Docket #2211 Date Filed: 4/17/2024

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

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

DEBTORS' OBJECTION TO MOTION OF MAUNE RAICHLE CLAIMANTS TO REQUIRE ADMISSIONS

Aldrich Pump LLC ("Aldrich") and Murray Boiler LLC ("Murray"), the debtors in the above-captioned chapter 11 cases (the "Debtors"), hereby file this objection to *Robert Semian and All MRHFM's Claimants' Motion to Require the Debtors and Trane To Make Irrevocable, Unequivocal, and Unconditional Admissions About the Enforcibility [sic] of the Funding Agreements* (the "Motion") [Dkt. 2172].

INTRODUCTION

Law firm Maune Raichle Hartley French & Mudd, LLC ("Maune"), which represents a member of the Official Committee of Asbestos Claimants in these cases (the "ACC"), has filed a motion in this Court that is unprecedented, patently improper procedurally, wholly unsupported, and contains several material misstatements. Oddly, Maune asks *this Court* that the Debtors and "their Corporate Parents" "admit" that the Funding Agreements are valid and enforceable "***outside of bankruptcy***." Mot. at 1-2. The structure of the demand itself demonstrates the obvious—that it is not a motion properly directed to this Court at all and is a waste of the Court's time.

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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Rather, in the guise of a "motion" under Sections 105(a) and 1123(a)(5) (which is non-sensical) of the Bankruptcy Code, Maune seeks to serve what is in all respects a request for admission under Federal Rule of Bankruptcy Procedure 7036. But the request for admission is untethered to any pending adversary proceeding or contested matter. The Motion should be rejected for these reasons alone.

Maune also provides no authority to support anything even remotely analogous to the relief sought here. It cites a portion of the Bankruptcy Code dealing with plan confirmation (Section 1123(a)(5)), despite the fact that the confirmation process for the only plan on file has not begun. It also cites Section 105(a), but a bankruptcy court may issue an order under that section only in support of an applicable Bankruptcy Code provision; none is implicated here. And Maune further fails to show how its request is even ripe or that its clients are the appropriate parties to ask for the relief sought.

Beyond these fatal procedural defects, Maune makes no credible argument as to why it needs the "admissions" and "affirmations" sought in the Motion now, or ever. In fact, the assurances that Maune seeks have already been provided multiple times in these cases. First, the Debtors have been consistent in the public record throughout these cases regarding the enforceability of the Funding Agreements outside bankruptcy. Further, as described below, the discovery Maune seeks already was obtained twice in these cases through deposition, once by the ACC in the preliminary injunction ("PI") litigation and once by Maune itself in connection with its motion to dismiss. The deposition cited by Maune in fact ended with the Debtors' Chief Legal Officer stating that the Debtors would press to enforce the Funding Agreements.

Finally, Maune's hypotheticals both lack credibility and are intentionally misleading. Speculating at this juncture in the case regarding what structure a solicited plan might take is

premature and, in any event, the role of the Funding Agreements in any such plan will be assessed in depth as part of the confirmation process. In addition, Maune's hypothetical plan in which all tort claims are passed through to the tort system, apparently with no trust or claims resolution procedures, makes no sense as a bankruptcy plan in a case like this, where *all* claims are tort claims. See Mot. at 3, 10.

In the midst of Maune's improper demand for the Debtors to repeat previously asked and answered statements, it is notable that we do not hear something productive from Maune, for example that the fraudulent conveyance and substantive consolidation litigation in these cases should be dismissed since that litigation is both inconsistent with the Debtors' public position on the Funding Agreements and the position of Maune and the ACC in the dismissal litigation.

The Motion should be denied.

I. THE MOTION IS PROCEDURALLY IMPROPER AND WHOLLY UNSUPPORTED BY THE LAW

A. Maune Identifies No Basis For What Amounts To A Request For Admission.

The Motion, as titled, seeks "To Require the Debtors and Trane to Make Irrevocable, Unequivocal, and Unconditional Admissions About the Enforcibility *[sic]* of the Funding Agreements" — a request for admission under Federal Rule of Civil Procedure 36 / Federal Rules of Bankruptcy Procedure 7036. In other words, instead of requesting relief from this Court, the Motion requests an admission from the Debtors. Thus, it is not a motion at all and should be denied on that basis alone. Even if Maune repackaged its demand as an actual request for admission, it is improper because it does not provide the text of exactly what it would like to be admitted. See Fed. R. Civ. P. 36(a)(1)–(2). Further, in a bankruptcy case, requests for admission may be served only in adversary proceedings and contested matters. See Fed. R. Bankr. P. 7036, 9014(c). Here, the Motion was filed in the base bankruptcy case and is

untethered to any adversary proceeding or contested matter.[2] The Motion should be denied on these bases as well.

B. Maune Provides No Valid Legal Basis For Its Motion.

Separate from these procedural infirmities, Maune provides no support to authorize anything remotely analogous to the relief sought in the Motion. Bankruptcy courts, including this Court, are understandably hesitant to grant motions that are entirely unprecedented. In re Rose, 512 B.R. 790, 795 (Bankr. W.D.N.C. 2014) (Whitley, J.) ("There is no published case law construing Section 105 to permit [this request]. This decision will not be the first."). Without any case law to draw on, Maune cites two sections of the Bankruptcy Code, Sections 1123(a)(5) and 105(a). Neither authorizes its request.

1. Maune observes that Section 1123(a)(5) "requires the Court to ensure the Debtors have adequate means to implement any plan of reorganization." Mot. at 10. But Section 1123 is entirely irrelevant to Maune's purported concern about the validity of the Funding Agreements after a possible dismissal. In that scenario, there would be no plan to which Section 1123 could apply.

Further, Section 1123 cannot be a basis for relief as to un-proposed, unfiled plans. See Mot. at 3, 10. The only plan currently relevant for the purposes of Section 1123 is the plan jointly proposed by the Debtors and the FCR.[3] See [Dkt. 831]. When the time comes for a confirmation hearing and order, the Court would need to assess whether the Debtors' plan "provide[s] adequate means for the plan's implementation." 11 U.S.C. § 1123(a)(5); see also 11

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[2] Though the ACC has initiated adversary proceedings in these bankruptcies, the Motion was not filed in any of those cases. See Adv. Dkts. 22-03028; 22-03029. Nor are Maune's clients entitled to serve discovery in any of those proceedings.

[3] Moreover, the Court has already found that the Debtors have funded this proposed plan even "without contribution under the Funding Agreements" and have the wherewithal to fund a bankruptcy trust "if a deal were struck with the ACC." [Dkt. 2047] at 47.

U.S.C. § 1129(a)(1). Maune's clients may file objections and vote against the plan during that process. See 11 U.S.C. §§ 1126(a); 1128(b). But with no plan being solicited, now is not the time to raise Section 1123. See In re LATAM Airlines Grp. S.A., 2022 WL 790414, at *12 (Bankr. S.D.N.Y. Mar. 15, 2022) (pre-confirmation Section 1123 objections "premature" and overruled without prejudice).

2. Maune is thus forced to fall back on Section 105(a), which permits a court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). "Despite the breadth of language in § 105, … the Court's authority is not without limitation." In re Tate, 253 B.R. 653, 667 (Bankr. W.D.N.C. 2000). Orders under Section 105(a) must implement another part of the Code. Id. ("[A]n exercise of § 105 must be linked to a specific Code section, and not merely to a general objective of the bankruptcy process."). This limitation comes from the text of the statute itself, which authorizes orders "necessary or appropriate to *carry out the provisions of this title*." 11 U.S.C. § 105(a) (emphasis added). "Section 105(a) limits the bankruptcy court's equitable powers, which must and can only be exercised within the confines of the Bankruptcy Code." In re Dairy Mart Convenience Stores, Inc., 351 F.3d 86, 92 (2d Cir. 2003) (quotation marks and citation omitted).

Aside from a brief reference to an inapplicable section of the Code (Section 1123), Maune cites no statute, rule, or case law authorizing its request. With "no published case law construing Section 105 to" authorize this relief, this Court should "not be the first." Rose, 512 B.R. at 795.[4]

[4] Maune also invokes broad policy considerations, such as "what bankruptcy is about" and this proceeding's "great public importance." Mot. at 11. But these considerations do not create the right to an entirely novel form of relief. After all, "the Code does not authorize bankruptcy courts to create substantive rights not otherwise available under applicable statutes." Rose, 512 B.R. at 794 (quotation marks and citation omitted).

C. The Motion Is Not Ripe.

The Motion is also unripe. "Ripeness is peculiarly a question of timing" and prevents federal courts "from entangling themselves in abstract disagreements" by adjudicating disputes too early. Thomas v. Union Carbide Agric. Prods. Co., 473 U.S. 568, 580 (1985) (alterations adopted, quotation marks and citations omitted); see also Renne v. Geary, 501 U.S. 312, 320 (1991) ("Justiciability concerns not only the standing of litigants to assert particular claims, but also the appropriate timing of judicial intervention."). There must exist "a real, substantial controversy," not merely a "hypothetical or abstract" one. Miller v. Brown, 462 F.3d 312, 316 (4th Cir. 2006) (quoting Babbitt v. United Farm Workers Nat. Union, 442 U.S. 289, 298 (1979)). Courts may deny requests for relief, not just entire claims, as unripe. See, e.g., Murray v. Ostrowski, 2023 WL 2384457, at *2 (D.N.J. Mar. 6, 2023); Levesque v. Iberdrola, S.A., 2021 WL 1520596, at *5 (D. Me. Apr. 16, 2021).

Only in a hypothetical controversy—multiple steps removed from the present situation—would a potential injury occur such that Maune's requested relief could be ripe or relevant. *First*, under Maune's hypothetical scenarios, the bankruptcy case would have to be dismissed or a plan of reorganization filed and solicited that provides current and future claimants the ability to simply "opt-out" to the tort system. See Mot. at 2, 7, 10-11. Neither event has occurred. *Second*, a claimant would have to proceed to trial and successfully litigate a claim to judgment against the Debtors in the tort system. *Third*, the claimant would have to seek liquidation of that judgment. *Fourth*, the Debtors would have to fail to honor that judgment. Only at that point would the plaintiff even theoretically have been injured by the failure to enforce the Funding Agreements.

Absent this entire series of events happening, there has been no "injury in fact," either "actual or imminent." Lujan v. Defs. of Wildlife, 504 U.S. 555, 560 (1992) (quotation marks and

citations omitted). Maune's amorphous "concerns" about the enforceability of the Funding Agreements and the "ability [of its clients] to collect on their claims" (Mot. at 4) in a hypothetical post-dismissal world cannot constitute a "legally protected interest" on which to base a claim for relief. Lujan, 504 U.S. at 560. And perhaps most obviously, the Motion also ignores the claims for relief (such as fraudulent transfer) that Maune's clients could pursue in the event all of these hypothetical events, including dismissal of the case, transpired.

D. Maune's Clients Are Not Proper Parties To Seek The Relief Sought.

Even if the Motion were justiciable, it is based on alleged concerns that would apply equally to all asbestos claimants. Yet the ACC, not Maune, is tasked with litigating issues, like this one, that theoretically impact all claimants. See [Dkt. 147]. Indeed, the ACC was granted explicit authority to "investigate, commence, prosecute and, if appropriate and approved by the Court after notice and hearing, settle an action or actions on behalf of the Debtors' estates, with respect to, arising from or otherwise related to the Corporate Restructuring." [Dkt. 1121] at ¶ 2.

II. THE RELIEF SOUGHT THROUGH THE MOTION IS UNNECESSARY

Beyond the lack of any legal support for the Motion, Maune provides no credible need for the "admissions" and "affirmations" it seeks.

A. The Debtors Have Already Confirmed—Multiple Times—The Enforceability Of The Funding Agreements

The Motion states that the Debtors have been clear from the outset of these cases on the Funding Agreements, and in fact describes the Debtors' long-standing position as a "proclamation" that the Funding Agreements are valid and enforceable. Mot. at 3, 8. The Debtors always have indicated that the Funding Agreements give the Debtors the same ability to pay asbestos claimants as Old IRNJ and Old Trane had before the 2020 Corporate Restructuring. Id. Numerous filings by the Debtors in these cases confirm the Debtors' long-standing position.

See, e.g., *Decl. of Ray Pittard*, ¶ 14 [Dkt. 27] ("A funding agreement was established between [New Trane and Aldrich and New Trane and Murray] that ensures that [Aldrich and Murray have] the same ability to pay the asbestos claims against it as [Old IRNJ and Old Trane] had before the 2020 Corporate Restructuring); *Debtors' Objection to Motion of the Official Committee of Asbestos Personal Injury Claimants to Dismiss Debtors' Chapter 11 Cases* at 20, [Dkt. 1813] ("The Funding Agreements about which the ACC complains ensure that each of the Debtors has the same ability to pay valid current and future asbestos-related claims as the Debtors' predecessors had prior to the bankruptcy filings").

Further, the information Maune seeks already has been obtained multiple times in discovery in these cases, including by depositions taken by both the ACC and Maune. In the PI litigation, Allan Tananbaum, the Debtors' chief legal officer, was deposed twice by the ACC, once individually and once as a Rule 30(b) designee. Attached as Exhibit 1 is an excerpt from the former deposition. Mr. Tananbaum stated therein that outside of bankruptcy the Debtors would have "great comfort" that they could pay all asbestos claims based on the Funding Agreements.[5]

Mr. Tananbaum was also the Debtors' declarant in the dismissal litigation. There, both the ACC and Maune deposed him. Maune only quotes part of Mr. Tananbaum's answer to Maune's question in that deposition as to whether the Debtors would enforce the Funding Agreements. Mot. at 7. Attached as Exhibit 2 is an excerpt from that deposition, which speaks for itself. A more complete recitation of the back and forth on the enforceability of the Funding Agreements is set forth below and demonstrates that Maune itself, through its own questioning, already has obtained in discovery what it claims it now seeks:

[5] See Mar. 22, 2021 Tananbaum Dep. 228:9–232:2.

> **Q.** Are the funding agreements between Aldrich and New Trane Technologies and between Murray and New Trane, are they enforceable outside of bankruptcy if there's not a bankruptcy pending? . . .
>
> **A.** I testified to this during the PI Hearing, during deposition, and that transcript should control, in case my recollection is faulty now, but my understanding is that if there is no bankruptcy that those funding agreements would support the funding of the entities in the tort system, yes.
>
> **Q.** Okay. I appreciate that. I'm not trying to trip you up on that.
>
> **A.** No, it has – it has just been a while since I studied up on them, and I know I was asked extensively on that in the past, but that's my recollection. Obviously I have access to all of that information and I could go back and confirm. . . .
>
> **Q.** And putting aside dismissal, if for some reason New Trane or New Trane Technologies were to refuse to honor the funding agreements, the debtors would push to have those enforced; would they not? . . .
>
> **A.** Yeah, I don't know how that would work, but you're asking if at some point the funders weren't honoring their commitments under the agreement, would we press to have them do so, and I don't know what that would look like, but I would imagine, yes, that we would press to have those commitments honored.[6]

Despite Maune's protest to the contrary (Mot. at 8), in the context of the Debtors' repeated public filings in these cases on the Funding Agreements, these statements from Mr. Tananbaum are clearly "good enough." There has been no "hedging" or "inconsistent self-serving statements" by the Debtors. Id. at 7.

III. MAUNE'S HYPOTHETICALS LACK CREDIBILITY AND ARE MATERIALLY MISLEADING

Maune attempts to justify its unprecedented, unclear request through hypotheticals that lack credibility and are laden with factual inaccuracies. It suggests that this Court will approve a

[6] July 6, 2023 Tananbaum Dep. 158:22–162:9 [Dkt. 1909].

plan of reorganization where all current and future asbestos claimants simply go back to the tort system. Mot. at 3, 10.[7] Obviously, that is not a plan at all. In fact, the ACC in Bestwall filed essentially that plan as one of its no less than five attempts directly or indirectly to dismiss that case.[8] Judge Beyer declined to entertain the request to move that plan forward, describing it as "akin to dismissal."[9] But, in any case, why would Maune need ***now*** an "admission" that it claims is relevant to a hypothetical plan that has not been filed, should never be confirmed, and even theoretically is a long time from being addressed?

Next, Maune claims that the Funding Agreements are the "only mechanism that will allow the claimants to recover ***anything*** on their claims in this bankruptcy proceeding." Mot. at 8 (emphasis added). But Maune completely ignores the Debtors' plan that has been on file in these cases since August 2021 and is supported by the FCR, by far the largest claimant constituency in these cases. That plan already is fully funded, including through the $270 million qualified settlement fund that the Court approved.[10] As the Court stated in its opinion denying Maune's motion to dismiss these chapter 11 cases, that plan was funded even without the Funding Agreements.[11]

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7 Presumably, this is some attempt by Maune to link its demand actually to the bankruptcy cases even though Maune indicates its purported concern is with the Funding Agreements ***outside of bankruptcy,*** where this Court would have no further jurisdiction.

8 See *Amended Plan of Reorganization Proposed by the Official Committee of Asbestos Claimants and the Future Claimants' Representative*, In re Bestwall LLC, No. 17-31795 (Bankr. W.D.N.C. July 22, 2020) [Dkt. 1219].

9 See Oct. 22, 2020 Hr'g Tr. 16:18-18:11, In re Bestwall LLC, No. 17-31795, (Bankr. W.D.N.C. Oct. 26, 2020) [Dkt. 1435] (declining to consider ACC and FCR's plan solicitation motion and disclosure statement until after estimation trial).

10 *Order Authorizing the Debtors to Establish a Qualified Settlement Fund for Payment of Asbestos Claims*, [Dkt. 994].

11 *Order Denying Motion to Dismiss* at 54 [Dkt. 2047].

Furthermore, Maune's recitation of events in LTL Management is materially misleading. LTL entered its first chapter 11 filing with a funding agreement from its direct parent company (the same structure as these cases), as well as essentially a guaranty of that funding agreement from the publicly traded parent of the entire corporate family. Maune well knows this, as it was heavily involved in the LTL case, including its dismissal litigation. LTL did not have that parent guaranty going into its second case, but instead the proposal was that such a guaranty would be approved by the bankruptcy court as part of the proceedings.[12] Maune makes it sound instead like the corporate family simply disavowed its funding for LTL in the second bankruptcy case. This is completely false. In fact, even without that guaranty, the second bankruptcy case was dismissed under the Third Circuit dismissal test because LTL was "too solvent".[13]

Finally, Maune implies that this Court relied on the Funding Agreements in issuing the PI in these cases (which was not appealed). Mot. at 8. That is, again, an odd position, because the Court began to raise questions about the Funding Agreements *in its opinion approving the PI*. The Court's issuance of the PI was not based on the Funding Agreements, but instead applicable statutes and case law that has led to the issuance of such preliminary injunctions repeatedly in asbestos mass tort cases. That law also led the Court not only to issue the PI, but also an order granting the Debtors' motion for summary judgement that the automatic stay applied (not "extending" the automatic stay) to enjoin actions by asbestos claimants against the Debtors'

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12 See *Decl. of John Kim in Support of First Day Pleadings* at 27-28, In re LTL Mgmt. LLC, No. 23-12825 (Bankr D.N.J. Apr. 4, 2023) [Dkt. 4] ¶ 81("The J&J Support Agreement is subject to the approval of the Court and is operative only in the chapter 11 case."). The case was dismissed before approval of the guaranty came up for consideration.

13 See *Opinion Granting Motion to Dismiss*, In re LTL Mgmt. LLC, No. 23-12825 (Bankr.D.N.J. July 28, 2023) [Dkt. 1127].

corporate affiliates.[14] In any event, Maune fails to explain how the "admissions" and "affirmations" it seeks would resolve the issues apparently the Court has with the Funding Agreements. Mot. at 2. Instead, such arguments are an attempt by Maune to justify its extraordinary Motion by claiming it is acting at the Court's behest.[15]

CONCLUSION

In addition to the myriad infirmities that render this Motion improper and wholly unsupported, none of the purported reasons posited by Maune as to why it needs this information ***now*** (or at all) have any credibility, particularly where it has already obtained this information. The Motion's stated purpose – to have some certainty (that Maune already has obtained) as to what would happen to the Funding Agreements ***outside*** of bankruptcy (e.g. Mot. at 2, 11) – is simply harassment.[16]

The Debtors have been consistent in these cases on the Funding Agreements. It has been the ACC, and now Maune, that have raised purported issues with those agreements. Maune's procedurally improper attempt to obtain discovery on the issue, despite having already obtained said discovery multiple times in these cases, only wastes this Court's time. If Maune suggested

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[14] *Order Declaring that the Automatic Stay Applies to Certain Actions Against Non-Debtors, Preliminarily Enjoining Such Actions, and Granting in Part Denying in Part the Motion to Compel*, Adv. Pro. No. 20-03041 [Adv. Dkt. 307].

[15] This Court, in response to a motion by DBMP and its affiliates (Case No. 20-30080, [Dkt. 1051]) to approve amendments to address this Court's stated concerns about the funding agreement in that case, declined to get involved with interpreting or otherwise modifying that funding agreement, stating "I'm loathe to start tinkering around with the, the funding agreement without consent as it could impair or extinguish claims and remedies that, based on what had transpired before bankruptcy." To the extent this Motion is directed at the Debtors instead of the Court, the Court should similarly decline Maune's invitation here. See Dec. 16, 2021 Hr'g Tr. 124:15-18, In re DBMP LLC, No. 20-30080, (Bankr. W.D.N.C. Dec. 21, 2021) [Dkt. 1260].

[16] Maune's hyperbole that these cases involve "billions of dollars" and "hundreds of thousands of people" (Mot. at 11) also is false. One of the problems in the cases, as the Debtors have noted, is that the Debtors have no idea what amount of funds current claimants want. The FCR has been clear, and the Debtors' plan with the FCR has been on file for going on three years. As minority claimants, current claimants are not entitled to "billions of dollars." Nor are there "hundreds of thousands" of them. As of the Petition Date, there were approximately 35,000 current claimants (not counting claimants on inactive dockets).

that it is time to dismiss the fraudulent conveyance and substantive consolidation litigation in these cases, that would be productive. But Maune has shown repeatedly in these cases and other asbestos cases in this jurisdiction that it seeks the opposite of productivity.

The Motion should be denied.

Dated: April 17, 2024
Charlotte, North Carolina

Respectfully submitted,

/s/ John R. Miller, Jr.

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ATTORNEYS FOR DEBTORS
AND DEBTORS IN POSSESSION

Exhibit 1

March 22, 2021 Deposition of Allan Tananbaum Excerpt

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

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IN RE:

Chapter 11
No. 20-30608 (JCW)
(Jointly Administered)

ALDRICH PUMP LLC, et al.,

Debtors.

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ALDRICH PUMP LLC and

MURRAY BOILERS LLC,

Plaintiffs,

Adversary Proceeding
No. 20-03041 (JCW)

v.

THOSE PARTIES TO ACTIONS

LISTED ON APPENDIX A

TO COMPLAINT AND

JOHN AND JANE DOES 1-1000,

Defendants.

----------x

March 22 2021

REMOTE VIDEOTAPED DEPOSITION OF

ALLAN TANANBAUM

Stenographically Reported By:
Mark Richman, CSR, CCR, RPR, CM
Job No. 191087

A. TANANBAUM

right, but if the payor doesn't get protection under the plan then you're undermining the purpose of putting quiet title to the company's asbestos liabilities. Those liabilities sit squarely and solely in Aldrich and Murray, and so you can style a claim against the payor any way you want but it's really just a restyled claim arising out of the products that Aldrich and Murray distributed in commerce and for which they solely have the liability.

So if you don't -- if you -- if you -- if you set up a 524 (g) plan and you don't protect the payor with a channel injunction, then that's like the exception that swallows the rule and you've really accomplished nothing. You're just restyling. You're going to re-up the tort system against a new set of defendants.

And so my understanding is that it's essential that the payor be

A. TANANBAUM

protected at the end of this case in order for the bankruptcy to achieve its stated purpose.

Q. I think I've heard you say a few times as an effect of the corporate restructuring the debtors would have the same ability to fund, pay for claims that they had before the restructuring. Is that right?

A. Yes.

Q. If claims were brought in the tort system today, the debtors would be able to defend those claims in the same manner that they did before the corporate restructuring?

MR. HIRST: Objection to the form, a claim against who?

A. A claim against who is my question.

Q. If a claim was brought against the debtors in the tort system today, the debtors would be able to defend those claims in the same manner that they did before the corporate

A. TANANBAUM

restructuring; is that the case?

A. First off, if a claim were filed against the debtor today or tomorrow, it would be subject to the automatic stay so there would be no litigation.

Q. Okay.

A. At present.

Q. Assuming no bankruptcy, right now claim brought against the debtors, you would say they have the same ability to pay those claims as they did before the corporate restructuring; is that fair?

A. Yeah, I'm just turning back to the agreement because I think the key subsection of the permitted funding use is (c), when there's no proceeding under the bankruptcy code pending, yes, then the debtors can resort to the funding agreement to get necessary funds to satisfy their obligations in the tort system.

So in the specific hypothetical you lay out, yes.

Q. Okay. And you're obviously

A. TANANBAUM

familiar with the automatic stay. I think you referred to it several times.

A. Yes.

Q. Are you familiar with the concept of a lift stay?

A. I've become familiar with the concept of a lift stay from the lift stay motion that was filed in the DBMP case, yes.

Q. If the stay were lifted here in this case permitting claims to be brought in the tort system right now against the debtors --

A. Right.

Q. -- would the debtors be able to defend and pay those claims in the same manner that they did before the corporate restructuring?

A. No, they would not. I just read from -- you know, to understand -- no, they would not. To understand a prevented funding use you have to find one in this list and the only reference to funding claims in the tort system is,

A. TANANBAUM

quote, when there is no proceeding under the Bankruptcy Act.

Since we have a proceeding under the Bankruptcy Act, if the automatic stay were lifted then the debtors would not be able to to resort to the funding agreement to get those obligations paid for.

Q. So is it fair to say that then the debtors do not have the same ability to fund and pay for asbestos claims as they did before the corporate restructuring?

MR. HIRST: Object to the form.

A. Well I mean now we're playing language games. If there's no bankruptcy proceeding, assuming no bankruptcy proceeding the day after the divisional merger, Aldrich and Murray had the boards decided to stay in the status quo, could have continued just as Old IR and Old Trane had and would have great comfort from the funding agreements. But these funding

A. TANANBAUM

agreements envision a world where you're either in the tort system or you're in bankruptcy but you're not simultaneously in both because that's to my understanding an unprecedented situation to be in. It undermines the purpose of the bankruptcy.

And so, yeah, if you're saying, if you're asking whether Aldrich and Murray have -- would have the same ability to fund cases in the tort system while they're working earnestly to reach a resolution of the pending Chapter 11 bankruptcy case, then, yeah, they don't have in that one particular instance the same ability to pay.

But that's simply by dint of you got to be one thing or another, you can't be both. Has nothing to do with the protections, the financial ability of Trane to make good. But Trane is either going to make good in the tort system or it's going to make good in the bankruptcy. It's not going to do both,

A. TANANBAUM

both simultaneously, I should say.

Q. Are you aware of the Kaiser Gypsum bankruptcy currently pending before Judge Whitley in North Carolina?

A. I'm aware that there's such a bankruptcy pending, yes.

Q. Are you aware that the stay has been lifted in that case to allow asbestos claimants to sue the debtors in the tort system?

A. I may have heard it but I'm not, I'm not totally aware.

Q. Okay. I only ask because you said it was unprecedented so I was just, I wanted to know if you were aware of the current case in the same jurisdiction in front of the same judge that has those facts, but it sounds like you're not familiar with that.

MR. HIRST: Todd, can we do our break now?

MR. PHILLIPS: Sure.

MR. HIRST: 3 o'clock.

MR. PHILLIPS: Sure. Let's take

A. TANANBAUM

ten. Is that good?

MR. HIRST: That sounds good.

THE VIDEOGRAPHER: The time is 2:57 p.m., this is the end of media number 4, we're off the record.

(A recess was had.)

THE VIDEOGRAPHER: The time is 3:09 p.m., this is the start of media number 5, we're on the record.

MR. HIRST: And, Mr. Phillips, as I mentioned during a break, with regards to Committee Exhibit 190 which when there were questions asked about it I raised a potential privilege concern, my understanding is that New Trane is planning on clawing back that document, replacing it with a redacted version to redact the Jones Day advice that was contained therein for which I don't believe there were any questions asked of the witness or anything that he said substantively.

We can work together to see how

Exhibit 2

July 6, 2023 Deposition of Allan Tananbaum Excerpt

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
Chapter 11
Case No. 20-30608 (JCW)
----------x

In re

ALDRICH PUMP LLC, et al.,

Debtors.

----------x

July 6, 2023
10:01 a.m.

Videotaped Deposition of ALLAN TANANBAUM, pursuant to Notice, held at the offices of Jones Day, 250 Vesey Street, New York, New York, before Todd DeSimone, a Registered Professional Reporter and Notary Public of the State of New York.

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ALSO PRESENT:
ZEF COTA, Videographer

some degree, sure.
Q. And are you aware that the Third Circuit found that LTL Management was not in financial distress?
MR. EVERT: I object to the form of the question.
A. I'm aware that that's what the panel decision held, yes.
Q. And are you aware that after that decision LTL Management and J&j took the position that the funding agreement between the two of them was void or voidable, do you know that, sir?
A. I did hear -- I dialed in to one or two of the Zoom hearings in LTL 2 and I was made aware that that is one of the arguments that had come into play, yes.
Q. And you're aware that, I mean, clearly your declaration that you prepared in this case was in response to motions to dismiss that have been filed, right?
A. Yeah, that's correct.
Q. If Judge Whitley were to dismiss this case will the debtors enforce the funding agreements they have with New

Trane and New Trane Technologies?
MR. EVERT: I object to the form of the question. You are not here on behalf of the debtors.
Q. I think you can answer, sir, in your own capacity, I believe.
A. You know, I haven't really thought that through, so I don't have an opinion on that at the moment. Again, I could tell you we have no current intention of ever violating those agreements. Whether agreements are voidable or not, I don't know, I haven't studied that, but certainly wouldn't just outright -- I can't imagine we would just outright violate the agreements.
Q. Well, I guess from the debtors' perspective, I mean, you're the chief legal officer of Aldrich and Murray; is that right?
A. That's correct.
Q. And you would enforce the funding agreement regardless of whether or not Judge Whitley or the Fourth Circuit dismisses this case, right?

MR. EVERT: I object to the form of the question.
A. I don't know what we would do at the moment. I haven't given that a lot of thought.
Q. Are the funding agreements between Aldrich and New Trane Technologies and between Murray and New Trane, are they enforceable outside of bankruptcy if there's not a bankruptcy pending?
MR. EVERT: I object to the form of the question.
A. I testified to this during the PI hearing, during deposition, and that transcript should control, in case my recollection is faulty now, but my understanding is that if there is no bankruptcy that those funding agreements would support the funding of the entities in the tort system, yes.
Q. Okay. I appreciate that. I'm not trying to trip you up on that.
A. No, it has -- it has just been a while since I studied up on them, and I know I was asked extensively on that in the

past, but that's my present recollection. Obviously I have access to all of that information and I could go back and confirm.
Q. But sitting here today, as the chief legal officer of both debtors in this case, you can't commit that you are going to enforce the funding agreements if this case is dismissed?
MR. EVERT: I object to the form of the question.
A. Well, you raised the LTL 2 filing and you raised this issue that came up about voidability and all the rest, and I haven't studied that issue as to whether it would even -- what the merits of the argument are, whether they could potentially apply to us, and since we don't intend to have the case dismissed, that's not, thankfully, something I have dwelled on.
So I don't mean to evade -- I don't mean to avoid answering your question, but I do want to be careful. I suppose if the case were dismissed we would

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have to take a long, hard look at everything, and make our -- make some decisions.

Q. And you are saying -- when you are using "we" there, you are referring to the debtors; is that right?

A. That's correct. I can only speak for -- well, I can speak for myself at this deposition, but I can only act in connection with the debtors.

Q. Understood. And the debtors' primary assets are the funding agreements they have with New Trane and New Trane Technologies; is that right?

A. Yeah. I mean, the subsidiaries they hold contain valuable assets too, but there is no doubt that the funding agreement is probably the primary asset for purposes of this bankruptcy.

Q. And putting aside dismissal, if for some reason New Trane or New Trane Technologies were to refuse to honor the funding agreements, the debtors would push to have those enforced; would they not?

MR. EVERT: I object to the

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form of the question.

A. Yeah, I don't know how that would work, but you're asking if at some point the funders weren't honoring their commitments under the agreement, would we press to have them do so, and I don't know what that would look like, but I would imagine, yes, that we would press to have those commitments honored.

Q. Do you have any knowledge of what the total amount has been paid to bankruptcy professionals in the Aldrich and Murray bankruptcy cases?

A. The number is failing me right now, but I believe Mr. Guy has made reference even at one of our most recent hearings about the running total of cost. It is quite significant and it is a little bit distressing when I focus on it because that is money that really could have been redeployed into a trust that might have moved the needle.

So the fees have been substantial. I have got access to them obviously. I'm just, sitting here right

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now, not recalling what they total up to at the moment. But I do believe recently they have been running higher than in the other North Carolina cases, so that's a little bit distressing to me, but that's where we are.

Q. And, sir, absent the bankruptcy filing, that's also money that would have been going to asbestos claimants in the tort system, right?

A. Well, I guess -- I guess maybe some -- some of it undoubtedly, but some of it would have been going to professionals, other professionals, if you will, not the same professionals, although maybe Mr. Evert, maybe Mr. Evert would do okay regardless.

Q. What benefit is there to a future claimant if there is a trust formed in your perspective?

MR. EVERT: I object to the form of the question.

A. If there is a trust formed with the proper procedures that flock a run on the trust, then a future claimant should

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have comfort that if and when he or she has a claim arise that there will be money there to pay that claimant.

I think the future claimant would be able to make a claim and get paid on the claim with less friction, more efficiency, and less stress, if you will, and one of the stressors might be having to be deposed and go through a trial than you would have in the tort system. So I think -- I think of a properly structured asbestos trust as being efficient and fair to everybody, including -- including the claimant.

Q. I know that you have mentioned the Garlock estimation opinion a few times today. Do you have any familiarity with the Garlock trust that's been set up and how it functions?

A. At a high level, but I haven't studied it in minute detail.

Q. Okay. Do you have an opinion one way or the other whether or not you believe that's what the debtors are looking for, a trust that would operate similar to