, really, what we should be focusing on here, your Honor, is how it is that the debtors are attempting to skew the normal bankruptcy procedures and processes and the normal bankruptcy law to disadvantage asbestos claimants and to advantage themselves. As your Honor knows, this is now the third time that you have seen a transaction employed to separate assets from liabilities so as a previously non-existent debtor from a solvent entity in the context of an asbestos bankruptcy. And, your Honor, you're familiar with the other two, but just to say them for the record, Georgia-Pacific gave rise to Bestwall, currently pending before Judge Beyer, and CertainTeed gave rise to DBMP, currently pending before your Honor. Now Trane has done it. They've created these two debtors, Aldrich Pump and Murray Boiler.

Your Honor, today, we are on the precipice of allowing what is supposed to be extraordinary relief, relief of injunction, and previously unprecedented under circumstances like these to become the standard operating procedure in the Western District. We are concerned that, now that this pattern has emerged and become clear, that it is important that we, we

put a stop to it, your Honor, now before this trend continues and, and exacerbates the already existing harm.

Now let's think about the corporate transaction that you heard described by the debtors' counsel for a minute, your Honor. Why bother with all these corporate machinations if the entity who holds the valuable assets is the one who will be paying for these asbestos obligations in full, anyway? The answer, your Honor, when you think about it, is clear. It's to pose an obstacle to the ability of asbestos claimants. It's to hinder, delay, and defraud them, to put that another way. These cases are all about impending relief for the non-debtor parents, the ones that got the assets, and that has been made expressly clear by the structure of the funding agreement, which is even more explicit here than it was in the other two cases. It's even changed in a very fundamental way by conditioning their funding of the debtors' liabilities on the type of relief you only get under 524(g) and, and only those parents get it.

You heard, your Honor, by the way, something to the effect of that's the way all these cases work. No, it isn't, your Honor. Just a couple of months ago, the Septo (phonetic) bankruptcy was confirmed and it, and it did not include a contribution from, or protections for, any of the debtor's affiliates. And, of course, what they're really saying is they get to protect the assets of these nondebtors, even though

those nondebtors have chosen to keep those assets out of bankruptcy, even though they have chosen to, essentially, have their cake and eat it, too, by putting the -- the -- only the liabilities into bankruptcy, but keeping the assets out. That is what your Honor recognized was unusual in the CertainTeed case at the beginning and it's become not only unusual, in general, but even more inappropriate as it's become clear how these procedures are actually being implemented to disadvantage asbestos claimants. It's an attempt to gain inappropriate leverage, your Honor, and it's very evident, if you looked at Paragraph 13 in the first day declaration, you'd see that the, the debtors described the purpose of the restructuring transaction as being to avoid "unnecessarily subjecting the entire Old IRNJ and Old Trane Enterprises and their many employees, suppliers, vendors, and creditors to a chapter 11 proceeding." In other words, your Honor, for the debtors' affiliates with nearly all the assets, full steam ahead, but for the asbestos creditors, full stop. It is an attempt to have all the benefits of bankruptcy accrued to the non-debtor affiliates and all the detriments of bankruptcy fall upon the innocent asbestos victims.

And it is important to know that what they are seeking to do here is to have those non-debtor entities permanently rid themselves of liability for their past actions and to provide a windfall, your Honor, to shareholders, but, of course, the

debtors concede that many of these creditors have mesothelioma and always fear fatal cancer. Timely compensation for victims like that can make the difference between a more or less comfortable end of life. It, it is certainly just not equitable, your Honor, for the debtors' machinations prepetition to enable them to keep the assets separated from the liabilities to get the benefits of bankruptcy, but not its detriments. That's not the way the system is supposed to work and, of course, my colleague, as I mentioned, Natalie Ramsey, is going to be going through the legal test for a TRO and why it's not met here in some detail.

But just a very general point, your Honor, is the fact that if the debtor were able to accomplish here what they seek to accomplish and be able to not only gain the protections of the automatic stay and injunctive relief, but they would skirt essential bankruptcy court protections for creditors, such as debtor transparency, court supervision, and the absolute priority rule. They would be free to give dividends to their shareholders, upstream cash to affiliates, and then, of course, ultimately, seek a substantial bankruptcy discount from the asbestos victims who are, whose claims are frozen while the debtor goes about its business -- well, the nondebtor, actually, more importantly -- go about their business as, as prepetition.

Your Honor, in closing from this opening statement, it

is axiomatic that a person seeking equitable relief has to do equity and the debtors' conduct in separating the principal operating assets from their asbestos liability and seeking to confer the benefits of bankruptcy without the attendant burden for nondebtors is inherently unfair and inequitable and as my colleague, Ms. Ramsey, will further explain in detail, under the specific governing principles of law and equity this Court should deny the requested TRO today.

Thank you.

THE COURT: There was another group of claimants. Ms. Simpson, did you have anything you, you folks wanted to say?

MS. SIMPSON: Your Honor, I don't believe we need to make an opening statement at this point. I'll reserve. Thank you.

THE COURT: Anyone else?

(No response)

THE COURT: Okay. Let's go to the, to the agenda and see what we have to talk about today.

Back to the debtor. Mr. Erens?

MS. CAHOW: Good afternoon. Again, for the record, your Honor, this is Caitlin Cahow of Jones Day on behalf of the debtors.

THE COURT: Okay.

MS. CAHOW: And before we get started, I'll be taking

the Court through the first three motions on the agenda and I'll turn to my colleague, Mr. Cody, to take Items 4 and 5.

And this doesn't, this doesn't directly affect the first couple of motions on here, but I just want to make sure that your Honor was able to get a copy of the revised agenda that was filed shortly before the hearing.

THE COURT: I did. I've managed to misplace it here in the last couple minutes, but as soon as I get back to where we were, let's see. I have too many papers.

Thank you. All right. Now we're good.

Ms. Cahow?

MS. CAHOW: Thank you, your Honor.

So unless you would prefer a different order, I'm happy to take these in the order they appear on the agenda.

THE COURT: I have no preference.

How about the others? Anyone else?

(No response)

THE COURT: Let's start at the top, then.

MS. CAHOW: Great.

So, your Honor, Item No. 1 on the agenda is the joint administration motion.

THE COURT: Uh-huh (indicating an affirmative response).

MS. CAHOW: And by this motion debtors are seeking joint administration of their cases for procedural purposes

only.

THE COURT: Uh-huh (indicating an affirmative response).

MS. CAHOW: That's pursuant to Rule 1015(b) and Local Bankruptcy Rule 1015-1.

Debtors also propose a consolidated case caption and request that the Court find that the proposed caption satisfies the requirements of section 342(c)(1).

Your Honor, we believe that the relief will provide various benefits related to administrative efficiency and that the rights of the parties won't be prejudiced. This motion does not seek substantive consolidation of the debtors' estates.

We believe this to be a fairly straightforward request for relief and unless your Honor has any questions, we would ask that the Court grant the motion.

THE COURT: Let me ask. Do -- are there other parties that wish to weigh in on this particular motion?

(No response)

THE COURT: Perhaps what I should have said first --

MS. RAMSEY: Your Honor, on behalf --

THE COURT: Yes. Ms. Ramsey?

MS. RAMSEY: Oh, I'm sorry.

THE COURT: Go ahead.

MS. RAMSEY: Thank you, your Honor. Natalie Ramsey

for the Certain Asbestos Claimants.

Your Honor, we would only ask your Honor for an opportunity for any official committee that is appointed to weigh in on this motion. It is not clear to us at this point in time whether there are sufficient overlapping issues and overlapping assets, that it would make sense to have these cases jointly administered.

THE COURT: Okay.

What I was going to say before that was the -- I should have asked. We have a, a first day declaration. Is anyone opposed to treating that as the, the direct examination of the debtors' witnesses, witness or witnesses, depending, and then allowing cross-examination if there's a desire to do so? Pretty much standard procedure, I think, in these types of cases.

(No response)

THE COURT: I don't hear anyone objecting. So we're going to allow that right out of the gate and then if there's a request for other evidence, please let me know on a particular motion.

Anyone else on this motion?

MS. ABEL: Your Honor, this is --

THE COURT: Ms. Abel, uh-huh.

MS. ABEL: Sorry, your Honor. This is Shelley Abel.

In furtherance to the comment that was made by

Ms. Ramsey, I just wanted to let the Court know that I spoke with the debtors' representatives earlier today and had asked that we enter an order that might provide the ACC, once it is formed, to revisit any of the orders that are entered today or those that have been entered on an ex parte basis on a, previously, so as to permit them an opportunity to review those, even if the committee is formed past the normal 14-day response --

THE COURT: Uh-huh (indicating an affirmative response).

MS. ABEL: -- period.

So we would just note that request and we have preliminary agree, preliminarily agreed that we would enter into some sort of consent order that we would submit to the Court that would address that concern.

THE COURT: Ms. Cahow?

MS. CAHOW: And, your Honor, that's correct. And we're --

THE COURT: I'm sorry? We -- you, you said something. We lost you.

MS. CAHOW: We're --

THE COURT: One moment. Looks like we're having tech issues.

MS. CAHOW: I think I'm back, your Honor. Let me --

THE COURT: And froze again.

(Pause)

MR. LAMB: She's dropping.

THE COURT: Okay.

MS. CAHOW: I, I think I'm back. Is that, that working?

THE COURT: Yes, it is.

MS. CAHOW: Wonderful. Thank you, your Honor.

And what I was about to say is that we, we did, in fact, speak with Ms. Abel and we're happy to (indiscernible).

THE COURT: All right.

And, and as always, when we enter ex parte orders of these first day hearings, we normally under Local Rule reserve 14 days for those who might not have gotten the news that we were here to take a look at them and seek reconsideration as well.

But otherwise, anyone else opposed to this particular motion, joint administration?

(No response)

THE COURT: That is approved on an interim basis and subject to the criteria we just announced. All right.

MS. CAHOW: Thank you, your Honor.

The next item on the agenda is the application to retain and employ Kurtzman Carson Consultants LLC, or KCC, as claims, noticing, and ballot agent in these cases.

THE COURT: Uh-huh (indicating an affirmative

response).

MS. CAHOW: And as Mr. Erens alluded to and as your Honor would have read in our papers, the debtors anticipate these cases will involve many thousands of potential creditors and other parties in interest and in light of the significant administrative burdens that that would place on the Court and the clerk's office and, and also the debtors, we believe that having a claims, noticing, and ballot agent in the cases, in these cases is appropriate and, and, in fact, necessary.

THE COURT: Uh-huh (indicating an affirmative response).

MS. CAHOW: And as your Honor is no doubt aware, this is fairly typical relief in large cases to relieve the clerk's office, in particular, of administrative duties. We also believe that appointment of KCC will expedite service, streamline the claims and solicitation processes and generally promote administrative efficiency.

So we filed this application pursuant to 28 U.S.C. 156(b), which, as the Court is aware, empowers the Court to authorize the use of outside agents and facilities for administrative purposes.

Rule 2002 also allows the Court to direct other parties to give notice.

So we believe there's ample authority to request the relief.

The KCC service agreement is attached as Exhibit A to the application. Paragraph 10 of the application also discusses the services that KCC may perform in these cases and it goes into some detail, your Honor, and I'm happy to go into as much detail as you'd like, or just give a general overview. I'm guessing your Honor has seen a few of these requests before.

THE COURT: Uh-huh (indicating an affirmative response).

MS. CAHOW: Generally, KCC will be able to assist with serving notices, maintaining service lists and claims registers, providing balloting and tabulation services, including a tabulation certification (indiscernible). They'll also be able to assist further administrative functions. In fact, KCC maintains a website that's currently live and available now so that interested parties can access information and download documents filed in these cases free of charge.

The debtors are seeking to pay for these services in the ordinary course of business. We would have KCC's fees and expenses treated as administrative expenses in these cases.

So while the, while KCC would not file fee applications, KCC would provide invoices both to debtors and to the Bankruptcy Administrator so that the Bankruptcy Administrator can see those costs. And as required by 28 U.S.C. 156(b), of course, the debtors will pay all of the costs

of KCC's services.

This is laid out in the application, but I did want to flag for the Court that KCC is holding a $60,000 pre-petition retainer --

THE COURT: Uh-huh (indicating an affirmative response).

MS. CAHOW: -- and our application does request that KCC be authorized to hold on to that retainer throughout these cases. We spoke about this briefly with Ms. Abel this morning and we believe this to be consistent with similar relief granted in this District.

I also would note, your Honor, that though we are not seeking retention under 327, KCC did file a declaration in support of the application --

THE COURT: Uh-huh (indicating an affirmative response).

MS. CAHOW: -- and that declaration can be found at Exhibit B to the application and it was signed by Robert Jordan, who is a Senior Managing Director of Corporate Restructuring Services at KCC, and you'll see Mr. Jordan is available on this Zoom call to the extent that your Honor has any questions.

THE COURT: Okay.

Others? Anyone --

MS. CAHOW: I --

THE COURT: -- want to weigh in on this?

(No response)

THE COURT: Everyone good with this motion?

(No response)

THE COURT: Okay.

MS. ABEL: Your Honor, no objection from the Bankruptcy Administrator's Office.

THE COURT: All right.

Given the number of participants, don't tell me if you don't object. I just need to hear if you want to ask questions or, or weigh in on the, on the motions.

Anyone else?

(No response)

THE COURT: Okay. This one is approved.

MS. CAHOW: Thank you, your Honor.

THE COURT: Thank you.

MS. CAHOW: Item No. 3 on the agenda is a motion that really seeks four buckets of relief and this is fairly standard relief, we think.

First is authority to file a consolidated master list of creditors. The second is authority of file what we define in the motion as the top asbestos counsel list in lieu of the typical Top 20 List for each debtor. We also seek approval of certain notice procedures for asbestos claimants and approval of the form and manner of notice of the commencement of these

cases.

So each of the forms of relief requested in the motion is likely familiar to your Honor. It's similar to what your Honor would have seen in Kaiser and DBMP.

With respect to the consolidated creditors list, the debtors believe that the relief will further administrative efficiency and is generally appropriate under the circumstances in these cases.

With respect to the request regarding the top asbestos counsel list, what we're seeking here, your Honor -- and it's, it's spelled out in greater detail in our, in our papers -- is we're seeking to file a consolidated list of 20 law firms with significant representations of parties with asbestos claims against the debtors and that would be in lieu of lists of the creditors that have the 20 largest unsecured claims against each debtor and given the nature of the cases and the fact that the overwhelming majority of the debtors' creditors are asbestos claimants, we anticipate that an asbestos committee will be formed. We spoke, again, briefly this morning with Ms. Abel to that effect. We do not believe that a separate general unsecured creditors' committee will be formed in these cases.

And so with that in mind, we believe the top asbestos counsel list will be more helpful to the Bankruptcy Administrator and will provide the information necessary to

evaluate and form an asbestos committee representative of the claimants of each of the debtors in these cases. And we laid out a few of these facts in the motion, your Honor, but just to give a few examples. The top asbestos counsel list consists of the 20 law firms representing the largest number of claimants in asbestos lawsuits in which the debtors are defendants. And collectively, the law firms on this list represent claims in over 80 percent of those lawsuits.

So there is substantial overall representation on the list. If you were to break that out by debtor, if you were to try to put together a Top 20 List for each debtor, 16 of the 20 law firms that represent the most asbestos claimants in lawsuits against Aldrich and 17 of the 20 law firms that represent the most asbestos claimants in lawsuits against Murray appear on the top asbestos counsel list that we filed with the petition.

So there's significant overlap and also representation between the debtors. And, just more generally, these firms represent claimants across the various types of alleged harms that are asserted by claimants. And so that really is, for example, mesothelioma, lung cancer, etc.

So, in general, we, we believe this list to be very representative of the claimants in these cases.

The third bucket of relief, somewhat relatedly, the debtors are seeking authority to serve asbestos claimants in

care of their counsel, again similar to relief that you would have seen in DBMP and Kaiser. And we believe that this type of service is consistent both with what the law requires and also, our responsibilities under the Rules of Professional Conduct. This is also consistent with the debtors' past practices. As indicated in our papers, debtors may not have or be able to obtain current contact information for the individual claimants.

So we believe that serving claimants through counsel will just be a more efficient, reliable, and appropriate form of relief in these cases. And in that regard, we've also listed counsel contact information on the creditor matrix. So it's consistent there and, indeed, our, our service that went out for this first day hearing was to counsel for the asbestos claimants consistent with other requested relief.

And then the last form of request for relief is approval of the case commencement notice. We saw that your Honor already entered the notice suspending entry --

THE COURT: Uh-huh (indicating an affirmative response).

MS. CAHOW: -- and service of the standard notice of commencement, but we attached our proposed form of notice as Exhibit A to the motion and that form is based off of the official form, but there are a, a couple of (indiscernible) for purposes of this, of these cases and really, subject to a

signoff from the Bankruptcy Administrator -- and we didn't quite get the chance to talk about that this morning when we spoke, but I'm sure we'll have the opportunity to do that shortly -- we would propose to serve this notice out within five business days after we have the information regarding the 341 meeting that's required for the notice.

And so that, that covers the four buckets of relief. So unless your Honor or anyone else has questions, we would ask that the Court grant the requested relief.

THE COURT: Anyone else want to weigh in on this particular motion?

MS. RAMSEY: Yes, your Honor. Hi. Again, it's Natalie Ramsey for the Certain Asbestos Claimants.

Your Honor, we heard some clarification on the record today that they had responded to questions that we had, but we did take note that the language of the petition itself with respect to the, to the list of 20 law firms was rather unusual in that there was no representation regarding how those firms were selected. It simply was referred to as a list of 20 law firms with significant representations of asbestos claimants. Based upon the representation, if, if that is correct that those firms are, indeed, the firms that represent the largest number of pending claimants, we would not expect that we would have an objection, but -- but it was -- it was something that caught our eye and also was something that some of our clients

questioned.

So I did want to raise for the record that we would expect that a committee would want an opportunity to ensure that, in fact, the firms are representative of, as indicated by the debtors.

THE COURT: Okay.

Anyone else?

MS. ABEL: To that --

THE COURT: Yes.

MS. ABEL: Your Honor, this is Shelley Abel.

To that point, I have requested from the debtor to receive a comprehensive listing in a more usable format than that was provided in the adversary proceeding so that I can review those, the pending claims against the debtor in order to sort of assess the selection of the top 20 law firms that were provided.

And I expect that there may be an opportunity for further discussion in connection with a motion to appoint the ACC in this case.

THE COURT: Anyone else?

(No response)

THE COURT: Back to you, Ms. Cahow. Is that -- I think I read what was stated in the, in the declaration that, that these were, in fact, the firms that represented 80 percent of the clients if it wasn't stated in the petition, is that

correct? It was in the declaration, originally? I saw it somewhere.

MS. CAHOW: Yes. It's in the language -- that language itself is in the motion as well, your Honor.

THE COURT: Okay. But that is, in fact, the debtors' representation?

MS. CAHOW: Yes, your Honor. That's correct. And I believe -- and I, I apologize to Ms. Ramsey if, if this is not the case -- but I believe that the language regarding -- let me just flip to the appropriate paragraph here. Paragraph 11 of the motion, your Honor, and my recollection was that the language included with the petition so that the top asbestos counsel list consisted of the 20 law firms representing the largest number of claimants in asbestos lawsuits in which the debtors were defendants.

THE COURT: Uh-huh (indicating an affirmative response).

MS. CAHOW: But I can, I can go back and double check that.

THE COURT: Ms. Ramsey, is that sufficient?

MS. CAHOW: If it did not, we intended, we intended to do that.

THE COURT: Okay.

Ms. Ramsey, are you satisfied for present --

MS. RAMSEY: Yes, your --

THE COURT: -- purposes?

MS. RAMSEY: I'm sorry, your Honor. We had trouble unmuting.

Yes, your Honor. Thank you.

THE COURT: Well, don't feel badly. We've been doing this for a couple months now and everyone seems to have that problem about muting and unmuting the microphones.

All right. Anyone else?

(No response)

THE COURT: If not, the motion is approved. If you'll send me a proposed order on that.

MS. CAHOW: Thank you very much, your Honor.

And with that, I will turn things over to my colleague, Mark Cody, who will address the remaining main case agenda items.

THE COURT: Mr. Cody.

MR. CODY: Good afternoon, your Honor.

THE COURT: Afternoon.

MR. CODY: It's Mark Cody on behalf, on behalf of the debtors here from Jones Day.

The next item on the agenda, your Honor, is Agenda Item No. 4, which is the debtors' motion for entry of an order establishing certain case management procedures. By the motion, your Honor, what we're, what we're seeking to do is, is approve and implement certain notice, case management, and

administrative procedures to, effectively, establish various requirements for filing and serving papers filed in these chapter 11 cases --

THE COURT: Uh-huh (indicating an affirmative response).

MR. CODY: -- as well as orders entered in these cases --

THE COURT: Uh-huh (indicating an affirmative response).

MR. CODY: -- set standards for notices of hearings and agendas, fix periodic omnibus hearing dates and provide mandatory guidelines for scheduling hearings and setting various deadlines as well as to minimize, ultimately, to minimize the potential burdens on the Court by limiting matters that are otherwise required to be heard by the Court.

The debtors believe that the case management procedures will facilitate the efficient administration of these chapter 11 cases and ensure that appropriate notice is provided to interested parties.

We intend to serve the case management procedures on all interested parties as soon as practicable after the entry of the case management order, should you approve it; publish it on the debtors' restructuring website at, with KCC; and then make them available upon request with our claims and noticing agent, Kurtzman Carson Consultants.

The ultimate goal here is to figure out a way to, to alleviate significant administrative burdens and cost that otherwise could be imposed on the debtors' estates, parties in interest, the Court, and the Clerk of the Court due to the substantial number of parties in interest expected to be involved in these cases and the number of court filings that we would anticipate as well. Significantly, your Honor, the case management procedures do not seek to waive any substantive rights of any of the parties in these chapter 11 cases.

Similarly, the courts, courts in this District have regularly granted similar relief, including in, in, most recently, in DBMP.

Your Honor, the, a copy of the proposed case management procedures are attached to, to the proposed order. Unless your Honor has any questions, we'd respectfully request that the Court enter an order approving the motion.

THE COURT: Okay.

Others?

(No response)

THE COURT: Anyone?

(No response)

THE COURT: I notice there are blanks for omnibus hearing dates that we still need to talk about. What do you envision there, Mr. Cody? What are the, the debtors' needs?

MR. CODY: You know, your Honor, we can, we can

discuss this now or it might make sense to wait till after we've had -- heard from -- about the, the PI. So maybe we could do these --

THE COURT: Uh-huh (indicating an affirmative response).

MR. CODY: -- the -- whatever is required in that particular pleading that we have those together. I think, after that, we would anticipate maybe at the outset a once-a-month to sort of coincide with, with other activity in, in these cases. To the extent that a matter, a hearing time is not needed, then we would just consult --

THE COURT: Right.

MR. CODY: -- with the Court and then cancel the hearing.

THE COURT: Okay.

Everyone else good with holding this until we get through talking about the TRO request?

(No response)

THE COURT: That's what we'll do.

Otherwise, the, the motion is approved and we'll backfill the dates.

MR. CODY: Thank you, your Honor.

THE COURT: Thank you.

What's next?

MR. CODY: The next item, your Honor, is Agenda No. 5,

which is the debtors' motion to approve their continued use of their bank accounts, cash management system, and business forms, granting a waiver of requirements under section 345(b) of the Bankruptcy Code, and authorizing the debtors' banks to charge certain fees and other amounts.

THE COURT: Uh-huh (indicating an affirmative response).

MR. CODY: This, as I, as I noted, it sort of falls into four categories of, of relief here. The debtors are seeking approval to continue to use their current cash management system, existing bank accounts, existing business forms. They're seeking authority to open and close bank accounts, as necessary and appropriate. They're seeking a waiver of the requirements under section 345(b) of the Bankruptcy Code and seeking authority for participating banks to honor certain transfers as well as to charge certain bank fees associated with their involvement with the debtors.

At the outset, your Honor, relief here is sought under section 345 and section 363 of, of the Bankruptcy Code and at this point I would jump into some background on the, on the debtors' cash management system.

THE COURT: Uh-huh (indicating an affirmative response).

MR. CODY: The debtors maintain three bank accounts at JPMorgan Chase. Two -- each, each debtor has an operating

account that serves as both a, a consolidation -- consolidation -- an operating account that's, that's there for consolidation of funds as well as disbursements. There's also a dormant account that was originally used by the debtors to service and pay certain asbestos-related claims, including settlement payments. At present, that, that account has less than $3 million in it, but given the filing of these chapter 11 cases and the imposition of the automatic stay, that, that account will now remain dormant and the funds that are presently in there will be returned to the applicable debtors' operating accounts.

THE COURT: Okay.

MR. CODY: The debtors' cash management system is pretty straightforward. There's a, there's a chart at the back of the motion that highlights --

THE COURT: Uh-huh (indicating an affirmative response).

MR. CODY: -- the system. It's, as I mentioned, it's very, very simple, straightforward. There are the three bank accounts, one being the dormant account, the other two being the operating accounts, one with Murray Boiler, one with Aldrich Pump.

THE COURT: Uh-huh (indicating an affirmative response).

MR. CODY: And the parties are, are also party to cash

pooling agreements with their non-debtor subsidiaries. Effectively, in order to more efficiently manage funds the debtors and their non-debtor subsidiaries pool their cash in the debtors' accounts to maximize efficiencies of a coordinated cash management system. The funds are maintained and managed by each respective debtor, but the funds from the non-debtor affiliates remain the property of the non-debtor affiliates at all times, as do the funds of the, the debtors remain property of the debtors' bankruptcy estate.

The, the parties, the non-debtor parties monitor their cash in their accounts and then transfer excess cash to the applicable debtors in accordance with the terms of these cash pooling agreements. The non-debtor entities can withdraw funds or direct the debtors to disburse those funds in accordance with the pooling agreements. To the extent that a non-debtor subsidiary determines that it will not require subsequent withdrawals or disbursements of its excess cash, it may distribute those funds to the applicable debtor as a dividend.

But again, just to be clear, the funds that we're talking about with respect to withdrawals and disbursements are the non-debtor affiliates' cash. They keep a record of, of the, of the funds and the transactions that relate to those funds. The debtors' cash remains property of the estate and is not in any, in any capacities funneled down to any of the non-debtor entities.

So, your Honor, as, as, as a practical matter, it would be disruptive and administratively burdensome and unnecessary to require the debtors to close their existing bank accounts and open new debtor-in-possession bank accounts. The debtors use their accounts -- the debtors' use -- I'm sorry -- of their, their bank accounts constitute an ordinary course and appropriate business practice of the debtors and authorizing the continued use of the bank accounts will assist the debtors in accomplishing a smooth transition to operating as debtors in possession. Accordingly, the debtors are seeking authority to continue to use their bank accounts in the ordinary course of business.

Secondly, your Honor, the debtors would seek authority to open and close accounts as they deem necessary. Any new domestic bank account would be established at a bank that is insured by, with the FDIC or FSLIC and is otherwise organized under the laws of the United States or any, any state in the Union. Moreover, prior to opening or closing a bank account, the debtors will provide notice to the United States Bankruptcy Administrator, the official committee of asbestos claimants appointed in these chapter 11 cases, and the future claimants' representative appointed in these, in these cases.

Your Honor, this, this type of authority is, to continue to use bank accounts, is routinely granted and has been granted in other bankruptcy cases in this District. Your

Honor, just to be clear, the, the, the debtors do have in -- in -- a process in place to provide a -- they've had conversations with JPMorgan Chase to ensure that no checks are inadvertently cashed, checks that were written prior to the petition date are not otherwise cashed or honored.

The debtors are similarly seeking authority to maintain their ordinary course process for collecting, holding, and disbursing cash throughout their cash management system and to perform under the terms of the cash pooling agreements.

Cash management systems similar to that of the debtors, and related agreements like the cash pooling agreements, are also routinely implemented to consolidate and manage cash flows and bank accounts among affiliates within a corporate enterprise. The debtors believe that continued use of their cash management system as well as their continued performance under the cash pooling agreements is in the best interest of the debtors' estates and parties in interest and should be authorized by the Court.

Next, your Honor, the, the, the debtors would request that they not be required to include the legend DIP or other, any other debtor-in-possession designation and the corresponding bankruptcy case number on their business forms. The, the debtors respectfully submit that this release is, relief is appropriate. The debtors, as non-operating entities, have few business relationships and the parties they conduct

business with, such as law firms, are expected to be well aware of the debtors' status as debtors in possession. As such, the alteration of the debtors' checks and business forms to include debtor-in-possession designation would be unnecessary. Further, your Honor, the, the Court has allowed debtors to use their prepetition business forms and checks without the "DIP" label and corresponding bankruptcy cases [sic] in other large cases, including in this District.

Next, your Honor, we're requesting a limited waiver of section 345(b) of the Bankruptcy Code. The debtors submit that cause exists to justify a waiver of section 345(b) of the Bankruptcy Code, a limited waiver of section 345(b) of the Bankruptcy Code of these cases to the extent that funds maintained in, in their bank accounts or any domestic account opened during the chapter 11 cases exceed the amount insured by the FDIC or FSLIC. JPMorgan Chase is an extremely stable, reliable institution and the debtors maintain that any other banks will be of similar status. It will be -- it will impose an undue and unnecessary administrative burden on the debtors to require the debtors to open and maintain numerous accounts with limited funds such that all account funds may be covered by FDIC insurance, or, alternatively, to maintain a bond for the value of the account funds.

Your Honor, we did have discussions with Ms. Abel this morning about this particular issue. One of the concerns that

she raised was the amount of funds that the debtors have in, in their particular accounts at present. We are, are going to continue to discuss with Ms. Abel and come with, come up with a, a, a consensual proposal, have come up with a proposal that we hope will be, we'll reach a consensual resolution of her concerns.

In addition, Ms. Abel raised a concern about what we would be doing with our excess cash and what we have represented to Ms. Abel -- and again, we, we owe her some paperwork just so that she is comfortable with what, what we are proposing -- but we are proposing to put the excess cash in funds that are managed by JP, JPMorgan Chase that invest, effectively money market accounts, that invest solely in U. S. Treasury securities.

Thus, given all these, given all these components, your Honor, we would, we would request that -- that the -- that -- that we be granted the authority to, to have a limited waiver of section 345(b), once we've come to agreed-upon language with, with Ms. Abel.

Lastly, your Honor, the, the, the debtors are seeking authority for banks to charge and the debtors to pay or honor both pre-petition and post-petition services and other fees, costs, and charges, expenses, which, which banks may be entitled to under the terms of and in accordance with their contractual arrangements with the debtors. The debtors also

request that the Court authorize banks to charge back returned items to the bank accounts in the ordinary course of business.

The debtors require this relief to minimize disruption to their bank accounts and to assist in accomplishing a smooth transition to operation in chapter 11. Again, your Honor, authority for, for the debtors to pay these fees and, and for the banks to charge back returned items has been routinely granted in chapter 11 cases as well in this District.

Unless your Honor has any, any questions, we would respectfully request that the Court enter an order granting the relief sought by the motion with the proviso that the debtors will work through some language with Ms. Abel with respect to the scope of the section 340, the requested section 345 waiver.

THE COURT: Comments by other parties?

MS. ABEL: Your Honor, this is Shelley Abel.

I think that debtors' counsel has covered our discussion pretty adequately, but I just wanted to reserve our right to continue to negotiate on terms of a order before it's submitted to the Court and we will certainly contact Chambers if we need your assistance going forward.

THE COURT: Anyone else? That got it?

(No response)

THE COURT: All right. I'll, I'll approve all of that with the exception of the open items with the Bankruptcy Administrator. If you can't come to terms over that, let me

know. We'll set up a, a further telephonic hearing on, on the record to discuss what should be done with that. I would assume the other parties don't need to be involved in that since no one else has objected. But hopefully, you'll be able to work your differences out there.

The rest of it is fine, okay? Send me an order when you have one.

MR. CODY: Thank you, your Honor.

THE COURT: Okay.

MR. CODY: Will do. Thank you, sir.

THE COURT: All right. Any other base case matters or are we ready to talk about the two motions in the adversary?

MR. CODY: That would conclude the first part of that agenda, your Honor, and we're ready to proceed. Thank you.

THE COURT: Does anyone need a break before we start in there? We're about at midafternoon.

(No response)

THE COURT: Everyone good to continue?

(No response

THE COURT: Okay. We'll move on, then.

Mr. Erens, back to you. You wanted to, to take the motion and -- we've got two motions. One's the injunction and the other is the surface, service procedures. The second may be the least controversial of the two. Do you, do you have a preference as to which to approach first?

MR. ERENS: Your Honor, we were intending to approach the actual TRO first but, if you'd like, we can just dispense with the service procedures, but I'm not sure there's really any objections.

THE COURT: Let's get that out of the way. If that -- that's likely not to be controversial. I can tell from the, the pleadings. The other, of course, is. Why don't we address No. 7, then, the debtors' motion for approval of service procedures.

MR. ERENS: All right. Thank you, your Honor. I'll be happy to do that.

The relief is pretty straightforward, your Honor. The, the point, of course, is that claimants are represented by law firms. We have information as to the names of the law firms. We often don't have the information as to the names of the claimants. There's been a practice, historically, in asbestos cases that the law firms would like to receive the pleadings. They don't necessarily want their clients to receive the pleadings, which is for good reason. The clients often may not understand the pleadings. They would turn back to their, their, their, their lawyers, anyway, to understand what the pleadings really mean and, as a result, what we'd like to do is basically get authority to serve the adversary proceedings on the law firms rather than the claimants. That includes, of course, the summons and complaint, initially, and

then, ultimately, the other pleadings in the adversary proceeding, itself.

So with respect to the summons and complaint, as we set forth in the motion, there is authority under the Local, or not the Local Rules, but the applicable Rules for the summons and complaint to be served on an agent. We believe the law firms represent agent under the circumstances and, therefore, service on the law firms is authorized by, by the appropriate Rules.

With respect to the other pleadings, there are a number of reasons and I gave some of them, already, to serve the pleadings on law firms rather than claimants, (a) they're represented, already, so we think it might be inappropriate, frankly, for the debtors to serve those pleadings on the claimants. Again, it's more efficient for the pleadings to go to the law firms, themselves. Often, we don't actually have the address information for the individual claimants. And again, the claimants often would turn back to their law firms to understand what the purpose of the pleadings are, in any case.

So we don't think there's any controversy between the company and the various law firms as to what the proper procedure should be. This type of motion has been approved in numerous asbestos cases previously. It was approved in DBMP. It was approved in Bestwall, Kaiser Gypsum, Garlock. We think

it's appropriate. We also think it's consistent with the Rules of Professional Conduct and we would ask your Honor to approve the procedures set forth therein.

THE COURT: Any comments, objections? Anyone else to be heard?

(No response)

THE COURT: Okay. That one is approved.

All right. Backing up to the TRO/preliminary injunction matter. Mr. Erens?

MR. ERENS: All right. Thank you, your Honor.

Your Honor, I know we're going to have a lot of issues to discuss this afternoon on the proposed TRO, but I wanted to, to start with the, the following, which is, as I indicated in the introduction, there are thousands of pending claims, asbestos claims, currently against the debtors. There's over a hundred thousand claims, or close to a hundred thousand claims and there's close to 8200 mesothelioma claims. These are claims in this bankruptcy. They are pending against the two debtors. When you cut through all of this -- and I'll go through some detail -- but the ultimate purpose of the adversary proceeding for today, the TRO and, ultimately, a preliminary injunction, is to resolve the claims in the bankruptcy case. It is to prevent piecemeal litigation of the exact same claims that are being asserted in this bankruptcy case by, or exist in this bankruptcy case by asbestos claimants

from being litigated in piecemeal litigation throughout the country. They are claims against the debtors and if parties are able to then, instead, try to assert the exact same claims against third parties otherwise, we don't have much of a bankruptcy case, your Honor. The stay is eviscerated. The purpose of the bankruptcy case to resolve all the claims collectively under 524(g) is, is eviscerated as well. And so we think that the adversary proceeding is critical to the success of the bankruptcy and is integral to the bankruptcy, itself.

So what does the adversary proceeding seek to do? It seeks to present or -- excuse me -- to prevent various parties from pursuing, again, what we call Aldrich and Murray claims, which are claims against the debtors against third parties. There's three categories of parties. There are corporate affiliates, there are insurers, and then there are parties that we call indemnified parties. Those are parties that the debtors have indemnified for asbestos claims or the asbestos claims initiated. Ultimately, your Honor, the debtors will be seeking both a preliminary injunction and/or a declaration that the automatic stay or section 362 prevents the prosecution of the claims against the debtor against third parties, but for today we're limiting the relief we're seeking, obviously, to the TRO.

The request for the relief is supported by two

declarations, the declaration of Ray Pittard, the, the companies', or the debtors' Chief Restructuring Officer, and the declaration of Allan Tananbaum, the debtors' Chief Legal Officer. And we would ask that those two declarations be moved into evidence as a result.

THE COURT: Any opposition, again subject to the right of cross-examination?

MR. ERENS: Correct, your Honor.

THE COURT: Anyone opposed? Anyone?

(No response)

THE COURT: Received.

(Declarations of Ray Pittard and Allan Tananbaum admitted in evidence)

MR. ERENS: All right. Thank you.

Again, the purpose of the case, your Honor, is to fully and fairly resolve the asbestos claims against the debtors through the establishment of a 524(g) trust. We believe the adversary proceeding relief is critical to that purpose. Absent the relief, claimants could litigate the exact same claims that exist against the debtor, again against various parties throughout the country. It would prevent all the claims from being dealt with collectively. In this case, it would eviscerate the stay and, frankly, would require the debtors to go defend that litigation for reasons I'll get into momentarily, which would obviously divert their attention from

the reorganization at issue. It would defeat the purpose of the case and it would defeat the purpose of 524(g).

Importantly, this is a fact that we should never lose sight of. None of the protected parties manufactured or sold an asbestos-containing product that gives rise to a claim against the debtors. The only protected party that maybe is an exception are the entities that no longer exist, the two entities that ceased to exist as part of the, the divisional mergers. Those claims are allocated to the debtors in the divisional mergers.

So those claims are clearly against the debtors and we say in our pleadings that those claims clearly are stayed. For today, since we haven't sought a declaration under 362 we include them in the TRO request. But other than that, none of the parties that are on the protected party list manufactured or sold the asbestos-containing products at issue. Instead, the debtors became solely responsible for those liabilities as part of the 2020 restructuring, as was mentioned. And after that restructuring was done in early May, the companies started communicating that fact to plaintiffs' counsel. It didn't happen overnight, but it started happening relatively soon and in the, I'll call it, roughly 30 days since that communication started in May the debtors have now found almost 70 cases in which the same claims that exist against the debtors are being asserted under various theories, successor liability, alter

ego, etc., and -- we said in the papers 65 claims. We think it's now 70 claims -- and we think it'll just accelerate from here.

So the relief we're seeking is not speculative, as maybe someone has tried to point out in one of the papers. There are now 70 of these types of lawsuits out there that name New Trane Technologies as a defendant and New U.S. Trane Inc. as a defendant. There's some claims against Gardner Denver, Inc. Again, it was communicated. These are claims against the debtors, but nonetheless, in the tort system the lawsuits were being brought against third parties. If that continued, your Honor, again, today we have 70. I think in the future we could have hundreds, if not thousands, of these individual lawsuits throughout the country. I'm not sure what this bankruptcy case would really look like at that point. The claims are claims in this case. They shouldn't be litigated while the stay is in existence.

In terms of the authority, your Honor, for the injunction, pretty straightforward. Section 105(a) of the Bankruptcy Code gives your Honor the authority to enter the TRO and, ultimately, the preliminary injunction. This type of injunction has been entered in numerous cases in the asbestos context. We provide in the papers a laundry list of those cases. I think it was, maybe, 20. Most recently, in this jurisdiction the injunction was entered after contest in the

Bestwall case by Judge Beyer and I think your Honor is aware in the DBMP case your Honor did enter the, the TRO. I think there's a schedule on litigation for the preliminary injunction, itself.

THE COURT: Uh-huh (indicating an affirmative response).

MR. ERENS: Matter of fact, your Honor, the debtors are unaware of any case in which this type of injunction has not been entered for all the reasons that make sense because if you don't have this type of injunction, you really don't have a bankruptcy case.

In terms of case law authority on how your Honor is to assess the propriety of the injunction, the case law in this Circuit goes back to Robins, A. H. Robins, the mass tort case.

THE COURT: Uh-huh (indicating an affirmative response).

MR. ERENS: The Robins case, in large part, indicates that your Honor has the authority to enter this type of injunction where third-party litigation would put undue pressure on the reorganization or would interfere with the reorganization. That's the basic standard provided and, in fact, it's never been clear that that, itself, is not sufficient, per se, to enter the injunction. Nonetheless, courts in this jurisdiction typically go through a four-factor test for these types of injunctions, although I'm not sure your

Honor has to do that based on the Robins case. And there are four factors that apply.

The four factors are whether there's a reasonable likelihood of success, of a successful reorganization; the threat of irreparable harm to the debtor; the balance of harms between the parties; and the public interest, whether it supports the injunction. Your Honor, each of the four prongs for the issuance of the TRO today and, ultimately, an injunction, are satisfied.

With respect to reasonable likelihood of success, as we point out in the papers, at the outset of a bankruptcy this test is not designed to be particularly high. This is not a guarantee, this test is not a guarantee that this will be a successful reorganization, but it is a standard that says there is a reasonable likelihood that it will be a successful reorganization.

Your Honor, the facts are uncontroverted that that is the case. First of all, as mentioned, under the funding agreements the debtors have more than sufficient resources to fund fully a 524(g) trust. There are adequate resources to do a reorganization here and obviously, as I mentioned at the beginning, our intent is to sit down with the plaintiffs and to effectuate that result. We have come to this Court to conduct a proceeding that, hopefully, will lead to a successful 524(g). That is our intent. We have come in good faith and we will

work hard to reach that result, the very purpose of the 524(g) statute.

In addition, as judicial notice might indicate, many, many cases have been resolved under 524(g). There have been many reorganizations under 524(g) of the Code and I think in Mr. Maclay's statement he talked a little bit about Garlock as being a tough case. Garlock was a tough case, but even in that case they reached a resolution.

So as a result, debtors do meet the reasonable likelihood of success. We do believe it's likely that there'll be a 524(g) result at some point in this case.

With respect to the second prong, threat of irreparable harm, I mentioned in the introduction some of the points here. This is a fairly straightforward analysis. If the same claims that exist in this bankruptcy and that are stayed are, instead, brought throughout the country on various theories against third parties that the debtors have indemnified -- and that's one of the linchpins here. The debtors have indemnified protected parties -- then that's really a process where the claims will be fixed outside of this bankruptcy against the debtors. You don't have much of a bankruptcy if, your Honor, a third party is being sued elsewhere. That party has a contractual indemnity against the debtor. The claim is fixed outside of the bankruptcy in that jurisdiction and then becomes a claim in the bankruptcy.

Instead, 524(g)'s purpose is to deal with all the claims holistically in this bankruptcy, for the claims to be treated equally and fairly, and together. The claims that we're talking about, again, are the exact same claims that exist against the debtor, not other claims that exist against third parties.

So the indemnity relationship, we think, your Honor, is one of the important points to mention. If the claims are liquidated against third parties, it would really be tantamount to a claim against the debtor because the debtor has indemnity with respect to these parties.

There are other reasons that the, the debtors would suffer irreparable harm if litigation continued outside of this bankruptcy. So in addition to the indemnity relationship, that really means that, that litigation would be fixing claims against the debtors outside of this bankruptcy. The debtors would be faced with doctrines of *res judicata*, collateral estoppel. They'd be subject to evidentiary prejudice in these other proceedings. At the end of the day, since the claims would really be tantamount to claims against the debtors, they would be forced to ultimately go and defend those claims throughout the country.

So while they're trying to conduct a bankruptcy, your Honor, in North Carolina, they would be, they would be working throughout the U.S. defending these claims and would not have

the resources, we think, to adequately prosecute the bankruptcy at the same time. They'd have to, they'd have to participate in the litigation and there'd be significant diversion and that's, obviously, contrary to the breathing spell that section 362 is designed to create for a debtor in bankruptcy.

So that, in large part, would be the irreparable harm the debtors would face. The claims would not be in this case. They would be litigated outside this case, even though they're tantamount to claims against the debtors.

In terms of balance of harms, I just went through the harms to the debtor. In terms of harms to the claimants, we think, your Honor, the harms are really pretty limited. First of all, as I mentioned, none of the parties we're talking about manufactured asbestos-containing products at issue in this case. These are insurers, these are corporate affiliates, these are parties that are indemnified by the debtors, but did not actually manufacture the products.

More importantly, your Honor, as is well known, plaintiffs sue multiple parties in the tort system. So it's not like the debtor is the only defendant on these cases. The complaints we typically see name scores of defendants and the plaintiffs will be continuing to recover against those defendants in the tort system as well as in the bankruptcy trust system.

So the debtors may be one out of 20, 30, 40, 50

defendants in a case. So the prejudice is limited only to the amounts that they cannot currently recover against the debtors.

Thirdly, your Honor, the tort system is a fairly inefficient process for reasons I indicated at the beginning of the presentation. There are many claims that linger in the tort system for years. It's expensive. A lot of the money that's spent by the defendants actually do not go to the plaintiffs. Maybe less than 50 percent of the money that's spent by the defendants go to the actual plaintiffs. 524(g) is a much more efficient, much better system for everybody once the 524(g) result is achieved.

So while there may be some delay, ultimately the result that's sought to be achieved here will be much better for the plaintiffs as well.

Thirdly, your Honor, as I think I mentioned before, it's, the purpose, or one of the purposes of 524(g) to keep all the claims together, to treat them equally and fairly, and if you have some claimants outside of the system and some claimants inside of the bankruptcy system, that's not necessarily equal treatment. So there is unfairness not only to the debtors, we believe, from having this collateral litigation go on throughout the country, there can be, there can be damage or harm to claimants as well.

There's a allegation in, in one of the pleadings, I think, that was filed this morning that delay is a big harm to

the claimants. We don't discount the delay, your Honor, and that's why we say we want to move this case, but delay is never sufficient, your Honor, to deny an injunction. An injunction always involves delay. If delay were sufficient to deny an injunction, your Honor, then injunctions would never be issued.

So that's the balance of harms. We think it clearly favors the debtors to maintain the integrity of the stay and the integrity of the bankruptcy case.

Finally, public interest. As we, as your Honor read in the papers, there's always a public interest in a successful reorganization. We're going to work hard to get a successful reorganization in this case and we think that's especially true in a situation as complicated as this, which involves thousands of asbestos claimants. A successful reorganization that can resolve what has been a really difficult problem, as I said over several decades and could continue, potentially, in, outside of this bankruptcy, if it didn't occur for several more decades in the tort system, if we can achieve that result, that is a fantastic result and is very much in the public interest and would allow claimants to be resolved in a full and fair manner and litigation that has really dogged, I think, everybody for a long time will be resolved.

So a public interest, I think, your Honor, clearly favors trying to protect the integrity of this bankruptcy and to achieve a successful reorganization.

Before I finish, your Honor, I do want to mention a couple things about section 362 of the Bankruptcy Code. We're not seeking, again, a declaration, although we do ultimately seek a declaration that 362 applies to the protected parties in certain circumstances. Today, we're just seeking a TRO, but 362 itself does support the relief we're seeking in many different ways.

So, for instance, as I mentioned before, Old Trane and Old Trane Technologies no longer exist. So while they are protected parties, the claims that existed against those entities were allocated to the debtors. So those are now direct claims against the debtors. So we think 362(a)(1) clearly applies to protected parties, Old Trane and Old Trane Technologies.

Secondly, as I mentioned, one of the categories of protected parties are the insurers. The debtors have substantial insurance, as indicated in the first day papers. Allowing parties to pursue insurance of the debtors and to try to reduce the insurance asset of the debtors clearly is a, we believe, a violation of section 362(a)(3) of the Bankruptcy Code because the insurance, the insurance, your Honor, is an asset of the estate.

In addition, many of the types of claims that would be asserted against the protected parties in the tort system would be things like fraudulent conveyance, piercing, successor

liability. Those are all estate causes of action at this point, your Honor. Those are assets of the debtors.

So allowing parties to pursue those types of causes of action in the tort system would be using estate property, again, we believe, in violation of 362(a)(3) of the Bankruptcy Code.

And then finally, going back to section 362(a)(1) of the Bankruptcy Code, going back to Robins, which I mentioned at the beginning of this process, the Robins case, again, stands for the proposition that the automatic stay can be extended to a party where there's such an identity of interests between that party, the defendant, and the debtor, that the claim being brought is really being brought against the debtor. Your Honor, that, again, is what's going on here. The claims that are, that would be sought to be brought if this injunction or TRO would not be entered would be tantamount to claims against the debtor. We think that, again, would be eviscerating the automatic stay for purposes of this bankruptcy case and the goal to achieve a section 524(g) result.

So going to the TRO specifically, because that's all that's being asked of your Honor today, we're moving under Rule 65(b) and Bankruptcy Rule 7065. As noted, there's already been now, what, 70 cases filed against protected parties. If the stay or -- excuse me -- if the TRO were not entered, we know that number would only go up. Given the bankruptcy, we think

the process would be accelerated because it'd be sort of common sense for parties to say one of a number of things. One is, "I haven't brought a lawsuit yet. Well, I can't bring a lawsuit against the debtor. They're getting a stay. So I'm going to bring a lawsuit against one of these protected parties." Two is, "If I've only got a lawsuit against the debtor, I'm going to amend it now 'cause I can't continue it against the debtor. I'm going to amend it to add the protected parties and just go sue them." So we'll see more and more of those. And then, finally, if there are parties who have brought lawsuits and have named these third parties, they will continue to prosecute those lawsuits. That's the 70 that I mentioned, or so, that already exist today. And again, that's only in the course of a month.

So, in fact, the, the bankruptcy filing would probably precipitate the problem that we've already seen in the tort system prior to the filing of this bankruptcy. This type of TRO, again, your Honor, has been granted numerous times. It was granted in Bestwall, ultimately led to the entry by Judge Beyer of a full TRO. It was entered, your Honor, in DBMP subject to the pending litigation schedule over the PI. It was entered in Garlock. It was entered in Kaiser Gypsum. We think it's fairly routine in these bankruptcy cases to get a TRO to get the case stable and on a full track and if parties want to litigate over the PI over a course of a longer period of time,

that's certainly their right.

In terms of the period of time we're seeking for the TRO, normally TROs are for 24 -- excuse me -- for 14 days, but the, the Court can for cause extend it up to 28 days. We would, as we indicated in the papers, ask that the Court extend the TRO for the full 28 days for the main reason that an asbestos claimants' committee will be appointed soon and we want to give them the maximum amount of time to sit down with us and discuss all the issues associated with the TRO and the ultimate preliminary injunction. I don't know how long it'll take the ACC to get appointed, but 14 days may not be enough for them, to sit down with them and discuss the issues associated with this litigation matter.

Thank you, your Honor.

THE COURT: All right.

Responses?

MS. SIMPSON: Your Honor --

THE COURT: Ms. Ramsey.

MS. SIMPSON: -- I'll let Ms. --

MS. RAMSEY: Yes, your Honor. Oh.

MS. SIMPSON: -- Ramsey go first.

THE COURT: Okay.

Ms. Ramsey, you want, want honors?

MS. RAMSEY: Thank you, your Honor. Yes, I would. I appreciate it.

Your Honor, I'm going to ask, with the Court's permission, my colleague, Davis Wright, to put up on the screen some slides that we prepared for today and have ready to distribute to the other parties.

THE COURT: All right. We'll see how this goes. I think there was some conversation beforehand with our tech staff as to putting these up.

MS. RAMSEY: Uh-huh (indicating an affirmative response).

THE COURT: All right. Let's see how we go.

MS. RAMSEY: That's correct, your Honor. Right.

THE COURT: Very good, excellent.

MS. RAMSEY: Terrific.

So, your Honor, I'd like to start by calling back to the hearing on the first day in the DBMP case where your Honor observed:

"This is new. For those of us who have been doing debtor-creditor work for 30-odd years, the idea that you can have a liability go through a merger and not have a liability on one part of your entity is a little bit of a new thought.

Also, with regard to the general bankruptcy concept that when you come into bankruptcy you bring all of your assets and subject them to the risk in order for the bankruptcy relief."

So, your Honor, with that, the Court indicated that it was going to enter the TRO, but would, was not necessarily inclined and was reserving judgment with respect to entry of a preliminary injunction --

THE COURT: Uh-huh (indicating an affirmative response).

MS. RAMSEY: -- to be a decision that the Court was going to make after a contested evidentiary hearing, which is now scheduled, as the Court knows, for early September.

So this is -- I wanted to call back that, signify the Court because we are going to ask the Court today to revisit that determination and we're ask -- ask -- going to ask the Court to, to make the opposite call today.

Your Honor, this is the third time, as Mr. Maclay mentioned, that we've seen this same pattern. We saw it in Georgia-Pacific back in November of 2017, we saw it with CertainTeed in January of 2020, and now we've seen it with the two Trane entities with virtually the identical type of proceeding that the Court has seen before. These companies traveled to Texas, were there for a very few hours -- in this latest iteration less than two hours -- and then one, the, the entity that had the majority of the assets went back to Delaware or to Delaware and the entities that were the repository of the asbestos liabilities, a funding agreement, and, and very little else, traveled to, to North Carolina and

prepared for a bankruptcy.

What is a little unique about this particular transaction, your Honor, is that this is the second part of a, a series of transactions. In March of this year, there was, there were a series of transactions that are known as the Reverse Morris Trust Transaction. It, it's, essentially, a, a tax-sheltering structure and I don't want to get too deep in the woods, your Honor, but I think it's important to sort of understand how this fits in with the overall picture.

In the top left-hand side, you will see that these entities started out as Gardner Denver and what we've called Old Ingersoll Rand. Following it to the right, then what occurred was that Old Ingersoll Rand spun off Ingersoll Rand Industrial, one of its operating entities. It then merged Old Indust -- IR Industrial merged with Gardner Denver. And this is the part that is critical to us, your Honor. As part of that, 1.9 billion in cash and 6.9 billion in stock traveled out of Gardner Denver and went to Old IR and then, in the last days, your Honor, New IR changed its name -- Gardner Denver changed its name to New Ingersoll Rand and Old Ingersoll Rand became Trane. The importance to us, your Honor, is that this transaction resulted in almost $7 billion of value traveling out of the entities that are now depending on the two iterations of, that are called New Trane and New TTC to pay these obligations.

We then go to, your Honor, what you've seen before, which is the funding agreement allocations between these entities. We have Trane U.S. and Trane Technologies providing a funding agreement to Aldrich Pump and Murray Boiler and we have a tiny little part of the agreement that provides for an indemnification by those entities back to Trane, which is the same sort of structure we've seen before, and, and it's structured that way, as, as we advised the Court before, to give the debtors an argument that there's some reciprocal duty and they have some skin in the game in this, but ultimately, as they've candidly told the Court, these are backstops. This funding agreement is a backstop and the obligations from Trane U.S. and Trane Technologies mean that they are the real parties that have a financial interest in this case.

What is unique about this case, as, as Mr. Maclay advised the Court and as we put in our brief this morning, is that here we have a funding agreement that seeks to limit the Court's ability to determine whether Trane U.S. and Trane Technologies receive 524(g) relief and they do that by providing that the only kind of plan that can be confirmed is a plan that provides these non-debtor funding parties with all of the, all of the protections of section 524(g) of the Bankruptcy Code. They also go on to augment those provisions by saying that, that the agreement, the funding agreements terminate on the effective date of a plan and they provide that, you know,

this has to be a lump sum. And you heard some justifications this morning about that. This is just clarification and that was what, you know, of course, was always meant, but the Court may be aware that the funding agreements are reflected as having been amended on June the 15th -- so last Monday before the filing -- coincidentally after, in the Bestwall case, a plan was proposed. It did not provide 524(g) relief to the plan funders and provided for an assignment of the funding agreement.

So this is not accidental or clarification. This is an effort to close a loophole in the prior funding agreements.

If we go to the implications, your Honor, of, of these changes to the Court, it requires the Court to provide 524(g) relief that we contend is inconsistent with the language of the statute, itself. We believe that these parties cannot qualify for 524(g) relief. And so that makes this funding agreement as they are proposed in this bankruptcy completely illusory.

The payors are, you know, are going to argue, also, we believe, as a result of the lump sum provision that they have to have an estimation proceeding 'cause they're going to contend to the Court that that's the only way they can figure out what that lump sum should be. Through these modifications to the funding agreement and through the other provisions that were already in the funding agreement, they are looking to restrict all of the normal rights that creditors have. They're

trying to take away the ability of the creditors to file any plan or to assign these agreements or to otherwise take any action that they do not get to control. As the Court is aware, there are additional flaws in the funding agreements that we have pointed out time and again. The funding agreements, again, are not secured or guaranteed. They do not prohibit transfers of assets. In fact, they expressly permit transfers of assets. They do not provide any kind of restrictions on incurrence of debt. They do not prevent further divisional mergers from taking place.

So as you go through these, your Honor, they have -- the, the structure of the funding agreement means that, that payors are completely in charge of these bankruptcy cases and it's clear from the new funding agreement as now modified that they are running the case for their own benefit. That's all they're seeking to do. These cases are about the nondebtors.

So if we can go to the next slide.

I, I believe that debtors' counsel argued that under Robins the Court does not have to really identify all or really evaluate all of the four factors for a TRO. The, the Court can, you know, really, just sort of look at, at the first factor. That is, we believe, not a correct statement of the law, your Honor. We have cited in our papers the Winter case in the Supreme Court which specifically requires that each of the four factors be satisfied in order for a TRO to, to issue.

As the Court -- just one more -- before we get into the, the merits of that, one more piece of this puzzle, your Honor, is that what we've seen that's also different in this case than the other two cases, in Bestwall and then in DBMP, is that although the debtor is sort of throwing out the potential of, of settlement, it's very clear from the Informational Brief that has been filed in this case that the debtors intend to move for immediate discovery and an immediate estimation. On Page 36 of their Informational Brief when they're talking about the goals of this case they, they say:

> "Consistent with their intent to move these chapter 11 cases forward from the start, they intend to promptly ask this Court to begin a process to help them determine the aggregate amount of the Debtors' current and future asbestos liability for plan purposes."

What that means is that the debtors and their plan funders or the, the funding parties are asking the Court to value the asbestos claims through a proceeding in a bankruptcy case as opposed to a way that those claims are valued in the tort system. And I'll come back to that as we go through the individual factors, your Honor.

The, the first factors -- the four factors are listed here and they were correctly identified by the debtors, likelihood of a successful reorganization, imminent risk of irreparable harm, balancing of the harms, and public interest.

And, and debtors' counsel cited to the Robins case about, saying that failure to enjoin is appropriate when it would adversely affect the bankruptcy estate or would detrimentally influence and pressure the debtor through a third party. Neither of those things, your Honor, are present here.

The debtors, of course, have, have the burden of meeting the TRO factors that are proposed. There are, actually, four categories, the way that they were described in the papers, that the debtors seek to extend TRO protection to. The first are the former Trane Technologies Company LLC entity. We've defined that as OLD TTC. The former Trane U.S. Inc. entity, Old Trane. Those two entities were the entities that went through the divisional merger and resulted in the two debtors and the two new identified plan funders under the funding or funding -- not plan funders -- the entities that are the obligors, the payors, under the funding agreement. The third is non-debtor affiliates that are identified on Appendix B and those include Trane Technologies LLC, New Trane, and Trane U.S. Inc., New TTC. The next are entities that are not affiliates of the debtor, but are also identified on Appendix B as to entities that, that it has asserted Aldrich and Murray have contractual indemnification obligations to and the final party are the insurance entities, also identified on Appendix B.

So what claims are they looking, first of all, to

enjoin? That's the first thing that we'd like to call the attention, the Court's attention to. They define the claims as Aldrich/Murray asbestos claims and that means any asbestos-related claim against either debtor, including all claims related in any way to asbestos or asbestos-containing materials asserted against or that could have been asserted against Old Ingersoll Rand or Old Trane. And they go on to say:

> "For the avoidance of doubt, Aldrich/Murray Asbestos Claims include all asbestos personal injury claims and other asbestos-related claims allocated to, respectively, Aldrich from Old Ingersoll Rand New Jersey or Murray from Old Trane in the documents implementing the 2020 Corporate Restructuring."

These are allocated. They're allocated on purpose. They're allocated by an entity that is looking to avoid bankruptcy filing, itself.

So the first question is, the first criteria, no successful likelihood of, of reorganization is possible here. The debtors contend that they have a likelihood of success because they can afford to pay for it, they say, because of the backstop provided by these funding, funding agreements. However, the conditional nature of the funding agreements in these cases do not permit that funding because the funding agreements in these cases are completely subject to facts evolving exactly as the payors would have them evolve and the

claimants agreeing. Because 524(g) plans at their base, at their root require agreement and consent to whatever it is that the debtors believe that the liability is or that they choose to pay.

We also raise this for -- New TTC and New Trane, we believe, are ineligible for 524(g) relief because they have independent direct liability to the, to the asbestos claimants as successors to the Old Ingersoll Rand and Old Trane entities.

The debtors have not sought, to our, best of our information, any open dialogue with the claimants or any of their representatives. They have not come to this Court with any agreement. They can't demonstrate a likelihood of agreement. The Court has witnessed what has occurred in the other case that is pending. It's been pending longer, the Bestwall case. That case has been pending a little over 2-1/2 years and, and the debtor's counsel has recently announced that the parties are very, very far apart and the debtors in that case, the debtor in that case contends that the only way to bring the parties together is through an estimation trial.

Here, as I mentioned, the Informational Brief in this case is a declaration of war because what the, the debtors and the payors under the funding agreement want to do is have this Court allow them to conduct discovery and challenge -- and they've laid out some of the challenges they would intend to make -- the claims and to come to some estimation of liability.

Because, fundamentally, the only way to value these claims is on an individual basis, which can't be done in this case.

So we can see that this is a case that is more about trying to contain and control than to resolve fairly the asbestos claims.

Finally, your Honor, apart from New TTC's and New Trane's commitments, such as they are, in the funding agreements no other protected party who is proposed to benefit from the TRO has made any commitment or a representation that such an entity would contribute to any section 524(g) trust that might be created.

So because of, of that, your Honor, we don't believe that the debtor has sustained any proof of a likelihood of a successful reorganization and, in fact, we believe that they cannot demonstrate that based on the, the language of the new funding agreements.

To move to the second factor, your Honor, no imminent risk of irreparable harm to the debtors, we start with Old TTC and Old Trane. The Court heard debtors' counsel say that and made a, a point twice of saying none of the proposed protected parties other than Old TTC and Old Trane manufactured or sold any asbestos or asbestos-containing products at issue. Well, that's true. Neither did the debtors. These are the responsible entities, Old TTC and Old Trane, but the question is why do those entities need the protection of this Court and,

more than that, based on the inequitable conduct that they have engaged in where they have, they have gone through a transaction that took significant value out of these companies and then engaged in a divisive merger, which is expressly and exclusively designed to treat just the asbestos claimants differently than every other creditor of those entities.. Those entities, we believe, have engaged in conduct that, that makes them ineligible for this.

There's also, your Honor, no allegation that those entities were not able to pay asbestos claims, present and future, in full. These are the responsible parties and the only alleged harm relates to what has been structured to be harm. These are the entities that set this up so that they could then cry that they need this Court's assistance to protect them.

Moving to the next set of entities, your Honor, are New TTC and New Trane. Here, the, again, the debtors allege that these entities are able to pay all the claims in full. They, they make that representation on Page 25 of the Informational Brief. They go on to say a determination -- I'm sorry -- Page 25 of the motion for, for preliminary injunction -- a determination of liability against these entities, moreover, would satisfy some of the asbestos claims and since they're the real parties who have the financial interest, anyway, it's not logical that those entities would not defend

and resolve the claims to the best value that they could. Ultimately, when they pay them, it's a net neutral to the debtors because it's going to reduce the funding obligations, but it's also going to take some of these claims out of the estate. It simply has no harm, let alone irreparable harm to the debtors.

Meanwhile, the other thing that we're seeing, your Honor -- and this is in our brief -- is that on June 5th, not long before this bankruptcy was filed, New TTC announced a dividend to its shareholders payable in September of, of approximately $127 million. That is not different from what we've seen in the Bestwall-Georgia-Pacific context, which is that there are continuing dividends being paid to shareholders. If those entities were in bankruptcy, that would be something that, that was, was a violation of the absolute priority rule. Equity should not be being paid while creditors sit unpaid.

Finally, your Honor, again, the only alleged harms that, that the debtor has made are those that they specifically put in place as part of the structure. Through the secondment agreement it is New TTC and New Trane that are determining which employees are going to be seconded to these debtor entities. They could provide any other employees that they wished to be seconded. It is not necessary that the same people that would necessarily be involved in asbestos litigation, if you believe that, that there are individuals

that uniquely would have to be involved in that, there's no reason why those are the same individuals that would need to be assigned to these debtors as part of their restructuring effort.

Your Honor, I heard, also, debtors' counsel argue that, that tort litigation was inefficient and, and trusts are better. They're more efficient for asbestos claimants. And obviously, we have a couple of responses to that. Partly, our response is the asbestos claimants have their own view about what is best for them and they'd like to be litigating and pursuing their, liquidation of their claims in the tort system, at least, at least and unless there is an acceptable alternative to them.

But the debtors' claims of efficiency are -- are simply -- fall on deaf ears because while they may view this as efficient, there is, in fact, irreparable, imminent harm to the claimants.

Moving to the next group, your Honor, new debtor, non-debtor affiliates other than New TTC and, and Trane, the debtors have made no showing at all of, list the harm for the 102 other non-debtor affiliates on their list. This is a standard, the TRO standard that must be met on an individual basis with respect to every single entity that is listed and the debtors have simply not made that. The debtors have not alleged that most of these non-debtor affiliates have been sued

even, other than New TTC and New Trane. There's no allegation that those entities would contribute to this reorganization case, in any event, and many of the proposed protected parties are foreign entities and there's been no representation that they would consent to jurisdiction before this Court, which we believe would be a fundamental requirement that should be a condition of this Court providing any sort of injunctive relief.

Moving to the next slide.

Again, the debtors have not alleged any basis to enjoin an action against most of the non-debtor affiliates. They, they simply have failed to make any showing at all.

The next group, your Honor, are entities that are not affiliates of the debtors, but are indemnified, they said, or, or as to which Aldrich or Murray otherwise has agreed to be responsible. But that language is a little misleading, your Honor, because all of these indemnifications were assigned. All of these indemnifications were part of assignments during that divisive merger transaction. These are not agreements that Aldrich or Murray in their 48 days of existence prebankruptcy have made. Fifteen of the named entities, your Honor, are listed, but there are another large group of, a potentially large group of unidentified other parties which include affiliates of all of the foregoing under various agreements and their respective officers, directors, partners,

stockholders, employees, agents, representatives, and any permitted successors or assigns. In the new, in the amendment today, your Honor, this morning's amendment to, to Annex B, there's also another group of, of unidentified proposed indemnitees, Ingersoll Rand U.S. HoldCo. and its affiliates, including without limitation. Gardner Denver, Inc., Gardner Denver Holdings, Inc. and Ingersoll Rand are each a protected party, to the extent named in an asbestos claim.

So we have all kinds of, of additional parties, your Honor. Who knows how many there are out there. With respect to these indemnification obligations, again, your Honor, they're contrived. They're all part of a structure that is designed specifically to obtain relief in this case. In a full-pay case, though, your Honor, indemnity claims are going to replace the claims of the asbestos claimants once liquidated.

So there's no risk of irreparable harm. You're trading one creditor for another and to propose that indemnified parties receive the benefit of an injunction so that the asbestos claimants can't recover puts one set of parties above another and makes absolutely no sense at all. It's, it's an absolute bias against the asbestos claimants.

Moving to the insurers, your Honor, there are proposed insurers who have insurance-related agreements or they're like, they're under Aldrich or Murray again, they were assigned. In

a full-pay case, your Honor, there's no reason to protect the insurance assets. Everyone's going to be paid in full. So there's no risk of irreparable harm. The asbestos claimants are really the intended beneficiary of these contracts and they should be permitted to continue to collect from every available resource as long as it's not going to harm this estate and it's not going to harm this estate because there's a backstop for the payors.

Recently, in the Imerys bankruptcy case, your Honor -- that's the, the talc supplier to Johnson & Johnson --

THE COURT: Right.

MS. RAMSEY: -- and other products -- no temporary injunctive relief was sought or entered to protect the available insurance and litigation continued and has continued over the past 15 months. As your Honor has heard in Kaiser Gypsum many times the argument bankruptcy is not intended to benefit insurance companies. And finally, your Honor, stays are frequently lifted in cases to make sure that insurance proceeds are allowed to be pursued during the bankruptcy, provided that it will not depreciate the assets that are available, in any event, to, to the other claimants.

Moving to the third standard, balancing of the harms, your Honor, balancing of harms in this situation favors the claimants. The claimants have immediate economic interests. As Mr. Maclay said, you know, at the beginning, these

claimants, the money that they are seeking mean the difference between relative comfort at the end of their life or sometimes foregoing that comfort. It means the difference between a dying person's peace of mind that they have left behind, you know, security for their family versus the absence of that peace of mind. It is dismissive and callous to assert that asbestos claimants would suffer only mere delay. It has real and tragic consequences and, in addition to the emotional and medical consequences it has, in some states claimants will lose rights of compensation upon death. And so that -- and, and also, to the extent that litigation is not continuing, rights may be lost because a claimant's memory loss or death may impact the ability to pursue claims in the future.

While the automatic stay is automatic, non-debtor injunctive relief is discretionary with this Court and the debtor offers no justifications to treat the asbestos claimants differently here than it plans to treat all of the other creditors of New TTC and New Trane.

We heard debtors' counsel say what kind of bankruptcy do you have? How -- how will -- how are you going to have a bankruptcy case if at the same time claims are being eliminated and paid during the course of the case? But inconsistently at the beginning in the opening argument the Court heard how things are being filed every single day and litigation continues to, to go on every single day and, and it goes on day

in and day out, were the phrases that I believe counsel used. It is the case that the current claimants, to the extent that they are valuing, liquidating, being paid in the ordinary course, are likely to be replaced by individuals who are diagnosed and who will then have cognizable claims that they will pursue in this bankruptcy case in litigation, but we would advocate to the Court that it is a much more appropriate and effective way for those claims to be valued in the real world in the tort system, which is the American judicial system, and you heard a lot of things about how, you know, this Court is, is supposed to intervene and fix the way that the justice system works, but we do not believe that that is the purpose of this Court.

Your Honor, in a full-pay case there's simply no reason --

Moving to the next slide.

-- that there is a need to protect limited assets so that they can be fairly allocated because 524(g) at its root was designed, really, in mind of cases where there was a limited fund and claimants should share in that limited fund. The use of 524(g) in a contest in which there is a full-pay case does not require that every single claim be valued exactly the same. In fact, in every single asbestos trust there is the constitutionally required exit to the tort system, ultimately, so that a claimant can try its claim before a jury, as is its

right. In, in a trust, which is a full-pay, a trust, it is perfectly appropriate for claimants to be valued in ways that would otherwise be more typical of valuation mechanisms in the tort system.

So the idea that this is somehow contravening the purposes of 524(g) is just not a correct statement.

The protected parties had been out, at this litigation for, for some time and there is no reason to believe that in the next 14 days that any significant change is going to affect them by not granting this TRO. The debtors are not going to suffer any harm. To the extent that claims are liquidated and paid, they'll simply move out of this bankruptcy and that will simplify and expedite the bankruptcy case and, in fact, it'll eliminate the reason for this Court to have extensive litigation over whether or not an estimation proceeding is appropriate in this context and how claims are to be resolved.

And finally, your Honor, denying injunctive relief will expedite the resolution of this case because it will mean that there are countervailing urgencies and pressures that are on the debtor, not just on the claimants.

Your Honor, moving to the final point, no public interest. There's -- a TRO would normalize an otherwise existential threat to the integrity of this entire system. This is a carefully structured scheme which contravenes everything that Congress established in the Bankruptcy Code to

balance the competing interests of debtors and creditors. This is not a normal reorganization. We're now seeing it for the third time and, perhaps, it's a little less shocking than it was the first time, but this is not a, a normal bankruptcy. We believe the Court had it exactly right that, that the idea that a nondebtor can sit outside a bankruptcy case, go about its business, capture one set of creditors in a trap, and hold them there for, indefinitely. It is, is simply not the way that this process was intended to work.

A stay or injunction allows the debtors to receive, the, the protected parties to receive the equivalent of an automatic stay while not having that. So they are free of disclosure and reporting requirements. They're outside the Court's supervision. They can continue to engage in whatever transactions they want, pay their shareholders, pay their officers dividends and bonuses and they are completely exempt from all processes, including the fact that as a result the quarterly fees that are paid as a result of these matters are a fraction of what would be made, paid if the, the real party in interest were to be a debtor in the case.

There is a strong public interest in the timely compensation of personal injury claimants and in the principle that all entities should be held accountable for the harms that they cause. To the extent that the debtors or the payors under the funding agreement have defenses like chrysotile isn't

really that injurious and mesothelioma is a naturally occurring disease, if they want to advocate those positions, there's a place for them to do it. It's in the tort system. Those issues are litigated every day and that's where they should litigated those issues.

The public interest in a successful reorganization applies in every case, but in particular, your Honor, this is not a case about a successful reorganization. There's nothing to reorganize. You heard a statement that these entities are mere holding companies. They really don't have much in the way of cash. You heard that in connection with the cash management. This is not a true reorganization. This is an effort to take advantage of one provision of the Bankruptcy Code which is legitimate for a company to take advantage of if it's otherwise prepared to subject its assets to scrutiny, to the transparency that this process requires, to comply with the requirements of the Code, to otherwise engage as a real party in interest. It is not intended for reorganizations to be corrupted the way that the debtors and the payors would have it.

So, in conclusion, your Honor, the debtors have failed, we believe, to satisfy their burden. They will -- denial will expedite a full evidentiary hearing on the merits of a preliminary injunction. If the Court were to deny it, there's no question that we're going to get before the Court

much more quickly where the debtors are going to try to prove up their entitlement to a preliminary injunction and a committee appointed in the case can contest that. It will certainly not linger because there's ongoing discovery that the claimants have to initiate in order to get the information to challenge it. It will move it along.

And finally, your Honor, it should not be the claimants' burden to challenge an existing injunction and the truth is that we all know that once something's out there it's harder to remove than it is to put it in place in the first instance.

So again, your Honor, we are asking the Court to deny the requested TRO. We understand that this is unique. We understand that this is an extraordinary request in the scheme of bankruptcy, but these cases present extraordinary issues.

The final thing I, I want to say, your Honor, is there was some discussion about the entry of the preliminary injunction in Bestwall. It is correct the preliminary injunction was entered November of 2018, I believe, and that preliminary injunction is up on appeal and as the Court knows, we are contesting and going to an evidentiary hearing in the DBMP case. These cases present unique issues. This case presents an even more set of unique factors. Your Honor, we believe this is the case where the debtors and the effort of the parties that are engaging in those unique transactions

designed to abuse and misuse the Code should be told that the Court is not going to permit that to continue.

Thank you.

THE COURT: All right. Thank you.

I think at this point it probably would behoove all of us to take a ten-minute recess for comfort and then pick up with Ms. Simpson's arguments.

Anyone opposed?

(No response)

THE COURT: Okay. Don't turn off your videoconference. We'll leave it right where it is and we'll be back at 20 till, okay?

(Recess from 4:41 p.m., until 4:53 p.m.)

AFTER RECESS

(Call to Order of the Court)

THE COURT: Have a seat, everyone.

Okay, Ms. Simpson. Ready to hear from you.

MS. SIMPSON: Thank you, your Honor. Thank you. Linda Simpson, JD Thompson Law, representing Richard and Calvena Sisk. Mr. Kazan's also on the phone, or on the video, and he is the personal injury attorney for the Sisks.

I know your Honor has had mountains of pages to read today in a short period of time and I just wanted to see if you had had an opportunity to read the objection?

THE COURT: I did.

MS. SIMPSON: Okay. Thank you.

I, I'm not going to repeat what's in that objection or what the other parties have stated, but I just wanted to emphasize a few points.

Assets have, assets have been removed from the reach of asbestos claimants. The Reverse Morris Trust Transaction removed nearly 7 billion of value. The Texas divisive merger removed the vast majority of what was left in the Ingersoll Rand Enterprise.

As -- with respect to the funding agreement and the statements that the debtors' counsel made that the added provisions -- these were not in DBMP or the Bestwall cases -- but that those were merely there to describe the process, that argument is disingenuous. I've never heard of smart people in large firms in big cases adding provisions to agreements that have no substantive effect. But given that, the plain reading of those provisions, as set out in the Sisk objection, means that the funding agreements do not provide assets to the Sisks or other similarly situated asbestos victims unless the Court gives away its, to the debtors, its authority and responsibility to determine the appropriateness of 524(g) relief as to non-debtor entities and the Court is willing to limit any plan considerations to the one the debtors propose, a lump sum payment plan or a sum certain agreed to by the debtors.

Because the Ingersoll Rand Enterprise put only shell entities in bankruptcy, the Sisks and other asbestos claimants have been deprived of their ability to look at the transactions and have a full picture of the assets that should have been available to satisfy their claim. There's no transparency in this case. There's no transparency as far as the claimants go or the Court and transparency and disclosure are longstanding hallmarks of the bankruptcy process.

There's been a lot of references to the Garlock case and Judge Hodges, to this and that. I want to go back a little before that and recall a case with Thomas Mitchum (phonetic). It was in 1995 and it dealt with the debtor's lack of disclosure. In that, Judge Hodges quoted a Steely Dan song and he said, "Your black cards can make you money. So you hide them when you're able. In the land of milk and honey, you must put them on the table." In this case, the Ingersoll Rand Enterprise doled a few cards to the debtors and kept the rest hidden under the table. If they want to consume the milk and honey that this Court has to offer in the form of a TRO and relief, they must submit the full disclosure and transparency and put their cards on the table. In this case, the machinations of Ingersoll Rand Enterprise, they're contrary to what Congress intended for the bankruptcy system and for asbestos cases. Put simply, the actions of the Ingersoll Rand Enterprise abused the bankruptcy process by first hiding their

assets and then trying to hide them from their victims.

This Court is being asked to grant extraordinary relief in the form of a TRO to protect the Ingersoll Rand Enterprise, while what the Inger, while what that same enterprise has done is to strip all protections from the real victims like Mr. Sisk.

So why is this Court being asked to protect those who have already more than adequately protected themselves? When do we protect those who are actually injured? Your Honor, the time has come to protect real people, like Mr. Sisk, from the overreach and abuse of these companies. On behalf of the Sisks, I would ask the Court to deny the TRO.

THE COURT: All right.

MS. SIMPSON: Thank you, your Honor.

THE COURT: Anyone else who has not had an opportunity to speak once at least with regard to the current motion?

(No response)

THE COURT: Anyone?

(No response)

THE COURT: All right. Any rebuttal?

MR. NEIER: Your Honor --

THE COURT: Yes.

MR. NEIER: Your, your Honor, are we going to take examination of witnesses at some point?

THE COURT: Well, that's the question. I've, I've

heard discussion, but I haven't heard anyone asking about witnesses.

MR. NEIER: Your Honor, I'd like an opportunity to examine both witnesses on behalf of the asbestos claimants. It's David Neier for the asbestos claimants.

THE COURT: All right.

The only thing, folks, it's now 5:00 and we're obliged to be out of this building by 6:00. So we're going to have to do what we can today and we may not finish.

So don't mean to hamstring you, Mr. Neier, but those are the practical realities of what we're doing, so.

Did anyone else have anything by way of argument that did not involve examination? I'm just asking now.

(No response)

MR. NEIER: And, your Honor, I would expect my, my witnesses to take, you know, five, ten minutes, each --

THE COURT: Okay.

MR. NEIER: -- at most.

THE COURT: All right. Mr. Neier, who did you want to ask?

MR. NEIER: First, I'd like to call Mr. Pittard.

THE COURT: Okay.

Is Mr. Pittard on the line?

MR. PITTARD: Yes, I'm here, sir.

THE COURT: All right. Mr. Pittard, if you'll raise

your right hand, since we are not physically present.

RAY PITTARD, CLAIMANTS' WITNESS, ADMINISTERED OATH

CROSS EXAMINATION

BY MR. NEIER:

Q Good afternoon, Mr. Pittard. My name is David Neier.

Do you have a copy of your declaration handy?

A I can get it. I have, I have an electronic copy I can pull up.

Q Okay.

A Give me one moment here.

Okay.

Q Okay, great.

Now, Mr. Pittard, you've been a Vice President of the debtors since the, the corporate transaction on May 1, 2020, is that correct?

A Yes, that's correct.

Q And you've worked for Trane, Ingersoll Rand, various affiliates since 1988, for over 30 years, is that correct?

A Yes, that's correct.

Q And with respect to the May 1 transaction, could you turn to Annex 1 of your affidavit?

A Annex --

Q That's the -- that's the -- that's the chart.

A That's the chart. Okay. Give me a moment.

Q Okay. I think it may be on Page 22 of 61 of the PDF.

A Okay.

I have it. Okay.

Q So, Mr. Pittard, as part of the transaction you see the gray box that's labeled Aldrich Pump LLC and that's the debtor in this case, Aldrich Pump, is that correct?

A That's correct.

Q And that's why it's gray, is that right?

A Yes. 'Cause it highlights it at the bottom. It says it's the debtor.

Q And that entity has the asbestos-related claims that were formerly part of the, the prior entities, is that correct?

A That has part of it. I think Murray Boiler, also. There is Aldrich Pump, which is Ingersoll Rand New Jersey, Old IR, and Old Trane is Murray Boiler, the other gray box.

Q We're going to get to that in a minute.

A Okay.

Q With respect to all the other liabilities of those entities, they -- the -- those liabilities are now in the white box that's directly to the right of the gray box Aldrich Pump, is that right, Trane Technologies Company LLC

A That's, that's correct. That's correct.

Q And, and now let's go to the, the other transaction that you were referring to, which also took place on, on May 1.

With respect to Murray Boiler, that's the other gray box on this chart, is that right?

A Yes, that's correct.
Q And that's the, that's the other debtor in this case, is that right?
A That's, that's correct.
Q And once again, Murray Boiler has all of the asbestos liabilities that existed for all of the other entities other than the ones we just talked about with respect to Aldrich Pump, is that correct?
A Yes, that's correct.
Q And the, the remaining liabilities, that is, the liabilities to other creditors other than asbestos liabilities, those are in the white box that is at the other end of that arrow leading into the gray box, that is, Trane U.S. Inc.. Do you see that?
A Yes, I believe so. That's correct, I believe.
Q And would you agree with the statement made by Mr. Erens earlier that you made the, or the, the entities made the determination that chapter 11 would be a better option than the tort system in these cases?
A The, the board of directors made a decision after deliberation to select chapter 11, as, as explained.
Q And when you say "the board of directors," which board of directors?
A The Aldrich Pump board of directors in that case and the Murray Boiler board of directors.

Q And who made the determination to enter into the divisional transaction, the divisional merger, on May 1, 2020?
A Those were recommendations that were presented by outside counsel and internal counsel and that was decided through the, the Trane Technologies Company.
Q Okay. So the, the Trane Technologies Company made the determination to enter into the transaction?
A Yes.
Q And they made, they made the determination to go into the transaction so that these entities could file chapter 11, is that correct?
A No, that's not correct. They made the decision to seek more flexibility in how we address the asbestos liability, as explained by Mr. Erens.
Q So you're saying that these companies went into the divisional merger and filed bankruptcy within 30 days, 31 days, something like that, but there was no intent on the part of the companies at the time that the divisional merger was entered into to file a bankruptcy case and to seek TRO and a preliminary injunction?
A No. During that time there was deliberation by the boards repeatedly on the options and alternatives and those boards made independent decisions to, to proceed with the chapter 11, but alternatives were looked at.
Q Okay. How about with respect to other liabilities of these

companies? Did they make any determinations with respect to those liabilities, that they would retain those liabilities?

A I'm not sure what liabilities you refer to.

Q The non-asbestos liabilities. They retained those liabilities, correct?

A I think the liabilities that Aldrich and Murray have are, primarily, related to, to asbestos, if I understand? I'm not sure I follow your question, I guess.

Q Yeah. I'll try and make it a little clearer.

Can you go to Paragraph 14 of your affidavit?

A Paragraph 14. Give me a moment.

Q And first we'll do the Aldrich Restructuring.

A Sure.

Okay. Paragraph 14.

Q So I would direct your attention to Paragraph 14(c).

A Correct.

Q It says, "Aldrich was allocated certain of the Old IRNJ's assets" --

What does that stand for, by the way?

A That's Ingersoll Rand New Jersey, Old Ingersoll Rand.

Q Uh-huh (indicating an affirmative response).

-- "as set forth below, and became solely responsible for certain of its liabilities, including the asbestos claims against Old IRNJ and the defense of those claims," you see that?

A That is correct.
Q And then go to the next paragraph, Paragraph (d) below that.
A Correct, okay.
Q And it says, "New Trane Technologies was allocated all other assets of Old IRNJ and became solely responsible for all other liabilities of Old IRNJ," is that correct?
A That's correct. That's correct.
Q And is that your understanding of the transaction?
A That's my understanding of the transaction.
Q And you're saying that at the time that you went into this divisional merger there was no intent to file a subsequent bankruptcy on behalf of the new entity, Aldrich Pump, is that correct?
A What I'm saying was we were seeking flexibility and we wanted to set this up to give ourselves options to look at the best way to resolve it.
So the boards met and looked at those options and the option that was chosen at the end was the chapter 11 filing. So that's, that's all I know.
Q So it was on the table?
A At the time there was, flexibility was on the table, but there was no options predefined.
Q Can we agree that with respect to Murray Restructuring it's the same setup, Paragraph (c) and (d), also in Paragraph 14 of

your declaration --

A Yes.

Q -- that Murray became solely responsible for the asbestos liabilities and New Trane was allocated all the other assets and liabilities, is that correct?

A That's correct.

Q All right. Thank you.

MR. NEIER: I have no further questions, your Honor.

THE WITNESS: Okay.

THE COURT: Any other questions of this witness? Any party?

(No response)

THE COURT: Any redirect?

(No response)

THE COURT: All right. Thank you.

MR. TORBERG: No, your Honor. This is David Torberg. No redirect. Thank you.

THE COURT: Thank you.

MR. NEIER: Your Honor, hopefully, we can get through Mr. Tananbaum just as quickly.

THE COURT: Okay.

Mr. Neier, go ahead.

Mr. Tananbaum, let me get you sworn, first. If you'll raise your right hand.

ALLAN TANANBAUM, CLAIMANTS' WITNESS, ADMINISTERED OATH

THE COURT: All right, very good.

Please proceed.

CROSS-EXAMINATION

BY MR. NEIER:

Q Good afternoon, Mr. Tananbaum.

MR. NEIER: Oops, okay. We lost him.

THE WITNESS: A little too much --

BY MR. NEIER:

Q Lean back.

A A little bit too much sun. Apologies.

Q No problem.

I would ask, also, do you also have your declaration handy?

A I do. I printed out a clean copy and I have it in my hands.

Q Okay. That's good.

Mr. Tananbaum, you're the Chief Legal Officer of the debtors since the May 1, 2020 transaction that created them, is that correct?

A That's correct.

Q And you, you like -- I'm sorry. You okay?

A Yeah. Just controlling the sun. Sorry.

Q Okay. And you still work for the, the Trane entities, the non-debtor Trane entities, is that correct?

A That's correct.

Q You and, and Mr. Pittard are both seconded to the debtors

for the, the length of these cases, is that correct?
A That's correct.
Q And you've worked for Trane Technologies for 15 years, since January of 2005, is that correct?
A That's correct.
Q And as the Chief Legal Officer you're responsible for the defense and the resolution of all the asbestos-related claims against the debtors, is that correct?
A Yes, that's correct.
Q And would you agree that -- I don't want to repeat what just happened with Mr. Pittard because I think it's pretty clear now -- that all of the asbestos-related claims have been allocated to the debtors and all the other liabilities, non-asbestos liabilities have been retained by the other Trane and, Trane entities, is that correct?
A That, that's correct, along with the asbestos-related assets which went to Aldrich and Murray with the liabilities.
Q Uh-huh (indicating an affirmative response). But the other liabilities went with the non, or were retained by the nondebtors. Only the asbestos-related entities, only the asbestos-related claims were assigned to the debtors, is that correct?
A That's correct.
Q Okay.
MR. NEIER: I may be done, your Honor. Just give me

one second.

THE COURT: Take a moment.

(Pause)

BY MR. NEIER:

Q Did you have any role in the, in the, the corporate restructuring transaction?

A Not as such. I'm not a corporate transactional lawyer and the, the restructuring was accomplished via internal and external corporate M&A attorneys.

Q Okay. And who were those corporate M&A attorneys?

A Well, you've got the Jones Day team that has, has identified itself at the hearing and, and as well as some internal staff as well.

Q And did they represent the, the non-debtor Trane-Ingersoll Rand entities at the time of the corporate transaction, the divisional merger?

A Yeah, that's accurate.

Q Okay.

MR. NEIER: Your Honor, I have no further questions.

THE COURT: Other parties of this witness?

MR. TORBERG: Nothing for the debtor, your Honor.

THE COURT: Anyone?

(No response)

THE COURT: All right

Thank you. If you were standing, you can step down,.

but we're --

Any other evidence?

THE WITNESS: Thank you, your Honor.

THE COURT: Any other witnesses to be called, Mr. Neier?

MR. NEIER: Not by, not by me, your Honor.

THE COURT: Anyone else wishing to present evidence?

(No response)

THE COURT: Okay.

All right. Any -- and I think I've already previously called for anyone else who wanted to make arguments in opposition to the motion.

So I guess it goes back to the debtor at this point for, for rebuttal, if, if desired.

Mr. Erens?

MR. ERENS: Yes, your Honor. Yes, we would like to do rebuttal. Your Honor, I'll try to keep it relatively brief, given the hour 'cause I know you do have some time limitations.

We heard a tremendous amount of material from Ms. Ramsey. The reality is we've all heard it before. We've heard all of those arguments in the Bestwall case. They were all rejected by Judge Beyer. Now the matter is on appeal, but we do have a decision in the Bestwall case that addresses all of those issues and they were all rejected for all the same reasons that I indicated at the beginning, your Honor, that you

should enter the TRO. If we're going to have a legitimate bankruptcy, your Honor, the claims have to be in this case. They can't be litigated throughout numerous courts across the country. That would eviscerate the stay and the purpose of the bankruptcy case.

But I do want to address a couple of specific items that came up in, I think, most of Ms. Ramsey's presentation, but also maybe a couple others. So one was the reference to the RMT Transaction. The facts of the RMT Transaction are somewhat complicated, but the most important point is, your Honor, that transaction was announced in early 2019. It has nothing to do with the divisional merger and the ultimate filing of these bankruptcy cases. That transaction was in the works year, well, more than a year before and as we even heard, it deposited $1.9 billion of cash into the Trane Technologies family. So that have that cash. That cash is available to try to cut a deal. As we've said from the beginning, our goal in this case is to reach a resolution with the plaintiffs. We are here to negotiate. They seem to be here to fight and to object, but we are here to negotiate to reach a resolution that will be good for everyone. We think that is exactly what 524(g) entails.

Secondly, there was continued discussion about the funding agreement. I, I addressed that at the beginning of the presentation. I want to address it, again. There's this

allegation that's completely untrue that language in the funding agreement gives the nondebtors the ability to control the case, that, for instance, only a plan that they like can be confirmed in this case. That is not the case at all, your Honor. Matter of fact, in the Owens Illinois case, which is not in your jurisdiction but is in Delaware, I do believe the equivalent agreement to a funding agreement, similar type of case, is this does say that the only case that would be funded would be one that's acceptable to the non-debtor entities. That's not the case, your Honor.

Again, the provision that keeps coming up is very simple, which is if there is going to be a deal between the debtors, the payors under the funding agreement, and the plaintiffs, it's going to be a consensual deal. It's going to be a 524(g) deal and the clarification in the agreement is if the nondebtors are going to pay through the funding agreement, they should be released as part of the plan. Apparently, the plaintiffs are contemplating some scenario which seems fantastic to at least me, your Honor, that we would spend all this time negotiating a deal, the funders would pay money into a trust, and then the plaintiffs could then, later then pursue them, again. That would not be a deal. Of course, the nondebtors would not have a reason to deal. And if the plaintiffs didn't agree to the amounts that the funders were planning on putting into the trust, they wouldn't vote for the

plan. So there wouldn't be a deal, either.

So the scenarios that are being raised by Ms. Ramsey and the like are not scenarios that ever are going to exist. Our goal is to get a deal and that deal, like all other cases, will involve, to the extent the numbers justify, payments under the funding agreement and it would be appropriate at that time for the nondebtors to get a 524(g) release for that contribution. I think somebody once in this hearing said that there was a recent plan where there was no 524(g) release for nondebtors. They also said there was no funding. Well, of course, if there's no funding, then there's no need for a 524(g) injunction for the nondebtors.

But if the nondebtors are going to fund the plan, of course, they're entitled to a 524(g) release and that's common, commonplace in 524(g) reorganizations.

Now your Honor will have some time at some point to look at the funding agreement, yourself, and, of course, if your Honor believes that there's a problem with the funding agreement, we would address it. But the, the hysteria that's being thrown out with respect to the funding agreement is way overdone. There's no intent to change the purpose of the funding agreement from the prior cases.

So as another example, if your Honor ruled through estimation or otherwise that the amount that needed to be funded in a plan in this case was "X," okay --

THE COURT: Uh-huh (indicating an affirmative response).

MR. ERENS: -- and that went through all of the, the litigation that's necessary for that, the funding agreement provides that the funding has to be there for that, for that liability. So it's not that, you know, the number has to be acceptable to the nondebtors. That's just simply not the case at all.

But again, your Honor, if, if you found in the funding agreement provisions that you found to be unclear or unacceptable, we, of course, would deal with that with your Honor and the plaintiffs, but that's simply not the case in the current funding agreements.

Another thing that Ms. Ramsey, I think, said was that there was some implicit threat in our Information Brief that we were going to seek estimation in this case, promptly. Well, we are going to try to seek estimation in this case promptly or some liability determination because what's happened in the other cases is the plaintiffs keep complaining that the cases aren't moving. We don't want to be accused of not moving this case. Now if we sit down with the plaintiffs and there's a deal to be discussed and they would prefer that we put off estimation or some type of liability determination, of course, we would have that discussion. But the most important part is we do not want to be accused of not moving this case and,

matter of fact, in the Bestwall case there's a motion pending by the ACC that seeks to dismiss the case for failure to prosecute the case. Well, we never want to be accused of not promptly prosecuting this case and that's why we want to move this case for the benefit of all parties, including the plaintiffs. The plaintiffs are not benefitting by the case lingering in chapter 11. That's why we want to move the case as promptly as possible.

Couple of other things that came up, your Honor, with respect to insurance. There was a variety of statements. I'm not sure I understood all of them. But as I said, your Honor, insurance is an asset of this estate. Seeking to gain access to the debtors' insurance for the reasons that are set forth in our motion is clearly a violation of the automatic stay. It's an attempt to obtain control of property of the estate and, therefore, is enjoined under section 362(a)(3) of the Bankruptcy Code.

So we, we see no basis not to provide the insurance parties with protected party status or ultimately find that the plaintiffs should not be able to access the debtors' assets through the insurance because that will reduce the assets available for the reorganization.

There were some statements made about delay with respect to the four factors, that, that delay by claimants causes harm to them. Of course, it causes some harm to them.

We are not unsympathetic to the plaintiffs in this case, far from it. But again, your Honor, it's important to understand that these plaintiffs do sue numerous parties. They are collecting from numerous parties, from other tort defendants, and from trusts.

So while, again, we'd like to move the case and get them compensated as soon as possible, it is just simply not the case that, for instance as being alleged, that they're getting no compensation because this case will be pending. That's simply not the case.

I think, your Honor, in closing, 'cause, again, I didn't want to make too long of an argument, Ms. Ramsey admitted this at the very end. I think this is very telling. She said, you know, we understand we're asking for extraordinary relief to deny the TRO because it's never been denied in other cases. Because as we indicate in our pleadings, every single case where it's been asked in an asbestos context, the PI has been approved. Every single case where the TRO has been requested, it has been approved. I know it's still pending in the DBM case, DBMP case.

So what is being asked by the plaintiffs in this case, or the objectors, is really extraordinary relief, which is to allow a bankruptcy to exist and, notwithstanding, all the claims in the bankruptcy are going to start being litigated throughout various courts in the federal and court, federal and

state court system throughout the country. That is not a typical bankruptcy case. That is in violation of Robins. Robins makes the point from Fourth Circuit law, going back to the 1980s, that when third-party litigation puts undue pressure on the debtor, which is what Ms. Ramsey's intent would be, or it interferes with the reorganization effort it should be enjoined, whether it's just simply should be enjoined or it should be enjoined based on the four factors that we laid out in our pleadings and discussed previously.

With that, your Honor, if you have any specific questions 'cause I know a lot came up in the presentations, especially --

THE COURT: Uh-huh (indicating an affirmative response).

MR. ERENS: -- in Ms. Ramsey's, we'd be happy to answer any specific questions.

THE COURT: All right. Thank you, for now.

Anyone else?

Ms. Ramsey?

MS. RAMSEY: Your Honor, could I have a very brief opportunity to respond?

THE COURT: Go ahead.

MS. RAMSEY: I'm only going to make two short points, your Honor. The first is there was an interesting, I think, slip of, of the tongue here with respect to no plan funder

would -- would -- nobody -- no funder would dedicate assets if they weren't going to get relief. But that's inconsistent with what we keep hearing from the debtors, which is the funding agreements are assets of the debtors, that, that give them unfettered access to be able to pay. And now what we're hearing is, "Well, no, it's not really an asset of the debtor. It's a contribution of a kind by, by a third party, a nondebtor."

So this -- this -- this effort to sort of weave in some sort of allegation that, that it's really not an asset of the debtor unless we say it is because we really are trying to buy relief and, and I think that's the -- it's, it's a pay-to-play kind of structure that your Honor should not, should not endorse.

The, the other point, your Honor, is, is I, I don't believe that there's hysteria around the funding agreement. I think, I think the point is that the funding agreement this time changed. There's never been a reorganization like this. None of them have been successful yet. There have been no deals. There have been, you know, there's been one decision and we challenged that and, as I said, it, it is on appeal.

But, your Honor, these reorganizations continue to come. These structures continue to come. We believe that this is a different enough structure this time by reason of the changes to the funding agreement to justify this Court entering

a different type of decision than was previously entered on the TRO in DBMP. And, your Honor, I do not believe there was a effort to contest the, the entry of the TRO in, in Bestwall, but simply the preliminary injunction.

Thank you, your Honor.

THE COURT: Anyone else?

(No response)

THE COURT: Well, I wish I had had the benefit of having all those thoughts over the weekend, but I did not and I was in court this morning. So while I read the responses that were filed by the objecting parties, I did so hurriedly and there's quite a bit to digest here. It would be sufficient to say that, from what I did in DBMP, that, and as alluded to, I have some concerns about these transactions. The combination of the divisional merger, the trip to North Carolina. I understand Ingersoll Rand. I went to Davidson. I know where it is. The, but the bottom line is from Delaware corporation to Texas corporation to debtors filing as North Carolina corporations here and, and the advent of, of this, and I understand how this all came up. I'm concerned about the transactions and the propriety of what we're doing and to that end, I, in DBMP I did what I'm going to do now, which is to say I feel the obligation to grant the, the TRO, but with a full understanding that the preliminary injunction's going to require a good bit more.

Now the COVID virus and the shutdowns and all that affected our time in DBMP. So we haven't had those hearings yet and we've been forced to enter the preliminary injunction with a savings clause. I hope we don't have those kinds of delays now.

The bottom line is I question whether this is what Congress intended when they created 524(g). It's not a Manville situation and generally, when enterprise integrity is threatened by claims and assets are limited it appears to me that Congress envisioned that 524(g) would be a vehicle where the corporation could come in, subject its assets and transactions to, to scrutiny, and then with the cooperation of the asbestos creditors come up with a, a trust and a plan under that vehicle.

This is something less than that. I understand why the entities, Trane, Ingersoll Rand, would feel that it would be a unnecessary burden to, to bring the entire enterprise into a bankruptcy context for getting this relief. I question whether this can be obtained in the absence of, of that excursion or whether or not it is appropriate under the circumstances absent the support of the creditor body.

At the same time because we are on the first day of the case and we need some time for all to react and to get a, the creditors' committee, the asbestos creditors' committee formed, I feel obliged to enter the TRO on the same terms as

before, before the 14-day provision. As noted, bankruptcy courts generally do so in these circumstances, but these circumstances are different than what has been attempted before and as I had understood it, most of the fighting in Bestwall at the outset of the case, at least, was over whether or not the case was subject to dismissal under the Carolin standards, not with less attention focused on the, the TRO.

You're going to be lucky if you can get me to be consistent with myself, much less with Judge Beyer. So you're going to have to forgive me. I have not been sitting in the room listening to all those arguments. So I'm going to have to take my cases as, as they come up and judicial independence means that I may or may not agree with what was done there.

So the bottom line is I'm going to grant the TRO as requested. I think I need to do it, the way I read the Rule is that I have to do it for 14 days, renew for 14 more if there's cause, and then, beyond that, we have to start talking about a preliminary injunction. I question whether we can get a committee formed in that time period and, frankly, given my other two cases with Kaiser on for confirmation in July and DBMP up for some hearings as well, of whether we're going to be able to get a full-blown preliminary injunction hearing held in the time periods we're talking about.

But for now, I think the best thing I can do is put the TRO in place with full reservations of rights and

arguments. Don't take, take this as going to be written in stone forever because I have grave concerns about what's being proposed here.

We will -- I can get you back in court at least on a TRO basis for an extension. Looks like -- we are here on the 22nd -- I can have a hearing on July the 1st, if you all are not looking for exact compliance or if we tie the order from, from when it's entered, which would probably be tomorrow, anyway, I could also do this, I think, on July the 6th. I have July the 8th and 9th available as well.

So I'm open for suggestions at this point. If there's --

MR. MACLAY: The 1st and the 6th both work for me, your Honor.

THE COURT: Okay.

Anyone got problems on either of those days?

MR. ERENS: Your Honor, from the debtors' perspective, the 6th would probably be a better date.

THE COURT: Uh-huh (indicating an affirmative response).

MR. ERENS: Again, the reason we were asking for the 28 days was to give the committee time. I'm like you. I don't know exactly, you know, how long it's going to take them to be formed, but giving a little bit more time would be beneficial.

THE COURT: Ms. Abel, perhaps you would have an

opinion on this. You've already started soliciting the committee, correct?

MS. ABEL: Yes, your Honor. I just wanted to fill in the gaps on that front. We have requested that responses be provided to my office this Friday, which would be the 26th of June.

THE COURT: Right.

MS. ABEL: And it's my intention to put a motion on for your Court's, your consideration by Monday or Tuesday of the following week, which would mean that the motion could be filed on the 29th or the 30th, and depending on how much notice you think would be appropriate under the circumstances, my office is available for any of the dates proposed.

THE COURT: Okay. Well, let's, let's use the 6th. That's a Monday.

Madam Clerk, can you double check me on this and make sure that I'm not --

THE COURTROOM DEPUTY: You're open.

THE COURT: -- double booking.

THE COURTROOM DEPUTY: You're open.

THE COURT: We had a matter, but I think it was cancelled, so. All right.

So, in any event, everyone's on the East Coast at this point in time, Chicago being the, the farthest west so far? I'm just wondering whether we start at 9:30 or whether 10:30 or

something else would be better. Any thoughts?

MR. ERENS: 10:30 would be fine, your Honor.

THE COURT: Okay. Let's try 10:30 on the 6th.

Now the, if the parties that announce -- I, I realize that with as many unnamed and unnoticed parties to the adversary we have, it's hard to get a consensus, but if those who are actually participatory feel like that that would be, that exercise would be a waste of time and want to extend it a further two weeks, we can try to do something. The big problem there is that would put us in the middle of the Kaiser confirmation hearing and as Judge Beyer has a conflict with this case, we're limited in, in what our options are there.

So it's up to you folks as to, to where we come with that, but we're going to have problems getting the next hearing, is what I'm telling you. There's -- the only day I see open right now is the 15th. So maybe we could do something else on the, on the 17th. But again, that's a DBMP day.

But everything else for the rest of the month is pretty much booked up and so if we're going to have to have a lengthy evidentiary hearing, we're going to have some problems. Don't want to encourage anyone to use that for a tactical advantage, but, but the reality is, as I've said in the other cases, this is a two-judge court. It is very easy to overload us and with four or five of these cases pending at the same time, that's, that's quickly becoming what's happening.

So for now, let's just talk about it as being July the 6th, at 10:30.

Can I get the debtors to notice a, a continued hearing? Or maybe we treat it as a motion for extension, but I want some sort of notice to go out at least to the primary firms that are involved in this that we will have a further hearing on the 6th.

MR. ERENS: We'll do that, your Honor.

THE COURT: Okay.

Anything else?

(No response)

THE COURT: Well, it's a complex situation and I appreciate how you've come to terms with it so quickly and for the quality of the, the hearing today, given that we're on the first day. You've given me a lot to think about and we'll talk about it further in detail. But for now, I feel like that we at least need to maintain the status quo, even though it's a status quo of only six weeks duration, to get this thing slowed down enough so that we can get a good presentation and, and a decision that you can stand on. 'Cause I'm sure that this at some point will go up on appeal and I want you to have a, the Circuit or the District Court to have a good, clean look at it, all right?

Anything else?

If not, we'll recess.

MR. CODY: Your Honor, it's Mark Cody.

Just to follow up on some of the, the, the hearings, the subsequent hearings for at least certain of the pleadings we filed.

THE COURT: Right.

MR. CODY: Would it make sense for us to reach out to your clerk's office, your clerks to try to pick an agreeable date --

THE COURT: Well, while we're all --

MR. CODY: -- to send out a notice?

THE COURT: While we're here, Mr. Cody, why don't we talk for a moment about the needs --

MR. CODY: Sure.

THE COURT: -- of the case. We got the TRO situation. What kind of exigencies do you, do you anticipate? How quickly do you need to come back?

MR. CODY: We have -- pardon me a second here. Just looking for the list of the things. We have a number of pleadings that we filed with our initial package that, that we didn't hear today, given the, there was an, an emergency need to have them heard, but those, those would be the, the initial set of pleadings that we would, we would anticipate getting, having heard by your, by your Honor --

THE COURT: Uh-huh (indicating an affirmative response).

MR. CODY: -- which would be something, you know, looking at the way you described your schedule, the July 15th date might, might work. It's not -- it shouldn't take a long time to cover those off as a practical matter for, for at least those pleadings and then, after that, I, I suspect we'll be able to gauge what comes down.

THE COURT: For that first day, do you anticipate more than a half a day's worth of hearings? I know you can't anticipate --

MR. CODY: No.

THE COURT: - the, the objections, but --

MR. CODY: I, I don't expect that, your Honor --

THE COURT: Okay.

MR. CODY: -- given the nature of what we're asking.

THE COURT: For those who --

MR. CODY: They appear to be --

THE COURT: -- who are new to being with us, what we've been trying to do, recognizing that Judge Beyer and I can't keep the same people tied up in two different courts at the same time, I have been working the DBMP hearings around Kaiser days and that's what this would be. That also, back when we were all traveling to these hearings, the idea was to save some travel time and cost and burden for all of your folks.

The 15th works fine for me for that first one.

Does anyone else have problems?

(No response)

THE COURT: Okay.

If you don't mind, let's set that on at 9:30, though, so that since I have Kaiser the next day and we're in the, in the rollup to the confirmation hearing, I suspect -- that's the day of the Truck claim objection as well, I believe.

So let's start at 9:30 on the 15th.

MR. CODY: Okay.

THE COURT: Now -- all right. And beyond that, are you looking for something, a day in August?

MR. CODY: Yeah. If there's something your Honor has that we could target, we would, we'd get something on the, on the schedule and then we can evaluate it during --

THE COURT: Okay. This one, I think --

MR. CODY: -- (indiscernible) bring it up if nothing pops.

THE COURT: Again, y'all will have to help me out, those who are in Bestwall. I have Kaiser on the 13th, DBMP on the 14th. Judge Beyer has the 20th with Bestwall. I could certainly give you the 21st, if you want that. That's a Friday.

THE COURTROOM DEPUTY: Bestwall is for that day as well.

MR. CODY: That would work for the debtors, your

Honor.

THE COURT: Bestwall's a two day? Okay.

Bestwall's got that one tied up, apparently.

MR. CODY: Okay.

THE COURT: So we don't want to -- we could go the other way. The 12th is available and I believe the preceding week, we at one time were talking about having the DBMP preliminary injunction hearing the week of the 3rd through the 7th and we have moved to September on that. So that week is free at the moment.

And as well, maybe the local attorneys can help me out here. With most of the RNC going to Jacksonville, the, the 24th through the 26th, we thought, was going to be unavailable. I'm not sure if Downtown's still going to be locked down or not. We still have some business meetings that are being held here and I'm not sure what the security plan is.

But potentially, the, if not those days, the 27th would be available in August as well. That's a Thursday.

MR. CODY: Your Honor, August the 12th would, considering we'd be in front of you on the 15th of July, maybe August 12th would, would work --

THE COURT: How about --

MR. CODY: -- (indiscernible) your time.

THE COURT: How about for the local attorneys? That's Judge Beyer's chapter 11 day and I'm not sure if that'll create

any havoc there but if y'all think we can work around that, that, that'd be -- just make three days of it.

MR. CODY: Your Honor, we'd be amenable to the end of the month as well. It's -- it's -- we're not trying to create --

THE COURT: Well, it's the same --

MR. CODY: -- havoc.

THE COURT: -- same problem. The asbestos bar is relatively small and so is my chapter 11 --

MR. CODY: Okay.

THE COURT: -- bar and I don't like having people that need to be in two places at once.

Let's take August 27th, instead, and, and clear that conflict, so. All right? And again, we'll make this one 9:30 Eastern time on that.

MR. CODY: Okay. Thank you.

THE COURT: All right. Is that enough to start you off or do we need to go into September as well?

MR. CODY: That should get us started, your Honor. Thank you.

THE COURT: Okay, very good.

Anything else we need to discuss today?

(No response)

THE COURT: All right. Thank you very much.

We will recess at this point.

MR. ERENS: Thank you, your Honor.

THE COURT: Uh-huh (indicating an affirmative response).

(Proceedings concluded at 5:40 p.m.)

CERTIFICATE

I, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

/s/ *Janice Russell* June 25, 2020

Janice Russell, Transcriber Date

EXHIBIT 14 - LTL counsel during 10/20/2021 first day hearing here

MRHFM'S MOTION TO DIMISS

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 22-2003, 22-2004, 22-2005, 22-2006, 22-0007,
22-2008, 22-2009, 22-2010, 22-2011

In re: LTL MANAGEMENT, LLC
Debtor

LTL MANAGEMENT, LLC

v.

THOSE PARTIES LISTED ON APPENDIX A TO COMPLAINT
AND JOHN AND JANE DOES 1-1000

*OFFICIAL COMMITTEE OF TALC CLAIMANTS,
Appellant in case Nos. 22-2003, 22-2004 and 22-2005

*OFFICIAL COMMITTEE OF TALC CLAIMANTS; PATRICIA COOK;
EVAN PLOTKIN; RANDY DEROUEN; KRISTIE DOYLE,
as estate representative of Dan Doyle; KATHERINE TOLLEFSON;
TONYA WHETSEL, as estate representative of Brandon Wetsel;
GIOVANNI SOSA; JAN DEBORAH MICHELSON-BOYLE,
Appellants in case Nos. 22-2006, 22-2007 and 22-2008

ARNOLD & ITKIN LLP, on behalf of certain personal injury
claimants represented by Arnold & Itkin,
Appellant in case No. 22-2009

AYLSTOCK WITKIN KREIS & OVERHOLTZ PLLC, on behalf of more
than three thousand holders of talc claims,
Appellant in case Nos. 22-2010 and 22-2011

*(Amended per Court's Order dated 06/10/2022)

Appeal from the United States Bankruptcy Court
for the District of New Jersey
(District Court No.: 21-bk-30589; 21-ap-03032)
Bankruptcy Judge: Honorable Michael B. Kaplan

Argued September 19, 2022

Before AMBRO, RESTREPO, and FUENTES, Circuit Judges

JUDGMENT

These cases came to be heard on the record before the United States Bankruptcy Court for the District of New Jersey and were argued on September 19, 2022.

On consideration whereof, IT IS ORDERED AND ADJUDGED by this Court that the order of the Bankruptcy Court entered March 2, 2022 is reversed and the case is remanded with the instruction to dismiss Appellee's Chapter 11 petition. The order of the Bankruptcy Court entered March 4, 2022 is vacated as moot. Costs taxed against the Appellee.

All of the above in accordance with the Opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

Dated: January 30, 2023

Certified as a true copy and issued in lieu of a formal mandate on 03/31/2023

Teste: Patricia A Dodszuweit
Clerk, U.S. Court of Appeals for the Third Circuit

PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

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(Opinion filed: January 30, 2023)

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OPINION OF THE COURT

AMBRO, Circuit Judge

Johnson & Johnson Consumer Inc. ("Old Consumer"), a wholly owned subsidiary of Johnson & Johnson ("J&J"), sold healthcare products with iconic names branded on consumers' consciousness—Band-Aid, Tylenol, Aveeno, and Listerine, to list but a few. It also produced Johnson's Baby Powder, equally recognizable for well over a century as a skincare product. Its base was talc, a mineral mined and milled into a fine powder. Concerns that the talc contained traces of asbestos spawned in recent years a torrent of lawsuits against Old Consumer and J&J alleging Johnson's Baby Powder has caused ovarian cancer and mesothelioma. Some of those suits

succeeded in verdicts, some failed (outright or on appeal), and others settled. But more followed into the tens of thousands.

With mounting payouts and litigation costs, Old Consumer, through a series of intercompany transactions primarily under Texas state law, split into two new entities: LTL Management LLC ("LTL"), holding principally Old Consumer's liabilities relating to talc litigation and a funding support agreement from LTL's corporate parents; and Johnson & Johnson Consumer Inc. ("New Consumer"), holding virtually all the productive business assets previously held by Old Consumer. J&J's stated goal was to isolate the talc liabilities in a new subsidiary so that entity could file for Chapter 11 without subjecting Old Consumer's entire operating enterprise to bankruptcy proceedings.

Two days later, LTL filed a petition for Chapter 11 relief in the Bankruptcy Court for the Western District of North Carolina. That Court, however, transferred the case to the Bankruptcy Court for the District of New Jersey.

Talc claimants there moved to dismiss LTL's bankruptcy case as not filed in good faith. The Bankruptcy Court, in two thorough opinions, denied those motions and extended the automatic stay of actions against LTL to hundreds of nondebtors that included J&J and New Consumer. Appeals followed and are consolidated before us.

We start, and stay, with good faith. Good intentions—such as to protect the J&J brand or comprehensively resolve litigation—do not suffice alone. What counts to access the Bankruptcy Code's safe harbor is to meet its intended

purposes. Only a putative debtor in financial distress can do so. LTL was not. Thus we dismiss its petition.

I. BACKGROUND

A. J&J, Baby Powder, and Old Consumer

The story of LTL begins with its parent company, J&J. It is a global company and household brand well-known to the public for its wide range of products relating to health and well-being. Many are consumer staples, filling pharmacies, supermarkets, and medicine cabinets throughout the country and beyond.

One of these products was Johnson's Baby Powder, first sold by J&J in 1894. It became particularly popular, being used by or on hundreds of millions of people at all stages of life.

J&J has not always sold baby powder directly, though. In 1979, it transferred all assets associated with its Baby Products division, including Johnson's Baby Powder, to Johnson & Johnson Baby Products Company ("J&J Baby Products"), a wholly owned subsidiary (the "1979 Spin-Off"). A series of further intercompany transactions in ensuing decades ultimately transferred Johnson's Baby Powder to Old Consumer.

So since 1979 only Old Consumer and its predecessors, and not J&J, have directly sold Johnson's Baby Powder. LTL maintains that the 1979 Spin-Off included an agreement between J&J and J&J Baby Products that makes Old Consumer, as successor to the latter, responsible for

indemnifying J&J for all past, present, and future liabilities stemming from Johnson's Baby Powder. Thus, according to LTL, Old Consumer was liable for all claims relating to Johnson's Baby Powder, either directly or indirectly through its responsibility to indemnify J&J.

B. Baby Powder Litigation

Talc triggered little litigation against J&J entities before 2010. There had been but a small number of isolated claims alleging the products caused harms such as talcosis (a lung disease caused by inhalation of talc dust or talc), mesothelioma (a cancer of organ membranes, typically in the lungs, associated with exposure to asbestos), and rashes. But trials in 2013 and 2016 resulted in jury verdicts for plaintiffs alleging Old Consumer's talc-based products caused ovarian cancer. Despite the first resulting in no monetary award, and the second being reversed on appeal, these trials ushered in a wave of lawsuits alleging Johnson's Baby Powder caused ovarian cancer and mesothelioma.[1] Governmental actions, including the U.S. Food and Drug Administration's finding of asbestos traces in a sample of Johnson's Baby Powder in 2019 and Health Canada's confirmation in 2021 of its 2018 finding of a significant association between exposure to talc and ovarian

[1] The talc litigation also involves claims regarding Shower to Shower, a different talc-containing product initially produced by J&J and later by Old Consumer and its predecessors. LTL maintains intercompany transactions involving J&J and Old Consumer ultimately made the latter responsible for all claims stemming from Shower to Shower. Because the talc litigation concerns mainly Johnson's Baby Powder, for convenience references herein to that name may include other talc products.

cancer, also heightened J&J's and Old Consumer's potential exposure.

With the door wide open, over 38,000 ovarian cancer actions (most consolidated in federal multidistrict litigation in New Jersey) and over 400 mesothelioma actions were pending against Old Consumer and J&J when LTL filed its Chapter 11 petition. Expectations were for the lawsuits to continue, with thousands more in decades to come. The magnitude of the award in one case also raised the stakes. There, a Missouri jury awarded $4.69 billion to 22 ovarian cancer plaintiffs, reduced on appeal to $2.24 billion to 20 plaintiffs who were not dismissed. *Ingham v. Johnson & Johnson*, 608 S.W.3d 663 (Mo. Ct. App. 2020), *cert. denied*, 141 S. Ct. 2716 (2021).

Yet other trials reaching verdicts for plaintiffs were not so damaging to J&J entities. Since 2018, damages in all other monetary awards to plaintiffs that were not reversed averaged about $39.7 million per claim. Moreover, Old Consumer and J&J often succeeded at trial. According to LTL's expert, of 15 completed ovarian cancer trials, only *Ingham* resulted in a monetary award for the plaintiffs that was not reversed; and of 28 completed mesothelioma trials, fewer than half resulted in monetary awards for the plaintiffs that were not reversed (and many of those were on appeal at the time of LTL's bankruptcy filing). In addition, Old Consumer and J&J often avoided trial before bankruptcy, settling roughly 6,800 talc-related claims for just under $1 billion in total and successfully obtaining dismissals without payment of about 1,300 ovarian cancer, and over 250 mesothelioma, actions.

Undoubtedly, the talc litigation put financial pressure on Old Consumer. Before LTL's petition, it paid

approximately $3.5 billion for talc-related verdicts and settlements. It also paid nearly $1 billion in defense costs, and the continuing run rate was between $10 million to $20 million per month. LTL's expert identified talc-related costs as a primary driver that caused the income before tax of J&J's Consumer Health business segment (for which Old Consumer was the primary operating company in the U.S.) to drop from a $2.1 billion profit in 2019 to a $1.1 billion loss in 2020.

Old Consumer also faced billions in contested indemnification obligations to its bankrupt talc supplier, Imerys Talc America, Inc. and affiliates (collectively "Imerys"), as well as parties who had owned certain of Imerys's talc mines. These remained after J&J's settlement proposal of about $4 billion to $5 billion in the Imerys bankruptcy case—which, per LTL, had been tentatively agreed by attorneys for talc plaintiffs—ultimately fell through by June 2021. An LTL representative testified that, if that proposal succeeded, it would have settled (subject to an opt-out) virtually all ovarian cancer claims in the multidistrict tort litigation and corresponding additional claims against J&J entities in the Imerys case. Old Consumer was also the target of both state and federal talc-related governmental complaints and investigations, as well as securities and shareholder actions, that could result in their own financial penalties and defense costs. LTL's expert opined, and the Bankruptcy Court accepted, that the total talc-related liabilities threatened Old Consumer's ability to make substantial talc-related payments from working capital or other readily marketable assets while funding its costs of operations (including marketing, distribution, research and development).

Still, Old Consumer was a highly valuable enterprise, estimated by LTL to be worth $61.5 billion (excluding future talc liabilities), with many profitable products and brands. And much of its pre-filing talc costs were attributable to the payment of one verdict, *Ingham*, a liability J&J described in public securities filings as "unique" and "not representative of other claims." App. 2692-93. Further, while it allocated all talc-related payments to Old Consumer per the 1979 Spin-Off, J&J functionally made talc payments from its accounts and received an intercompany payable from Old Consumer in return. Addressing the scope of its litigation exposure in an October 2021 management representation letter to its auditors, J&J valued its and its subsidiaries' probable and reasonably estimable contingent loss for products liability litigation, including for talc, under Generally Accepted Accounting Principles ("GAAP"), at $2.4 billion for the next 24 months.[2] It also continued to stand by the safety of its talc products and deny liability relating to their use.

Consistent with their fiduciary duties, and likely spurred by the U.S. Supreme Court's denial of certiorari in *Ingham*, members of J&J's management explored ways to mitigate Old Consumer's exposure to talc litigation. In a July 2021 email with a ratings agency, J&J's treasurer described a potential restructuring that would capture all asbestos liability in a subsidiary to be put into bankruptcy.

[2] Adam Lisman, assistant controller for J&J, suggested in his trial testimony that it was J&J's general policy to consider the next 24 months when calculating contingent costs under GAAP.

C. Corporate Restructuring and Divisional Merger

On October 12, 2021, Old Consumer moved forward with this plan, undergoing a corporate restructuring relying principally on a merger under Texas law. Counterintuitively, this type of merger involves "the division of a [Texas] entity into two or more new . . . entities." Tex. Bus. Orgs. Code Ann. § 1.002(55)(A); *see generally id.* §§ 10.001 *et seq*. When the original entity does not survive the merger, it allocates its property, liabilities, and obligations among the new entities according to a plan of merger and, on implementation, its separate existence ends. *Id*. §§ 10.003, 10.008(a)(1). Except as otherwise provided by law or contract, no entity created in the merger is "liable for the debt or other obligation" allocated to any other new entity. *Id.* § 10.008(a)(4). In simplified terms, the merger splits a legal entity into two, divides its assets and liabilities between the two new entities, and terminates the original entity. While some pejoratively refer to it as the first step in a "Texas Two-Step" when followed by a bankruptcy filing, we more benignly call it a "divisional merger."

In our case, Old Consumer's restructuring was designed as a series of reorganizational steps with the divisional merger at center.[3] Ultimately, the restructuring created two new

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[3] A slightly abbreviated summary of the many steps is as follows. Old Consumer merged into Chenango Zero, LLC, a Texas limited liability company and indirect, wholly owned subsidiary of J&J ("Chenango Zero"), with Chenango Zero surviving the merger. Chenango Zero (formerly Old Consumer) effected a divisional merger under the Texas Business Organizations Code by which two new Texas limited liability companies were created, Chenango One LLC

entities, LTL and New Consumer, and on its completion Old Consumer ceased to exist. It also featured the creation of a Funding Agreement, which had Old Consumer stand in momentarily as the payee, but ultimately (after some corporate maneuvers[4]) gave LTL rights to funding from New Consumer and J&J.

As the most important step, the merger allocated LTL responsibility for essentially all liabilities of Old Consumer tied to talc-related claims.[5] This meant, among other things, it would take the place of Old Consumer in current and future talc lawsuits and be responsible for their defense.

("Chenango One") and Chenango Two LLC ("Chenango Two"), and Chenango Zero ceased to exist. Chenango One then converted into a North Carolina limited liability company and changed its name to "LTL Management LLC." Chenango Two merged into Curahee Holding Company Inc., the direct parent company of LTL ("Curahee"). Curahee survived the merger and changed its name to "Johnson & Johnson Consumer Inc." (now New Consumer).

[4] On the day of the divisional merger, the Funding Agreement was executed by Chenango Zero (formerly Old Consumer), as payee, along with J&J and Curahee, as payors. Then, per the divisional merger, LTL was allocated rights as payee under the Funding Agreement, replacing Chenango Zero. Chenango Two (which assumed Old Consumer's assets not allocated to LTL) then merged into Curahee, one of the two original payors, and became New Consumer.

[5] LTL's liability was for all talc claims except those where the exclusive remedy existed under a workers' compensation statute or similar laws.

Old Consumer also transferred to LTL assets in the merger, including principally the former's contracts related to talc litigation, indemnity rights, its equity interests in Royalty A&M LLC ("Royalty A&M"), and about $6 million in cash. Carved out from Old Consumer and its affiliates just before the divisional merger, Royalty A&M owns a portfolio of royalty streams that derive from consumer brands and was valued by LTL at approximately $367.1 million.

Of the assets Old Consumer passed to LTL, most important were Old Consumer's rights as a payee under the Funding Agreement with J&J and New Consumer. On its transfer, that gave LTL, outside of bankruptcy, the ability to cause New Consumer and J&J, jointly and severally, to pay it cash up to the value of New Consumer for purposes of satisfying any talc-related costs as well as normal course expenses. In bankruptcy, the Agreement gave LTL the right to cause New Consumer and J&J, jointly and severally, to pay it cash in the same amount to satisfy its administrative costs and to fund a trust, created in a plan of reorganization, to address talc liability for the benefit of existing and future claimants. In either scenario, there were few conditions to funding and no repayment obligation.[6] The value of the payment right could

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[6] For LTL to require J&J and New Consumer to fund, certain customary representations and warranties made by LTL must be true, such as those addressing its good standing under state law, the due authorization of the Funding Agreement, and the absence of any required governmental approval. And LTL must not have violated its covenants, specifically, that it will use the funds for only permitted uses and materially perform its indemnification obligations owed to New Consumer for all talc liabilities as set out in the plan of divisional merger.

not drop below a floor defined as the value of New Consumer measured as of the time of the divisional merger, estimated by LTL at $61.5 billion, and was subject to increase as the value of New Consumer increased after it.[7]

On the other side of the divisional-merger ledger, New Consumer received all assets and liabilities of Old Consumer not allocated to LTL. It thus held Old Consumer's productive business assets, including its valuable consumer products, and, critically, none of its talc-related liabilities (except those related to workers' compensation). After this, the organizational chart was reshuffled to make New Consumer the direct parent company of LTL.

When the ink dried, LTL—having received Old Consumer's talc liability, rights under the Funding Agreement, a royalties business, and cash—was prepared to fulfill its reason for being: a bankruptcy filing. Meanwhile, New Consumer began operating the business formerly held by Old Consumer and would essentially remain unaffected (save for its funding obligation) by any bankruptcy filing of LTL.

LTL became in bankruptcy talk the "bad company," and New Consumer became the "good company." This completed the first steps toward J&J's goal of "globally resolv[ing] talc-related claims through a chapter 11 reorganization without subjecting the entire Old [Consumer] enterprise to a bankruptcy proceeding." App. 450 (Decl. of John Kim 6).

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[7] In each calculation of New Consumer's value, its obligation under the Funding Agreement is not included.

D. <u>LTL Bankruptcy Filing and Procedural History</u>

On October 14, 2021, two days after the divisional merger, LTL filed a petition for Chapter 11 relief in the Bankruptcy Court for the Western District of North Carolina. It also sought (1) to extend the automatic stay afforded to it under the Bankruptcy Code to talc claims arising from Johnson's Baby Powder asserted against over six hundred nondebtors (the "Third-Party Claims"), including affiliates such as J&J and New Consumer, as well as insurers and third-party retailers (all nondebtors collectively the "Protected Parties"), or alternatively, (2) a preliminary injunction enjoining those claims. LTL's first-day filings described the bankruptcy as an effort to "equitably and permanently resolve all current and future talc-related claims against it through the consummation of a plan of reorganization that includes the establishment of a [funding] trust." App. 3799 (LTL's Compl. for Decl. and Inj. Relief 2); App. 316 (LTL's Info. Br. 1).

A month later, the North Carolina Bankruptcy Court issued an order enjoining Third-Party Claims against the Protected Parties. But the order expired after 60 days and would not bind a subsequent court. The next day, following motions from interested parties (including representatives for talc claimants) and a Show Cause Order, the Court transferred LTL's Chapter 11 case to the District of New Jersey under 28 U.S.C. § 1412. It rejected what it viewed as LTL's effort to "manufacture venue" and held that a preference to be subject to the Fourth Circuit's two-prong bankruptcy dismissal

standard[8] could not justify its filing in North Carolina. App. 1515 (N.C. Transfer Order 10).

With the case pending in the Bankruptcy Court for the District of New Jersey, the Official Committee of Talc Claimants (the "Talc Claimants' Committee") moved to dismiss LTL's petition under § 1112(b) of the Bankruptcy Code as not filed in good faith. Soon after, Arnold & Itkin LLP, on behalf of talc claimants it represented ("A&I"), also moved for dismissal on the same basis. LTL opposed the motions. Two other law firms—including Aylstock, Witkin, Kreis & Overholtz, PLLC, on behalf of talc claimants ("AWKO")—joined the motions. For ease of reference, we refer collectively to the Talc Claimants' Committee, A&I, and AWKO as the "Talc Claimants."

[8] In the Fourth Circuit, a court can only dismiss a bankruptcy petition for lack of good faith on a showing of the debtor's "subjective bad faith" and the "objective futility of any possible reorganization." *Carolin Corp. v. Miller*, 886 F.2d 693, 694 (4th Cir. 1989). The Bankruptcy Court in the District of New Jersey described this as a "much more stringent standard for dismissal of a case for lacking good faith" than the Third Circuit's test. App. 13 (Mot. to Dismiss Op. 13). Perhaps not by coincidence then, debtors formed by divisional mergers and bearing substantial asbestos liability seem to prefer filing in the Fourth Circuit, with four such cases being filed in the Western District of North Carolina in the years before LTL's filing. *See In re Bestwall LLC*, Case No. 17-31795 (Bankr. W.D.N.C.); *In re DBMP LLC*, Case No. 20-30080 (Bankr. W.D.N.C.); *In re Aldrich Pump LLC*, Case No. 20-30608 (Bankr. W.D.N.C.); *In re Murray Boiler LLC*, Case No. 20-30609 (Bankr. W.D.N.C.).

At the same time, LTL urged the New Jersey Bankruptcy Court to extend the soon-to-expire order enjoining Third-Party Claims against the Protected Parties. The Talc Claimants' Committee and AWKO opposed this motion.

In February 2022, the Bankruptcy Court held a five-day trial on the motions to dismiss and LTL's third-party injunction motion. It denied soon thereafter the motions to dismiss and granted the injunction motion. App. 1, 57, 140, 194 (Mot. to Dismiss Op.; Mot. to Dismiss Order; Third-Party Inj. Op.; Third-Party Inj. Order).

In its opinion addressing the motions to dismiss, the Bankruptcy Court applied Third Circuit case law and held that LTL filed its bankruptcy petition in good faith. The Court ruled the filing served a valid bankruptcy purpose because it sought to resolve talc liability by creating a trust for the benefit of claimants under § 524(g) of the Bankruptcy Code. At a high level, that provision allows a debtor satisfying certain conditions to establish, in a plan of reorganization, a trust for the benefit of current and future claimants against which an injunction channels all asbestos litigation.[9] The Court highlighted what it viewed as several benefits of claims administration through a § 524(g) trust, compared to mass asbestos litigation in trial courts, including the possibility it could resolve claims more efficiently (from both a cost and time perspective), ensure more balanced recoveries among claimants, and preserve funds for future claimants.

[9] Under certain conditions, the injunction can also channel to the trust claims against third parties affiliated with the debtor. 11 U.S.C. § 524(g)(4).

The Court also held LTL was in financial distress. It focused on the scope of litigation faced by Old Consumer (and transferred to LTL), the historic costs incurred by Old Consumer in connection with talc litigation, and the effect of these costs on its business. It suggested that extrapolating this talc liability into the future showed the "continued viability of all J&J companies [was] imperiled." App. 36 (Mot. to Dismiss Op. 36). Yet it appeared to doubt LTL would completely exhaust its payment right under the Funding Agreement. App. 35 (*Id.* at 35).

Finally, the Court determined LTL's corporate restructuring and bankruptcy were not undertaken to secure an unfair tactical litigation advantage against talc claimants, but constituted "a single integrated transaction" that did not prejudice creditors and eliminated costs that would otherwise be imposed on Old Consumer's operating business had it been subject to bankruptcy. App. 43 (*Id.* at 43). The Court ultimately saw the bankruptcy forum as having a superior ability, compared to trial courts, to protect the talc claimants' interests, viewing this as an "unusual circumstance[]" that precluded dismissal under 11 U.S.C. § 1112(b)(2). App. 13 (*Id*. at 13 n.8).

At the same time the Bankruptcy Court grappled substantively with existing Circuit case law, it made much of LTL's novel design and the reasons for it. Its bankruptcy, the Court believed, presented a "far more significant issue" than equitable limitations on bankruptcy filings: "which judicial system [better served talc claimants]—the state/federal court trial system, or a trust vehicle established under a chapter 11 reorganization plan . . . [in Bankruptcy Court]." App. 12-13

(*Id*. at 12-13). Answering this question, it provided a full defense of its "strong conviction that the bankruptcy court is the optimal venue for redressing the harms of both present and future talc claimants in this case." App. 19 (*Id.* at 19).[10]

The Talc Claimants timely appealed the Bankruptcy Court's order denying the motions to dismiss. The Talc Claimants' Committee and AWKO also appealed the order enjoining Third-Party Claims against the Protected Parties. On request of the Talc Claimants, the Bankruptcy Court certified the challenged orders to our Court under 28 U.S.C. § 158(d)(2). In May 2022, we authorized direct appeal of the orders under the same statute.

The Bankruptcy Court had jurisdiction of the bankruptcy case under, *inter alia*, 28 U.S.C. §§ 157(a) and 1334(a).[11] We have jurisdiction of the appeals under 28 U.S.C. § 158(d)(2)(A).

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[10] In the separate opinion explaining its order preserving the injunction of Third-Party Claims against Protected Parties, the Court held that "unusual circumstances" warranted extension of the automatic stay to those claims under Bankruptcy Code §§ 362(a)(1) and 362(a)(3). It also held that Bankruptcy Code § 105(a) provided it independent authority to issue a preliminary injunction enjoining them. App. 140 (Third-Party Inj. Op.).

[11] The parties contest whether the Bankruptcy Court had jurisdiction to issue the order enjoining the Third-Party Claims against the Protected Parties. Dismissing LTL's petition obviates the need to reach that question.

II. ANALYSIS

A. Standard of Review

We review for an abuse of discretion the Bankruptcy Court's denial of the motions to dismiss the Chapter 11 petition for lack of good faith. *In re 15375 Mem'l Corp. v. BEPCO, L.P.*, 589 F.3d 605, 616 (3d Cir. 2009). That exists when the decision "rests upon a clearly erroneous finding of fact, an errant conclusion of law, or an improper application of law to fact." *Id.* (citation omitted). We give fresh (*i.e.*, plenary or *de novo*) review to a conclusion of law and review for clear error findings of fact leading to the decision. *Id.*

Facts subject to clear-error review include those that are basic, "the historical and narrative events elicited from the evidence presented at trial . . .," and those that are inferred, which are "drawn from basic facts and are permitted only when, and to the extent that, logic and human experience indicate a probability that certain consequences can and do follow from the basic facts." *Universal Mins., Inc. v. C.A. Hughes & Co.*, 669 F.2d 98, 102 (3d Cir. 1981). These are distinguished from an "ultimate fact," which is a "legal concept with a factual component." *Id.* at 103. Examples include negligence or reasonableness. *Wells Fargo, N.A. v. Bear Stearns & Co. (In re HomeBanc Mortg. Corp.)*, 945 F.3d 801, 810 (3d Cir. 2019). Reviewing an ultimate fact, "we separate [its] distinct factual and legal elements . . . and apply the appropriate standard to each component." *Universal Mins.*, 669 F.2d at 103.

Concluding a bankruptcy petition is filed in good faith is an "ultimate fact." *BEPCO*, 589 F.3d at 616. While the

underlying basic and inferred facts require clear-error review, the culminating determination of whether those facts support a conclusion of good faith gets plenary review as "essentially[] a conclusion of law." *Id.*; *see also U.S. Bank Nat'l Ass'n ex. rel. CWCapital Asset Mgmt. LLC v. Vill. at Lakeridge, LLC*, 138 S. Ct. 960, 966-68 (2018). A conclusion of financial distress, like the broader good-faith inquiry of which it is a part, likewise is subject to mixed review. Whether financial distress exists depends on the underlying basic facts, such as the debtor's ability to pay its current debts, and inferred facts, such as projections of how much pending and future liabilities (like litigation) could cost it in the future. But the ultimate determination, like with good faith, is essentially a conclusion of law that gets a fresh look. *See id.*

B. <u>Good Faith</u>

Chapter 11 bankruptcy petitions are "subject to dismissal under 11 U.S.C. § 1112(b) unless filed in good faith." *BEPCO*, 589 F.3d at 618 (citing *NMSBPCSLDHB, L.P. v. Integrated Telecom Express, Inc. (In re Integrated Telecom Express, Inc.)*, 384 F.3d 108, 118 (3d Cir. 2004)). Section 1112(b) provides for dismissal for "cause." A lack of good faith constitutes "cause," though it does not fall into one of the examples of cause specifically listed in the statute. *See In re SGL Carbon Corp.*, 200 F.3d 154, 159-62 (3d Cir. 1999). Because the Code's text neither sets nor bars explicitly a good-faith requirement, we have grounded it in the "equitable nature of bankruptcy" and the "purposes underlying Chapter 11." *Id.* at 161-62 ("A debtor who attempts to garner shelter under the Bankruptcy Code . . . must act in conformity with the Code's underlying principles.").

Once at issue, the burden to establish good faith is on the debtor. *BEPCO*, 589 F.3d at 618 (citing *Integrated Telecom*, 384 F.3d at 118); *SGL Carbon*, 200 F.3d at 162 n.10. We "examine the totality of facts and circumstances and determine where a petition falls along the spectrum ranging from the clearly acceptable to the patently abusive." *BEPCO*, 589 F.3d at 618 (internal quotation marks omitted) (citing *Integrated Telecom*, 384 F.3d at 118). Though a debtor's subjective intent may be relevant, good faith falls "more on [an] objective analysis of whether the debtor has sought to step outside the 'equitable limitations' of Chapter 11." *Id.* at 618 n.8 (citing *SGL Carbon*, 200 F.3d at 165).

"[T]wo inquiries . . . are particularly relevant": "(1) whether the petition serves a valid bankruptcy purpose[;] and (2) whether [it] is filed merely to obtain a tactical litigation advantage." *Id.* at 618 (internal quotation marks omitted) (citing *Integrated Telecom*, 384 F.3d at 119-20). Valid bankruptcy purposes include "preserv[ing] a going concern" or "maximiz[ing] the value of the debtor's estate." *Id.* at 619. Further, a valid bankruptcy purpose "assumes a debtor in financial distress." *Integrated Telecom*, 384 F.3d at 128.

C. Financial Distress as a Requirement of Good Faith

Our precedents show a debtor who does not suffer from financial distress cannot demonstrate its Chapter 11 petition serves a valid bankruptcy purpose supporting good faith. We first applied this principle in *SGL Carbon*. The debtor there filed for Chapter 11 protection in the face of many antitrust lawsuits—in its words, to "protect itself against excessive demands made by plaintiffs" and "achieve an expeditious resolution of the claims." 200 F.3d at 157. But we dismissed

the petition for lack of good faith, relying on the debtor's strong financial health. *Id.* at 162-70. We rejected arguments that the suits seriously threatened the company and could force it out of business, suggesting the magnitude of potential liability would not likely render it insolvent. *Id.* at 162-64. And the filing was premature, as one could be later made—without risking the debtor's ability to reorganize—at a time a company-threatening judgment occurred. *Id*. at 163. Finally, in considering whether the petition served a valid bankruptcy purpose, we discerned none in light of the debtor's substantial equity cushion and a lack of evidence suggesting it had trouble paying debts or impaired access to capital markets. *Id.* at 166. Were the debtor facing "serious financial and/or managerial difficulties at the time of filing," the result may have been different. *Id.* at 164.

Integrated Telecom made clear that "good faith *necessarily requires* some degree of financial distress on the part of a debtor." 384 F.3d at 121 (emphasis added). That debtor was a non-operating, nearly liquidated shell company that was "highly solvent and cash rich at the time of the bankruptcy." *Id.* at 124. And its financial condition was key to the petition's dismissal. We said that Chapter 11 could not improve its failing business model nor resolve pending securities litigation in a way that increased recoveries for creditors. *Id.* at 120-26. Thus the proceeding could preserve no "value that otherwise would be lost outside of bankruptcy," showing those problems were not the kinds of financial issues Chapter 11 aimed to address. *Id.* at 120, 129. And absent financial distress, the debtor's desire to benefit from certain Code provisions (such as those capping claims for future rents) could not justify its presence in bankruptcy. *Id.* at 126-29.

We note that, when considering the whole of the circumstances in these decisions, we evaluated rationales for filing offered by the debtor that were only modestly related to its financial health—even after recognizing it was not in financial distress. Yet we rejected all of them and stuck to the debtor's financial condition. *Id.*; *SGL Carbon*, 200 F.3d at 167-68.

The theme is clear: absent financial distress, there is no reason for Chapter 11 and no valid bankruptcy purpose. "Courts, therefore, have consistently dismissed . . . petitions filed by financially healthy companies with no need to reorganize under the protection of Chapter 11. . . . [I]f a petitioner has no need to rehabilitate or reorganize, its petition cannot serve the rehabilitative purpose for which Chapter 11 was designed." *Integrated Telecom*, 384 F.3d at 122 (quoting *SGL Carbon*, 200 F.3d at 166).

But what degree of financial distress justifies a debtor's filing? To say, for example, that a debtor must be in financial distress is not to say it must necessarily be insolvent. We recognize as much, as the Code conspicuously does not contain any particular insolvency requirement. *See SGL Carbon*, 200 F.3d at 163; *Integrated Telecom*, 384 F.3d at 121. And we need not set out any specific test to apply rigidly when evaluating financial distress. Nor does the Code direct us to apply one.

Instead, the good-faith gateway asks whether the debtor faces the kinds of problems that justify Chapter 11 relief. Though insolvency is not strictly required, and "no list is exhaustive of all the factors which could be relevant when analyzing a particular debtor's good faith," *SGL Carbon*, 200 F.3d at 166 n.16, we cannot ignore that a debtor's balance-

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sheet insolvency or insufficient cash flows to pay liabilities (or the future likelihood of these issues occurring) are likely always relevant. This is because they pose a problem Chapter 11 is designed to address: "that the system of individual creditor remedies may be bad for the creditors *as a group* when there are *not enough assets to go around*." *Integrated Telecom*, 384 F.3d at 121 (second set of italics added) (quoting Thomas H. Jackson, *The Logic and Limits of Bankruptcy Law* 10 (1986)).

Still, we cannot today predict all forms of financial difficulties that may in some cases justify a debtor's presence in Chapter 11. Financial health can be threatened in other ways; for instance, uncertain and unliquidated future liabilities could pose an obstacle to a debtor efficiently obtaining financing and investment. As we acknowledged in *SGL Carbon*, certain financial problems or litigation may require significant attention, resulting in "serious . . . managerial difficulties." 200 F.3d at 164. Mass tort cases may present these issues and others as well, like the exodus of customers and suppliers wary of a firm's credit-risk. *See, e.g.*, Mark J. Roe, *Bankruptcy and Mass Tort*, 84 Colum. L. Rev. 846, 855 (1984) (describing the "adverse" and "severe" effects large-scale, future tort claims may have on a firm). So many spokes can lead to financial distress in the right circumstances that we cannot divine them all. What we can do, case-by-case, is consider all relevant facts in light of the purposes of the Code.

Financial distress must not only be apparent, but it must be immediate enough to justify a filing. "[A]n attenuated possibility standing alone" that a debtor "may have to file for bankruptcy in the future" does not establish good faith. *SGL Carbon*, 200 F.3d at 164; *see, e.g., Baker v. Latham*

Sparrowbush Assocs. (In re Cohoes Indus. Terminal, Inc.), 931 F.2d 222, 228 (2d Cir. 1991) ("Although a debtor need not be *in extremis* in order to file[,] . . . it must, at least, face such financial difficulty that, if it did not file at that time, it could anticipate the need to file in the future."). Yet we recognize the Code contemplates "the need for early access to bankruptcy relief to allow a debtor to rehabilitate its business before it is faced with a hopeless situation." *SGL Carbon*, 200 F.3d at 163. A "financially troubled" debtor facing mass tort liability, for example, may require bankruptcy to "enable a continuation of [its] business and to maintain access to the capital markets" even before it is insolvent. *Id.* at 169.

Still, encouragement of early filing "does not open the door to premature filing." *Id.* at 163. This may be a fine line in some cases, but our bankruptcy system puts courts, vested with equitable powers, in the best position to draw it.

Risks associated with premature filing may be particularly relevant in the context of a mass tort bankruptcy. Inevitably those cases will involve a bankruptcy court estimating claims on a great scale—introducing the possibility of undervaluing future claims (and underfunding assets left to satisfy them)[12] and the difficulty of fairly compensating

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[12] *See* Report of the National Bankruptcy Review Commission 343-44 (Oct. 20, 1997) (recognizing claims-estimation accuracy is an important component of the integrity of the mass tort bankruptcy process and noting underestimation of claims occurred in the Johns-Manville case, one of the earliest asbestos bankruptcy cases, while also pointing to the adequate funding of trusts in subsequent cases to show those risks are surmountable).

claimants with wide-ranging degrees of exposure and injury. On the other hand, a longer history of litigation outside of bankruptcy may provide a court with better guideposts when tackling these issues.[13]

To take a step back, testing the nature and immediacy of a debtor's financial troubles, and examining its good faith more generally, are necessary because bankruptcy significantly disrupts creditors' existing claims against the debtor: "Chapter 11 vests petitioners with considerable powers—the automatic stay, the exclusive right to propose a reorganization plan, the discharge of debts, etc.—that can impose significant hardship on particular creditors. When *financially troubled* petitioners seek a chance to remain in business, the exercise of those powers is justified." *Integrated Telecom*, 384 F.3d at 120 (emphasis added) (citing *SGL Carbon*, 200 F.3d at 165-66). Accordingly, we have said the availability of certain debtor-favored Code provisions "assume[s] the existence of a valid bankruptcy, which, in turn, assumes a debtor in financial

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[13] For instance, the A.H. Robins claimants' trust has been recognized as one that functioned effectively and remained solvent for years. There the Court and stakeholders had the benefit of data from 15 years of tort litigation by A.H. Robins before its filing. *See* Report of the National Bankruptcy Review Commission 328 n.813, 344-45 (Oct. 20, 1997) (citing Jack B. Weinstein, *Individual Justice in Mass Tort Litigation: The Effect of Class Actions, Consolidations, and other Multiparty Devices* 280 n.88, 326 n.149 (Northwestern Press 1995), and Ralph R. Mabey & Peter A. Zisser, *Improving Treatment of Future Claims: The Unfinished Business Left by the Manville Amendments,* 69 Am. Bankr. L.J. 487, 497 n.45 (1995)).

distress." *Id.* at 128. Put another way, "Congress designed Chapter 11 to give those businesses teetering on the verge of a fatal financial plummet an opportunity to reorganize on solid ground and try again, not to give profitable enterprises an opportunity to evade contractual or other liability." *Cedar Shore Resort, Inc v. Mueller (In re Cedar Shore Resort, Inc.)*, 235 F.3d 375, 381 (8th Cir. 2000) (internal quotation marks omitted).

Our confidence in the conclusion that financial distress is vital to good faith is reinforced by the central role it plays in other courts' inquiries.[14] Chapter 11's legislative history also

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[14] *See, e.g.*, *Little Creek Dev. Co. v. Commonw. Mortg. Corp. (In re Little Creek Dev. Co.)*, 779 F.2d 1068, 1072 (5th Cir. 1986) ("Determining whether the debtor's filing for relief is in good faith depends largely upon the bankruptcy court's on-the-spot evaluation of the debtor's financial condition, motives, and the local financial realities."); *Cedar Shore Resort, Inc.*, 235 F.3d at 379-80 (in evaluating good faith, courts "consider the totality of the circumstances, including . . . the debtor's financial condition, motives, and the local financial realities"; dismissing petition, in part, because the debtor was "not in dire financial straits"); *In re James Wilson Assocs.*, 965 F.2d 160, 170 (7th Cir. 1992) (recognizing that, while the Code permits a firm to file though it is not insolvent, such filings usually involve "impending insolvency"); *Cohoes Indus. Terminal*, 931 F.2d at 228 (in the context of whether a petition was frivolous under Bankruptcy Rule 9011, stating "[a]lthough a debtor need not be *in extremis* in order to file[,] . . . it must, at least, face such financial difficulty that, if it did not file at that time, it could anticipate the need to file in the future"); *see also, e.g.*, *Barclays-Am./Bus. Credit, Inc. v. Radio WBHP, Inc.* (*In*

suggests it was meant to "deal[] with the reorganization of a financially distressed enterprise." *SGL Carbon*, 200 F.3d at 166 (quoting S. Rep. No. 95-989, at 9, *reprinted in* 1978 U.S.C.C.A.N. 5787, 5795).

The takeaway here is that when financial distress is present, bankruptcy may be an appropriate forum for a debtor to address mass tort liability. Our *SGL Carbon* decision specifically addressed this in distinguishing the financial distress faced by Johns-Manville in its Chapter 11 case. It was prompted by a tide of asbestos litigation that, but for its filing, would have forced the debtor to book a $1.9 billion liability reserve "trigger[ing] the acceleration of approximately $450 million of outstanding debt, [and] possibly resulting in a forced liquidation of key business segments." *In re Johns-Manville Corp.*, 36 B.R. 727, 730 (Bankr. S.D.N.Y. 1984). That created a "compelling need [for the debtor] to reorganize in order to meet" its obligations to creditors. *Id.* This urgency stood in stark contrast to the circumstances in *SGL Carbon*, where the debtor faced no suits, or even liquidated judgments, that threatened its ongoing operations.

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re Dixie Broad., Inc.), 871 F.2d 1023, 1027-28 (11th Cir. 1989) (stating that whether a debtor is "financially distressed" is one factor evidencing bad faith and that "the Bankruptcy Code is not intended to insulate 'financially secure' [debtors]"); *Carolin Corp.*, 886 F.2d at 701 (one prong of the good-faith inquiry is meant to ensure the petition bears "some relation to the statutory objective of resuscitating a financially troubled [debtor]") (brackets in original) (citing *Connell v. Coastal Cable T.V., Inc. (In re Coastal Cable T.V., Inc.)*, 709 F.2d 762, 765 (1st Cir. 1983)).

A.H. Robins Company, before its bankruptcy, faced financial woes like Johns-Manville's, in both cases caused by mass product liabilities litigation. Before filing, Robins had only $5 million in unrestricted funds and a "financial picture . . . so bleak that financial institutions were unwilling to lend it money." *In re A.H. Robins Co., Inc.*, 89 B.R. 555, 558 (Bankr. E.D.V.A. 1988). The Court concluded Robins "had no choice but to file for relief under Chapter 11." *Id.*

And in Dow Corning's Chapter 11 case, the Court described the company's resolve to address mass tort liability as "a legitimate effort to rehabilitate a solvent but *financially-distressed* corporation." *In re Dow Corning Corp.*, 244 B.R. 673, 676-77 (Bankr. E.D. Mich. 1999) (emphasis added). It specifically recognized that "the legal costs and logistics of defending the worldwide product liability lawsuits against the [d]ebtor threatened its vitality by depleting its financial resources and preventing its management from focusing on core business matters." *Id.* at 677.

These cases show that mass tort liability can push a debtor to the brink. But to measure the debtor's distance to it, courts must always weigh not just the scope of liabilities the debtor faces, but also the capacity it has to meet them. We now go there, but only after detouring to a problem particular to our case: For good-faith purposes, should we judge the financial condition of LTL by looking to Old Consumer—the operating business with valuable assets, but damaging tort liability, that the restructuring and filing here aimed to protect? Or should we look to LTL, the entity that actually filed for bankruptcy? Or finally, like the Bankruptcy Court, should we consider "the financial risks and burdens facing both Old [Consumer] and [LTL]"? App. 14 (Mot. to Dismiss Op. 14).

D. Only LTL's Financial Condition is Determinative.

Weighing the totality of facts and circumstances might seem on the surface to require that we evaluate the state of affairs of both Old Consumer and LTL when judging the latter's financial distress. That said, we must not underappreciate the financial reality of LTL while unduly elevating the comparative relevance of its pre-bankruptcy predecessor that no longer exists. Even were we unable to distinguish the financial burdens facing the two entities, we can distinguish their vastly different sets of available assets to address those burdens. On this we part from the Bankruptcy Court.

Thus for us, the financial state of LTL—a North Carolina limited liability company formed under state law and existing separate from both its predecessor company (Old Consumer) and its newly incorporated counterpart company (New Consumer)—should be tested independent of any other entity. That means we focus on its assets, liabilities, and, critically, the funding backstop it has in place to pay those liabilities.

Doing so reflects the principle that state-law property interests should generally be given the same effect inside and outside bankruptcy: "Property interests are created and defined by state law. Unless some federal interest requires a different result, there is no reason why such interests should be analyzed differently simply because an interested party is involved in a bankruptcy proceeding." *Butner v. United States*, 440 U.S. 48, 55 (1979). No one doubts that the state-law divisional merger passed talc liabilities to LTL. Why in bankruptcy would we

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recognize the effectiveness of this state-law transaction, but at the same time ignore others that augment LTL's assets, such as its birth gift of the Funding Agreement? To say the financial condition of Old Consumer prior to the restructuring—which was not bolstered by such a contractual payment right—determines the availability of Chapter 11 to LTL would impose on the latter a lookback focused on the nonavailability of a funding backstop to what is now a nonentity.

Instead, we must evaluate the full set of state-law transactions involving LTL to understand the makeup of its financial rights and obligations that, in turn, dictate its financial condition. Even were we to agree that the full suite of reorganizational steps was a "single integrated transaction," App. 43 (Mot. to Dismiss Op. 43), this conclusion does not give us license to look past its effect: the creation of a new entity with a unique set of assets and liabilities, and the elimination of another. Only the former is in bankruptcy and subject to its good-faith requirement. *See* Ralph Brubaker, *Assessing the Legitimacy of the "Texas Two-Step" Mass-Tort Bankruptcy*, 42 No. 8 Bankr. L. Letter NL 1 (Aug. 2022) (observing that the Bankruptcy Code is designed to address the financial distress of the entity *in* bankruptcy).

We cannot say a "federal interest requires a different result." *See Butner*, 440 U.S. at 55. That is because the Bankruptcy Code is an amalgam of creditor-debtor tradeoffs balanced by a Congress that assumed courts applying it would respect the separateness of legal entities (and their respective assets and liabilities). "[T]he general expectation of state law and of the Bankruptcy Code . . . is that courts respect entity separateness absent compelling circumstances calling equity . . . into play." *In re Owens Corning*, 419 F.3d 195, 211

(3d Cir. 2005). Put differently, as separateness is foundational to corporate law, which in turn is a predicate to bankruptcy law, it is not easily ignored. It is especially hard to ignore when J&J's pre-bankruptcy restructuring—ring-fencing talc liabilities in LTL and forming the basis for this filing—depended on courts honoring this principle.

The Bankruptcy Code is designed in important part to protect and distribute a debtor's assets to satisfy its liabilities. It strains logic then to say the condition of a defunct entity should determine the availability of Chapter 11 to the only entity subject to it. To do so would introduce uncertainty regarding how far back and to what entities a court can look when evaluating a debtor's financial distress.

Thus, while we agree with the Bankruptcy Court that both entities are part of our discussion of financial distress, the financial condition of Old Consumer is relevant only to the extent it informs our view of the financial condition of LTL itself.

E. LTL Was Not in Financial Distress.

With our focus properly set, we now evaluate the financial condition of LTL. It is here we most disagree with the Bankruptcy Court, as it erred by overemphasizing the relevance of Old Consumer's financial condition. And while we do not second-guess its findings on the scope and costs of talc exposure up to the filing date, we do not accept its projections of future liability derived from those facts.

After these course corrections, we cannot agree LTL was in financial distress when it filed its Chapter 11 petition. The value and quality of its assets, which include a roughly

$61.5 billion payment right against J&J and New Consumer, make this holding untenable.

The Funding Agreement merits special mention. To recap, under it LTL had the right, outside of bankruptcy, to cause J&J and New Consumer, jointly and severally, to pay it cash up to the value of New Consumer as of the petition date (estimated at $61.5 billion) to satisfy any talc-related costs and normal course expenses. Plus this value would increase as the value of New Consumer's business and assets increased. App. 4316-17 (Funding Agreement 4-5, § 1 Definition of "JJCI Value").[15] The Agreement provided LTL a right to cash that was very valuable, likely to grow, and minimally conditional. And this right was reliable, as J&J and New Consumer were highly creditworthy counterparties (an understatement) with the capacity to satisfy it.

As for New Consumer, it had access to Old Consumer's cash-flowing brands and products along with the profits they produced, which underpinned the $61.5 billion enterprise value of New Consumer as of LTL's filing. And the sales and adjusted income of the consumer health business showed steady growth in the last several years when talc costs were excluded. Most important, though, the payment right gave LTL direct access to J&J's exceptionally strong balance sheet. At the time of LTL's filing, J&J had well over $400 billion in equity value with a AAA credit rating and $31 billion just in

[15] While, as described above, the uses for which LTL may draw on the payment right change in bankruptcy (*i.e.*, LTL is permitted to draw on it to fund a claimant trust and satisfy administrative expenses), we focus on the rights available to it just prior to its filing for good-faith purposes.

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cash and marketable securities. It distributed over $13 billion to shareholders in each of 2020 and 2021. It is hard to imagine a scenario where J&J and New Consumer would be unable to satisfy their joint obligations under the Funding Agreement. And, of course, J&J's primary, contractual obligation to fund talc costs was one never owed to Old Consumer (save for the short moment during the restructuring that it was technically a party to the Funding Agreement).

Yet the Bankruptcy Court hardly considered the value of LTL's payment right to its financial condition. True, it noted its jurisdictional authority could "ensure that [LTL] pursue[d] its available rights" under the Funding Agreement. App. 43 (Mot. to Dismiss Op. 43). But, in discussing LTL's financial condition, the Court was "at a loss to understand, why—merely because [LTL] contractually has the right to exhaust its funding options [under the Funding Agreement]"—it was "not to be regarded as being in 'financial distress.'" App. 35 (*Id.* at 35). It speculated that a draw on the payment right could force J&J to deplete its available cash or pursue a forced liquidation of New Consumer and have a "horrific impact" on those companies. *Id.* The assumption seems to be that, out of concern for its affiliates, LTL may avoid drawing on the payment right to its full amount. But this is unsupported and disregards the duty of LTL to access its payment assets.

Ultimately, whether this assumption was made or not, the Bankruptcy Court did not consider the full value of LTL's backstop when judging its financial condition. And at the same time it acutely focused on how talc litigation affected *Old Consumer*. *See, e.g.,* App. 34 (Mot. to Dismiss Op. 34) ("The evidence confirms that the talc litigation . . . forced *Old [Consumer]* into a loss position in 2020"); App. 36 (*Id.* at 36)

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("*Old [Consumer]* was not positioned to continue making substantial [t]alc [l]itigation payments"); App. 38 (*Id.* at 38) ("*Old [Consumer]* need not have waited until its viable business operations were threatened past the breaking point") (emphasis added in each citation). Directing its sight to Old Consumer and away from the Funding Agreement's benefit to LTL essentially made the financial means of Old Consumer, and not LTL, the lodestar of the Court's financial-distress analysis. This misdirection was legal error.

We also find a variable missing in the Bankruptcy Court's projections of future liability for LTL extrapolated from the history of Old Consumer's talc litigation: the latter's successes. To reiterate, before bankruptcy Old Consumer had settled about 6,800 talc-related claims for under $1 billion and obtained dismissals of about 1,300 ovarian cancer and over 250 mesothelioma claims without payment. And a minority of the completed trials resulted in verdicts against it (with some of those verdicts reversed on appeal). Yet the Court invoked calculations that just the legal fees to defend all existing ovarian cancer claims (each through trial) would cost up to $190 billion. App. 37 (*Id.* at 37). It surmised "one could argue" the exposure from the existing mesothelioma claims alone exceeded $15 billion. App. 17 (*Id.* at 17). These conjectures ballooned its conclusion that, "[e]ven without a calculator or abacus, one can multiply multi-million dollar or multi-billion dollar verdicts by tens of thousands of existing claims, let alone future claims," to see that "the continued viability of all J&J companies is imperiled." App. 36 (*Id.* at 36).

What these projections ignore is the possibility of meaningful settlement, as well as successful defense and

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dismissal, of claims by assuming most, if not all, would go to and succeed at trial. In doing so, these projections contradict the record. And while the Bankruptcy Court questioned the continuing relevance of the past track record after *Ingham* and the breakdown of the Imerys settlement talks, this assumes too much too early. Nothing in the record suggests *Ingham*—one of 49 pre-bankruptcy trials and described even by J&J as "unique" and "not representative," App. 2692-93—was the new norm. Nor is there anything that shows all hope of a meaningful global or near-global settlement was lost after the initial Imerys offer was rebuffed. The Imerys bankruptcy remained a platform to negotiate settlement. And the progression of the multidistrict litigation on a separate track would continue to sharpen all interested parties' views of mutually beneficial settlement values.

Finally, we cannot help noting that the casualness of the calculations supporting the Court's projections engenders doubt as to whether they were factual findings at all, but instead back-of-the-envelope forecasts of hypothetical worst-case scenarios. Still, to the extent they were findings of fact, we cannot say these were inferences permissibly drawn and entitled to deference. *See Universal Mins.*, 669 F.2d at 102. Hence, they were clearly erroneous. And as we locate no other inferences or support in the record to bear the Court's assertion that the "talc liabilities" "far exceed [LTL's] capacity to satisfy [them]," we cannot accept this conclusion either.[16] App. 23 (Mot. to Dismiss Op. 23).

[16] Because we arrive at the same result assuming the Bankruptcy Court was correct to determine LTL was responsible to indemnify J&J for *all* talc costs it incurs, we need not opine on this conclusion. Still, we note certain

In this context, it becomes clear that, on its filing, LTL did not have any likely need in the present or the near-term, or even in the long-term, to exhaust its funding rights to pay talc liabilities. In the over five years of litigation to date, the aggregate costs had reached $4.5 billion (less than 7.5% of the $61.5 billion value on the petition date), with about half of these costs attributable to one ovarian cancer verdict, *Ingham*, to date an outlier victory for plaintiffs. While the number of talc claims had surged in recent years, still J&J, as of October 2021, valued the probable and reasonably estimable contingent loss for its products liability litigation, including for talc, under GAAP, at $2.4 billion for the next two years. Further, though settlement offers are only that, we do not disregard LTL's suggestion that $4 billion to $5 billion was at one time considered by plaintiffs' lawyers to be in the ballpark to resolve

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pertinent factors lack full discussion in the Court's analysis of the indemnity agreement relating to Johnson's Baby Powder in the 1979 Spin Off. App. 163-69 (Third-Party Inj. Op. 24-30). For example, it is not obvious LTL must indemnify J&J for the latter's independent, post-1979 conduct that is the basis of a verdict rendered against it. *See* App. 4957 (Agreement for Transfer of Assets and Bill of Sale 5 ¶ 4) (Old Consumer's predecessor agrees to assume and indemnify J&J against "all . . . liabilities and obligations of every kind and description *which are allocated on the books or records of J&J* as pertaining to the BABY Division.") (emphasis added). It is also not clear the indemnity should be read to reach punitive damage verdicts rendered against J&J for its own conduct. Additionally, the Court never discussed how it reached its conclusion that Old Consumer assumed responsibility from J&J for *all* claims relating to Shower to Shower.

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virtually all multidistrict ovarian cancer claims as well as corresponding additional claims in the Imerys bankruptcy. And as noted, we view all this against a pre-bankruptcy backdrop where Old Consumer had success settling claims or obtaining dismissal orders, and where, at trial, ovarian cancer plaintiffs never won verdicts that withstood appeal outside of *Ingham* and mesothelioma plaintiffs had odds of prevailing that were less than stellar.

From these facts—presented by J&J and LTL themselves—we can infer only that LTL, at the time of its filing, was highly solvent with access to cash to meet comfortably its liabilities as they came due for the foreseeable future. It looks correct to have implied, in a prior court filing, that there was not "*any imminent or even likely need of [it] to invoke the Funding Agreement to its maximum amount or anything close to it.*" App. 3747 (LTL's Obj. to Mots. for Cert. of Direct Appeal 22) (emphasis added). Indeed, the Funding Agreement itself recited that LTL, after the divisional merger and assumption of that Agreement, held "assets having a value at least equal to its liabilities and had financial capacity sufficient to satisfy its obligations as they become due in the ordinary course of business, *including any [t]alc [r]elated [l]iabilities*." App. 4313 (Funding Agreement 1, ¶ E) (emphasis added). This all comports with the theme LTL proclaimed in this case from day one: it can pay current and future talc claimants in full. *See* App. 630 (Transcript of N.C. "First Day" Hearing, October 20, 2021) (LTL's counsel telling the North Carolina bankruptcy court in his opening remarks that "[LTL], New [Consumer], and J&J believe that *$2 billion exceeds* any liability [LTL] could reasonably have for talc-related claims . . . ." (emphasis added)).

We take J&J and LTL at their word and agree. LTL has a funding backstop, not unlike an ATM disguised as a contract, that it can draw on to pay liabilities without any disruption to its business or threat to its financial viability. It may be that a draw under the Funding Agreement results in payments by New Consumer that in theory might someday threaten its ability to sustain its operational costs. But those risks do not affect LTL, for J&J remains its ultimate safeguard. And we cannot say any potential liquidation by LTL of Royalty A&M—a collection of bare rights to streams of payments cobbled together on the eve of bankruptcy—to pay talc costs would amount to financial distress. Plus LTL had no obligation, outside of bankruptcy, to sell those assets for cash before drawing on the Funding Agreement.

At base level, LTL, whose employees are all J&J employees, is essentially a shell company "formed," almost exclusively, "to manage and defend thousands of talc-related claims" while insulating at least the assets now in New Consumer. App. 449 (Decl. of John Kim 5). And LTL was well-funded to do this. As of the time of its filing, we cannot say there was any sign on the horizon it would be anything but successful in the enterprise. It is even more difficult to say it faced any "serious financial and/or managerial difficulties" calling for the need to reorganize during its short life outside of bankruptcy. *SGL Carbon*, 200 F.3d at 164.[17]

[17] In saying the nature of the payment right and a lack of meaningful operations show that LTL did not suffer from sufficient kinds of financial distress, we focus on the special circumstances here and do not suggest the presence of these characteristics would preclude a finding of financial distress in every case.

But what if, contrary to J&J's statements, *Ingham* is not an anomaly but a harbinger of things to come? What if time shows, with the progression of litigation outside of bankruptcy, that cash available under the Funding Agreement cannot adequately address talc liability? Perhaps at that time LTL could show it belonged in bankruptcy. But it could not do so in October 2021. While LTL inherited massive liabilities, its call on assets to fund them exceeded any reasonable projections available on the record before us. The "attenuated possibility" that talc litigation may require it to file for bankruptcy in the future does not establish its good faith as of its petition date. *Id.* at 164. At best the filing was premature.[18]

In sum, while it is unwise today to attempt a tidy definition of financial distress justifying in all cases resort to Chapter 11, we can confidently say the circumstances here fall outside those bounds. Because LTL was not in financial distress, it cannot show its petition served a valid bankruptcy purpose and was filed in good faith under Code § 1112(b).[19]

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[18] Some might read our logic to suggest LTL need only part with its funding backstop to render itself fit for a renewed filing. While this question is also premature, we note interested parties may seek to "avoid any transfer" made within two years of any bankruptcy filing by a debtor who "receive[s] less than a reasonably equivalent value in exchange for such transfer" and "became insolvent as a result of [it]." 11 U.S.C. § 548(a). So if the question becomes ripe, the next one might be: Did LTL receive reasonably equivalent value in exchange for forgoing its rights under the Funding Agreement?

[19] Because we conclude LTL's petition has no valid bankruptcy purpose, we need not ask whether it was filed "merely to obtain

F. "Unusual Circumstances" Do Not Preclude Dismissal

The Bankruptcy Court held, as an independent basis for its decision, that even if LTL's petition were not filed in good faith, § 1112(b)(2) of the Code authorized it nonetheless to deny dismissal. For a petition to be saved under that provision, a court must identify "unusual circumstances establishing that . . . [dismissal] is not in the best interests of creditors and the estate." 11 U.S.C. § 1112(b)(2). The debtor (or any other party in interest) must also establish "the grounds for . . . [dismissal] include an act or omission" (1) "for which there exists a reasonable justification" and (2) "that will be cured within a reasonable period of time." *Id*.

The Bankruptcy Court ruled that "the interests of current tort creditors and the absence of viable protections for future tort claimants outside of bankruptcy . . . constitute such 'unusual circumstances' as to preclude . . . dismissal." App. 13 (Mot. to Dismiss Op. 13 n.8). But what is unusual instead is that a debtor comes to bankruptcy with the insurance accorded LTL. Our ground for dismissal is LTL's lack of

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a tactical litigation advantage." *BEPCO*, 589 F.3d at 618. Yet it is clear LTL's bankruptcy filing aimed to beat back talc litigation in trial courts. Still "[i]t is not bad faith to seek to gain an advantage from declaring bankruptcy—why else would one declare it?" *James Wilson Assoc.*, 965 F.2d at 170. While we ultimately leave the question unaddressed, a filing to change the forum of litigation where there is no financial distress raises, as it did in *SGL Carbon*, the specter of "abuse which must be guarded against to protect the integrity of the bankruptcy system." 200 F.3d at 169.

financial distress. No "reasonable justification" validates that missing requirement in this case. And we cannot currently see how its lack of financial distress could be overcome. For these reasons, we go counter to the Bankruptcy Court's conclusion that "unusual circumstances" sanction LTL's Chapter 11 petition.

III. CONCLUSION

Our decision dismisses the bankruptcy filing of a company created to file for bankruptcy. It restricts J&J's ability to move thousands of claims out of trial courts and into bankruptcy court so they may be resolved, in J&J's words, "equitably" and "efficiently." LTL Br. 8. But given Chapter 11's ability to redefine fundamental rights of third parties, only those facing financial distress can call on bankruptcy's tools to do so. Applied here, while LTL faces substantial future talc liability, its funding backstop plainly mitigates any financial distress foreseen on its petition date.

We do not duck an apparent irony: that J&J's triple A-rated payment obligation for LTL's liabilities, which it views as a generous protection it was never required to provide to claimants, weakened LTL's case to be in bankruptcy. Put another way, the bigger a backstop a parent company provides a subsidiary, the less fit that subsidiary is to file. But when the backstop provides ample financial support to a debtor who then seeks shelter in a system designed to protect those without it, we see this perceived incongruity dispelled.

That said, we mean not to discourage lawyers from being inventive and management from experimenting with novel solutions. Creative crafting in the law can at times

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accrue to the benefit of all, or nearly all, stakeholders. Thus we need not lay down a rule that no nontraditional debtor could ever satisfy the Code's good-faith requirement.

But here J&J's belief that this bankruptcy creates the best of all possible worlds for it and the talc claimants is not enough, no matter how sincerely held. Nor is the Bankruptcy Court's commendable effort to resolve a more-than-thorny problem. These cannot displace the rule that resort to Chapter 11 is appropriate only for entities facing financial distress. This safeguard ensures that claimants' pre-bankruptcy remedies—here, the chance to prove to a jury of their peers injuries claimed to be caused by a consumer product—are disrupted only when necessary.

Some may argue any divisional merger to excise the liability and stigma of a product gone bad contradicts the principles and purposes of the Bankruptcy Code. But even that is a call that awaits another day and another case. For here the debtor was in no financial distress when it sought Chapter 11 protection. To ignore a parent (and grandparent) safety net shielding all liability then foreseen would allow tunnel vision to create a legal blind spot. We will not do so.

Because it abused its discretion in denying the motions to dismiss, we reverse the Bankruptcy Court's order denying the motions and remand this case with the instruction to dismiss LTL's Chapter 11 petition. Dismissing its case annuls the litigation stay ordered by the Court and makes moot the need to decide that issue.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 22-2003, 22-2004, 22-2005, 22-2006, 22-2007,
22-2008, 22-2009, 22-2010, 22-2011

In Re: LTL MANAGEMENT LLC,
Debtor

OFFICIAL COMMITTEE OF TALC CLAIMANTS,
Appellant

v.

THOSE PARTIES LISTED ON APPENDIX A TO COMPLAINT AND JOHN AND JANE DOES 1-1000

(District Court Civil No.: 21-bk-30589; 21-ap-03032)

Present: RESTREPO, FUENTES, and AMBRO* Circuit Judges,

ORDER

The Clerk is directed to file the amended precedential opinion contemporaneously with this order. The changes to the opinion are shown in blue and red text on the pages attached as Exhibit A to this order. As the opinion has not been revised in any material way, no party may file a petition for rehearing.

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* Judge Ambro assumed senior status on February 6, 2023.

BY THE COURT,

s/ THOMAS L. AMBRO
Circuit Judge

Dated: March 31, 2023
JK/cc: All Counsel of Record

Exhibit A

Revised Text

underlying basic and inferred facts require clear-error review, the culminating determination of whether those facts support a conclusion of good faith gets plenary review as "essentially[] a conclusion of law." *Id.*; *see also U.S. Bank Nat'l Ass'n ex. rel. CWCapital Asset Mgmt. LLC v. Vill. at Lakeridge, LLC*, 138 S. Ct. 960, 966-68 (2018). A conclusion of financial distress, like the broader good-faith inquiry of which it is a part, likewise is subject to mixed review. Whether financial distress exists depends on the underlying basic facts, such as the debtor's ability to pay its current debts, and inferred facts, such as projections of how much pending and future liabilities (like litigation) could cost it in the future. But the ultimate determination ~~conclusion~~, like with good faith, is essentially a conclusion of law that gets a fresh look. *See id.*

B. Good Faith

Chapter 11 bankruptcy petitions are "subject to dismissal under 11 U.S.C. § 1112(b) unless filed in good faith." *BEPCO*, 589 F.3d at 618 (citing *NMSBPCSLDHB, L.P. v. Integrated Telecom Express, Inc. (In re Integrated Telecom Express, Inc.)*, 384 F.3d 108, 118 (3d Cir. 2004)). Section 1112(b) provides for dismissal for "cause." A lack of good faith constitutes "cause," though it does not fall into one of the examples of cause specifically listed in the statute. *See In re SGL Carbon Corp.*, 200 F.3d 154, 159-62 (3d Cir. 1999). Because the Code's text neither sets nor bars explicitly a good-faith requirement, we have grounded it in the "equitable nature of bankruptcy" and the "purposes underlying Chapter 11." *Id.* at 161-62 ("A debtor who attempts to garner shelter under the Bankruptcy Code . . . must act in conformity with the Code's underlying principles.").

dismissal, of claims by assuming most, if not all, would go to and succeed at trial. In doing so, these projections contradict the record. And while the Bankruptcy Court questioned the continuing relevance of the past track record after *Ingham* and the breakdown of the Imerys settlement talks, this assumes too much too early. Nothing in the record suggests *Ingham*—one of 49 pre-bankruptcy trials and described even by J&J as "unique" and "not representative," App. 2692-93—was the new norm. Nor is there anything that shows all hope of a meaningful global or near-global settlement was lost after the initial Imerys offer was rebuffed. The Imerys bankruptcy remained a platform to negotiate settlement. And the progression of the multidistrict litigation on a separate track would continue to sharpen all interested parties' views of mutually beneficial settlement values.

Finally, we cannot help noting that the casualness of the calculations supporting the Court's projections engenders doubt as to whether they were factual findings at all, but instead back-of-the-envelope forecasts of hypothetical worst-case scenarios. Still, to the extent they were findings of fact, we cannot say these were inferences permissibly drawn and entitled to deference. *See Universal Mins.*, 669 F.2d at 102. Hence, they were clearly erroneous. And as we locate no other inferences or support in the record to bear the Court's assertion that the "talc liabilities" "far exceed [LTL's] capacity to satisfy [them]," we cannot accept this conclusion either.[16] App. 23 (Mot. to Dismiss Op. 23).

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[16] Because we arrive at the same result assuming the Bankruptcy Court was correct to determine LTL was responsible to indemnify J&J for *all* talc costs it incurs, we need not opine on this conclusion. Still, we note certain

virtually all multidistrict ovarian cancer claims as well as corresponding additional claims in the Imerys bankruptcy. And as noted, we view all this against a pre-bankruptcy backdrop where Old Consumer had success settling claims or obtaining dismissal orders, and where, at trial, ovarian cancer plaintiffs never won verdicts that withstood appeal outside of *Ingham* and mesothelioma plaintiffs had odds of prevailing that were less than stellar.

From these facts—presented by J&J and LTL themselves—we can infer only that LTL, at the time of its filing, was highly solvent with access to cash to meet comfortably its liabilities as they came due for the foreseeable future. It looks correct to have implied, in a prior court filing, that there was not "*any imminent or even likely need of [it] to invoke the Funding Agreement to its maximum amount or anything close to it.*" App. 3747 (LTL's Obj. to Mots. for Cert. of Direct Appeal 22) (emphasis added). Indeed, the Funding Agreement itself recited that LTL, after the divisional merger and assumption of that Agreement, held "assets having a value at least equal to its liabilities and had financial capacity sufficient to satisfy its obligations as they become due in the ordinary course of business, *including any [t]alc [r]elated [l]iabilities*." App. 4313 (Funding Agreement 1, ¶ E) (emphasis added). This all comports with the theme LTL proclaimed in this case from day one: it can pay current and future talc claimants in full. *See* App. 630 (Transcript of N.C. "First Day" Hearing, October 20, 2021) (LTL's counsel telling the North Carolina bankruptcy court in his opening remarks that "[LTL], New [Consumer], and J&J believe that *$2 billion exceeds* any liability [LTL] could reasonably have for talc-related claims . . . ." (emphasis added)).

accrue to the benefit of all, or nearly all, stakeholders. Thus we need not lay down a rule that no nontraditional debtor could ever satisfy the Code's good-faith requirement.

But here J&J's belief that this bankruptcy creates the best of all possible worlds for it and the talc claimants is not enough, no matter how sincerely held. Nor is the Bankruptcy Court's commendable effort to resolve a more-than-thorny problem. These cannot displace the rule that resort to Chapter 11 is appropriate only for entities facing financial distress. This safeguard ensures that claimants' pre-bankruptcy remedies—here, the chance to prove to a jury of their peers injuries claimed to be caused by a consumer product—are disrupted only when necessary.

Some may argue any divisional merger to excise the liability and stigma of a product gone bad contradicts the principles and purposes of the Bankruptcy Code. But even that is a call that awaits another day and another case. For here the debtor was in no financial distress when it sought Chapter 11 protection. To ignore a parent (and grandparent) safety net shielding all liability then foreseen would allow tunnel vision to create a legal blind spot. We will not do so.

Because it abused its discretion in denying the motions to dismiss, wWe ~~thus~~ reverse the Bankruptcy Court's order denying the motions ~~to dismiss~~ and remand this case with the instruction to dismiss LTL's Chapter 11 petition. Dismissing its case annuls the litigation stay ordered by the Court and makes moot the need to decide that issue.

OFFICE OF THE CLERK

PATRICIA S. DODSZUWEIT

CLERK

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
21400 UNITED STATES COURTHOUSE
601 MARKET STREET
PHILADELPHIA, PA 19106-1790
Website: www.ca3.uscourts.gov

TELEPHONE
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March 31, 2023

Ms. Jeanne A. Naughton
United States Bankruptcy Court for the District of New Jersey
Martin Luther King Jr. Federal Building & United States Courthouse
50 Walnut Street
Newark, NJ 07102

RE: In re: LTL Management LLC
Case Numbers: 22-2003, 22-2003, 22-2005, 22-2006, 22-2007, 22-2008
22-2009, 22-2010, 22-2011
District Court Case Numbers: 21-bk-30589 & 21-ap-03032

Dear District Court Clerk,

Enclosed herewith is the certified judgment together with copy of the opinion in the above-captioned case(s). The certified judgment is issued in lieu of a formal mandate and is to be treated in all respects as a mandate.

Counsel are advised of the issuance of the mandate by copy of this letter. The certified judgment or order is also enclosed showing costs taxed, if any.

Very Truly Yours,

s/ Patricia S. Dodszuweit
Clerk

By: s/ James King
Case Manager
Direct Dial: 267-299-4958

cc:

Cory L. Andrews
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Jeffrey M. Sponder
Daniel M. Stolz
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Allen J. Underwood II
Matthew W.H. Wessler
Jeffrey R. White
Michael S. Winograd
Paul J. Winterhalter
Felice C. Yudkin
Hassan A. Zavareei

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

In re:	)	
	)	**Chapter 11**
ALDRICH PUMP LLC,	)	
MURRAY BOILER LLC,	)	
	)	**Case No. 20-30608 (JCW)**
Debtors.	)	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing MOTION TO DISMISS ON BEHALF OF ROBERT SEMIAN AND OTHER CLIENTS OF MRHFM was filed in accordance with the local rules and served upon all parties registered for electronic service and entitled to receive notice thereof through the CM/ECF system.

Respectfully submitted this the 6th day of April, 2023.

WALDREP WALL BABCOCK
& BAILEY PLLC

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