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1	UNITED STATES BANKRUPTCY COURT WESTERN DISTRICT OF NORTH CAROLINA				
2	CHARLOTTE DIVISION				
3	IN RE:	: Case No. 20-30608-JCW (Jointly Administered)			
4	ALDRICH PUMP LLC, ET AL.,	: Chapter 11			
5	Debtors,	: Charlotte, North Carolina			
6		: Friday, April 1, 2022 9:30 a.m.			
7		:			
8					
9	OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS,	: AP 21-03029 :			
10	,				
11	Plaintiff,	:			
12	V.	:			
13	ALDRICH PUMP LLC, MURRAY BOILER LLC, TRANE	:			
14	TECHNOLOGIES COMPANY LLC, AND TRANE U.S. INC.,	:			
15	Defendants.	:			
16	:::::::::::::::::::::::::::::::::::::::	:			
17					
18	TRANSCRIPT OF PROCEEDINGS BEFORE THE HONORABLE J. CRAIG WHITLEY, UNITED STATES BANKRUPTCY JUDGE				
19	ONITED STILL	55 512.121.01 60502			
20	Audio Operator:	COURT PERSONNEL			
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25	Proceedings recorded by electronic sound recording; transcript produced by transcription service.				

1 PROCEEDINGS (Call to Order of the Court) 2 3 THE COURT: Okay. Have a seat. We are back in the Aldrich Pump lead case and Murray 4 Boiler bankruptcy cases, which are being jointly administered. 5 We were here yesterday hearing a variety of motions and we've 6 7 got a couple decisions to be made. Before I do that, let me go ahead and see who's --8 this is a telephonic hearing. Let me see who's on the phone 9 and needing to announce appearances, starting with the debtor. 10 11 MR. ERENS: Your Honor, you got Brad Erens with Jones Day on behalf or, on behalf of the debtors, yep. 12 13 THE COURT: Anyone else? MR. GUY: Your Honor, you have Jonathan Guy for the 14 15 FCR and I believe the FCR's on the phone, too. THE COURT: Okay. 16 17 Were there any other debtor attorneys needing to 18 announce, or we just, or have you got it, Mr. Erens? There may be others, you know. I noticed 19 MR. ERENS: that when the call started I was muted. So I dialed Star 6 to 20 21 unmute. I'm not sure if everybody is aware that's how you 22 unmute yourself. Right. I forgot to remind everyone. 23 THE COURT: Let, let's start with attorneys for the debtor and 24 then we'll move on to the others. 25

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             Anyone else? Star 6 gets you unmuted.
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             MR. MILLER: With thanks to Mr. Erens, this is Jack
    Miller, Rayburn Cooper & Durham. I believe Mr. Rayburn is also
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    on the line for the debtors.
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             MR. RAYBURN: Yes, I'm -- yes, I am. Thank you.
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             THE COURT: Any other debtor attorneys appearing?
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         (No response)
             THE COURT: Okay.
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             And then for the ACC?
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             MS. HARDMAN: Your Honor, Carrie Hardman from Winston
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    & Strawn and with me is David Neier also of Winston & Strawn.
    I believe that there may be others as well from the Committee
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    on the line. So I will defer to them, if they are on.
             THE COURT: All right. Anyone else, ACC?
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             MR. MACLAY: Yes.
                                Kevin Maclay from Caplin & Drysdale
    is on, your Honor.
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             THE COURT: Okay.
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             Anyone else, ACC?
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         (No response)
             THE COURT: And we got Mr. Guy on for the FCR.
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             Any other attorneys representing the FCR that need to
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    announce?
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             MR. GUY: No, sir.
                                 Thank you.
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             THE COURT:
                         Okay.
             How about the non-debtor affiliates? Mr. Mascitti,
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    are you with us?
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             MR. MASCITTI: Greg -- yes, I am, your Honor.
          Greq Mascitti, McCarter & English, on behalf of Trane
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    Technologies Company LLC and Trane U.S. Inc.
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             THE COURT: Anyone else?
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         (No response)
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             THE COURT: Any other parties, counsel for any other
    parties that need to announce?
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             MS. CORDES: Stacy Cordes, local counsel for Trane
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    Technologies and Trane Inc. Thank you.
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             THE COURT: Okay.
             Anyone else? Star 6, if you need to.
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         (No response)
             THE COURT:
                         That got it? Okay.
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             I would assume there are no preliminaries that we need
    to address before I announce these decisions. Anyone got
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    anything we need to talk about?
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         (No response)
             THE COURT: Okay, very good.
                                            Then maybe we'll keep
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    this short.
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             I appreciate the break. After a long morning and
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    organizing your thoughts and incorporating new things into the,
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    what's already been argued can be a little bit of a challenge.
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    So hopefully, this will be organized than it would have been
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otherwise.

I'll just take them in, in turn, starting with the debtors' motion to shorten notice on the tolling and staying motion.

As you know, I'm not going to argue why the parties wanted that and why they were opposed, but the bottom line was I signed the order shortening notice, then saw the written objection and realized that this was contested and under our Rules we always reconsider ex parte orders if someone wants to talk about it. I understand there was a little bit of gamesmanship back and forth as to wanting to have that heard before I announced any other rulings. It didn't, I didn't do it intentionally, but that's the way it works out.

So effectively, everyone got ready and argued the case and, or that motion, and now I think under the circumstances, while I do reconsider the shorten notice order, having done so, I grant the motion. We only cut three days out. The responses came in and it appeared everyone was ready to go. So really, no hardship there.

I would only say that we expect you to, if you send an order down, I'm assuming an ex parte order is not contested unless you say so and if, before sending down ex partes, other than things like pro hac vice orders, if you, you should talk to one another about them and, and if you know someone else is opposed to what you're doing, you need to let us know that, too. We don't want to get into that sort of gamesmanship,

either. Because everyone will start sending things down and we'll have a lot of hurt feelings and waste a lot of time and that's just not the way we do business. So 'nuf said there.

So the, the shorten notice was granted.

That takes us to the debtor and, and affiliates' motion to enter into the tolling agreement and staying litigation. I've decided to deny that motion. I'm not going to tell you what you all argued on that, but the bottom line is that I'm adopting, largely, the ACC's arguments except as noted before. As you know, we got into something similar to this in DBMP back in the fall and this, basically, comes out about the same way.

The -- the -- when we started talking about standing there was an argument in favor of tolling and I then said it's not appropriate to enjoin one side and let the other side go forward with their preferred avenue of litigation. With all respect for what the, the debtors and affiliates are arguing, I still don't think estimation is any more likely to produce an accord than proceeding with the 548 litigation, et al., or doing both. And frankly, while as I'm very eager for the parties to start talking to one another here, it's not my job to force you to and if you don't want to talk and with the experience that we have in this room you folks know better than I when it is ripe to, to, to discuss case resolutions.

But since we don't have a consensus on how to resolve

the disputes in our case and no agreement on either tolling or staying or mediating or even simple settlement negotiations,

I'm not inclined to order mediation or a standdown at this point in time. It was tried in Bestwall and did not work and I would assume we've get a similar result there, notwithstanding the fact that the debtors and affiliates and the FCR are all in agreement on a plan.

I think the other thing I would say is I am pretty confident at this point that estimation alone won't result in a compromise as long as the challenges to the merger are still untested. The debtor has suggested, of course, that since Judge Kaplan has gotten into the game and ruled on the dismissal motion up in New Jersey, that the propriety of the twostep may have been established. Frankly, you, bankruptcy judge opinions vary across the land on a variety of fronts and no one here is going to be relying on a bankruptcy judge's opinion. The challenges to the merger are going to get resolved higher up, either by an appellate court, maybe the Supreme Court, maybe they get resolved in, in Congress.

But in the meantime, I think it's an open question and if we end up having to go forward, resolve an estimation, get a number, and then the ACC is still not willing to go forward on negotiations -- and I'm not faulting them for that, but the point is I can't impose an estimation on anyone -- and if parties are still wanting to find out what happens when someone

takes a look at the fraudulent conveyance, substantive consolidation, all that on the merits, then I just don't, it would seem to me that we might delay matters more than, than we're going to the way we're doing this.

I will say again that I don't relish the path that we're going on. As I said before, the Sicily campaign analogy, I think, applies here. Rather than taking the North Coastal Road like General Montgomery did in World War II or the West Road like General Patton did, it seems that we are all going to be consigned to go over the mountain and fight through the gaps and, and the peaks as General Bradley did. I wish that were not the way we had to proceed. I hear the references to Paddock and other cases and would love to see you folks be able to work things out, as they appear to have worked out in those cases, but you know your business better than I do and at this point we just don't have an agreement.

So the last thing, of course, and as argued by the ACC is at this point standing's been granted to the ACC to bring estate causes of action related to the CR and the bankruptcy, decision to file bankruptcy. So at this point in time if there were going to be a tolling agreement, that would have to be the party and they have not agreed.

So the bottom line is I'm denying the motion and would encourage, again, continued discussion among the parties to see if we can find a way to do this in an efficient manner or even

to talk settlement. But the bottom line is that at this juncture it would be nice to have a tolling agreement so we don't have to spend all the money and resources that, that might be had. But until y'all come up with an agreement, I think that's the path that we're on.

So that one, I would call on the ACC for an order consistent with its briefs and what's been said today.

The third one is the debtors' motion to define the scope of the January 27th derivative standing ruling or to reconsider the order. That one, of course, was heard on, on March the 1st and I had it under advisement and I wanted to hear the rest of this before I announced. But having announced it now, that one, I think, is, is also -- well, let me before I announce a ruling, let's just talk our way through what we've got.

As you -- I won't tell you the prior proceedings.

Everyone knows what happened there. But at the original standing agreement the debtor basically made two arguments, that it was not in the best interest of the estate and, and necessary to pursue the litigation that was being sought for which the Committee was seeking standing and the other one was that, effectively, these proposed actions sought dismissal of the case, not a valid avoidance purpose, so.

Meanwhile, the affiliates argued about the same thing and then reargued a couple of findings from the PI hearing of

whether the claims were colorable or whether refusal by the debtor to prosecute such claims would have been unreasonable and the FCR kind of took a middle ground that saying that any suit should be filed but stayed as estimation proceeded.

As you know, I granted that motion largely adopting the arguments made by the ACC, effectively that colorable claims existed and that given the potential conflicts and the way things work structurally the debtor couldn't be expected to pursue those claims.

I don't want to repeat all those statements I made as to that and you can go back, if you want to look at it. But the bottom line, if I can give you the short-play version, our Circuit doesn't, hasn't ruled on whether there's derivative standing for committees in a bankruptcy case. Other circuits have said there is and, and a number of other courts. I believe that the right has to exist. I said then that if creditors were going to get the opportunity to contest the divisional merger or divisive merger as contemplated by the state statute, then either we were going to have to dismiss this case or relief from stay would be granted and the individual creditors afforded the opportunity or else and because this would be estate property largely, an estate representative would have to do it under the first-crack rule.

We had a number of arguments as to, you know, let's do estimation first and, and do this only later. There are

arguments about cost benefit and the like, but the bottom line is that then I thought that we needed to do that and I announced a ruling for that.

At the hearing when I announced there was a question about clarification regarding the precise causes of action that the Committee would be permitted to bring and Mr. Mascitti, I believe, in particular, asked the question and I said something off the cuff that might not have been as clear as what I wanted it to be. But effectively, what I said was that I didn't think I needed to identify the precise claims and I probably couldn't identify the precise claims then, but, rather, that the Committee was authorized to investigate and then pursue potential claims arising out of or relating to the corporate restructuring, which I defined to include the, the decision to file the bankruptcy cases.

Well, that's where we were and I called on the ACC to draw an order there and apparently, y'all had some problems talking about it and, instead, we ended up with this motion to further define the scope of that ruling. That puts us in an odd procedural posture, somewhere between a motion to reconsider since a ruling was announced and a motion for rehearing. But either way, I'm going to deny the motion.

The debtor notes and I did say something to the effect that we were doing this so that we could assess the propriety of the corporate restructuring and they've also noted that I

said something in response to the questions saying that if we need to talk about this further, tee it up. So here we are.

What I was actually thinking at that time was not quite what I said. I was thinking that I could not define the scope any more than the subject area at that time and what I meant to say, but probably didn't, was that we would just have to see what got filed and if it turned out to be beyond the grant of standing, beyond the scope of what was in order, then we could talk about that.

So what I was envisioning, that the claims would get filed in a complaint and then we'd get something akin to a 12(b)(6) motion or something of the like. But that's neither here nor there. We're, we're talking about it now. So we'll go ahead and do it.

As to the arguments, the debtor has suggested a variety of things in the -- that -- pointing out that the motion only identified specifically certain causes of action and that the debtor wasn't sure whether I wanted to give the ACC standing to prosecute some of the other claims that got filed, which are termed "secondary claims," breach of fiduciary duty, claims against officer and managers, and claims against the parent company for aiding and abetting breaches, and that, that sort of thing. They also weren't sure whether this was intended to cover what they called the "unidentified claims," civil conspiracy claims, etc., against officers. I will tell

you. I wasn't thinking about those types of claims at all, but we are where we are.

A further argument is made by the debtors that these secondary and unidentified claims are predicated on the corporate restructuring being found to be improper and effectively, the response is, well, first of all, this motion is procedurally defective 'cause you can't reconsider an order that you haven't entered. I don't think we need to worry about the procedures. It's either one or the other, reconsideration or rehearing, and we can work that into the order.

The second suggestion by the ACC was that, well, you could have submitted a competing proposed order. Well, that's certainly true and all that should be attempted before you start teeing up motions, but it sounds like that y'all are far enough apart on what you want to do next that that wouldn't have really produced, borne fruit, either.

The ACC also argues that this apparently is a motion to get a second bite at the apple to argue things that were rejected earlier and they recite what had been said before. I, I generally agree with that in principle and I don't want to encourage the party that gets on the short end of a ruling to just call it something else and refile it, but we are at a break point in this case and what we do next will define what we do for a period of years.

So I don't mind talking about it here, but as to

reconsidering that earlier ruling, I'm not really inclined to 1 change my mind at this point in time except maybe with one or 2 two exceptions. Again, I believe, because these common claims 3 are estate claims under the Bankruptcy Code, I have to give the 4 Committee standing and the opportunity to investigate and file 5 those causes of action. It is certainly true that parties 6 7 typically identify the causes of action for which they seek derivative standing to file. I'm not sure there's a legal 8 requirement. No one's cited to one. But here, I don't think 9 the Court in advance of the filing should specify what estate 10 11 claims a committee is permitted to bring. Again, I, I define it by subject matter. The investigation still is not through, 12 the claims have not been filed, and it's a novel situation. If 13 we were still outside of bankruptcy operating under the Texas 14 15 law, these individual creditors would have the right to file 16 their own lawsuits, whether it's 5,000 of them or 10,000 of them or however many in, in as many jurisdictions as, where 17 18 venue and jurisdiction lie. And frankly, they would be at liberty to choose the causes of action they deem appropriate 19 subject to dismissal and there would be no forewarning or prior 20 approval by a court of what they brought. 21 But we're in bankruptcy and, as I said, we've got 22 estate property and the first-crack rule that goes to the 23

trustee in the bankruptcy case and these claims need to be

They're important, they're novel, and the ACC is

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considered.

the party in a position to raise those causes of action. And secondarily, the ACC wasn't in the room and isn't privy to all of the facts, even though a lot of them came out during the preliminary injunction. So I don't think I should tie their hands in advance.

I'm not going to go through all of the underlying claims. I don't think at this -- actual fraudulent conveyance claims, of course, everyone agrees, would be within the scope of the ruling. Constructive fraudulent conveyance claims, well, we don't know if we're going to get them. I don't know entirely that they are dependent on the estimation hearing, but we'll come back to that, I guess, in a little bit.

But the bottom line is the secondary claims and the other identified claims, as to those, I think I'm going to do it the same way, permit the ACC to file what they deem proper and then we'll talk about whether it's appropriate to assert those claims or whether, as you are arguing next week in DB, some of you are arguing in DBMP, to argue whether or not those should be considered congruently with the primary claims or whether those should await a, a decision in the other claims.

So I'm going to leave it there. I'm not foreclosing or limiting at this point in time.

So effectively, the last argument, I think, was that there was an argument as to the secondary and unidentified claims that since they weren't subject to the 546(c) two-year

statute of limitations, that we didn't need to bring them then. 1 Well, to the extent those are under state statutes, I don't 2 know which ones would be controlling. But if it's North 3 Carolina, then, arguably, it's a 3-year statute of limitations 4 and about 2-1/2 months ran before the bankruptcy if you assume 5 that the corporate restructuring caused the statute to begin to 6 7 accrue. And if we're talking about two years, less than three years, that wouldn't be enough time to prosecute the primary 8 claims to final judgment before the, the filing, likely, the 9 way discovery and things have gone thus far in these cases. 10 11 I don't think that that's an argument, either. So effectively, again, I, I am ruling in favor of the 12 13 ACC on that and declining the request to further define the scope of the January 27th standing ruling, all right? 14 15 Again, if the ACC will take the first crack at the order and run it around for comments, comments as to whether it 16 fairly captures what I said, not as to whether you agree with 17 18 it. We don't want to argue until the end of time. That takes us, I believe, to the two motions to 19 dismiss the adversary proceeding, one by the debtor, one by the 20 non-debtor affiliates, the responses thereto in support of and 21 in opposition. I'm going to just discuss them together. 22 I assume, first of all, that most of you have either 23

listened to or are aware of the ruling I made recently in DBMP

on almost the same type of, pair of motions in that case under

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But the

similar facts. I don't want to repeat all that to you unless 1 you feel the need. Suffice it to say that substantive 2 consolidation is a rare remedy, rarely is it appropriate, even 3 less rarely is it appropriate when you're dealing with a, a 4 nondebtor that's being hailed into court with the debtor and 5 proposed to be consolidated with the debtor. I do believe the 6 7 complaint, as before, states a plausible case for substantive consolidation that meets the 12(b)(6) standards of Iqbal and 8 9 Twombly. On the other hand, as in DBMP, I don't think here that 10 11 unconscionability is an affirmative cause of action, even if you raise it in a declaratory judgment action and even if it 12 could be raised in that fashion, it would have to be by the 13 contract parties and not a third party such as what's being 14 15 attempted here. So on that one, I, I believe that that claim should be 16 17 dismissed. 18 There were some arguments -- is anyone uncomfortable with just relying on what I said in DBMP? I've, I've got notes 19 galore and I can go through all that, if you feel the need. 20 Does anyone feel that need or can I just talk about the new 21 arguments, ones weren't made there? 22 23 (No response) THE COURT: Okay. We good? All right. 24 25 Let me talk about the new arguments, then.

things I said in DBMP are equally applicable. We had some new The affiliates had argued standing and ripeness in arguments. a variety of contexts. I generally agreed with the ACC on that. I do believe, of course, there's a 12(b)(6) standard that applies when we're talking about a motion like this. I've got to assume the facts as alleged are true. I deny the motion if the complaint alleges enough facts to invoke subject matter jurisdiction and I think we're there.

There was an argument that the Committee lacked standing to pursue substantive consolidation. That's not the way I read the cases. I think both individual creditors and official committees have been held to have the standing to bring that and you cite the cases in your briefs.

There's a argument that the Committee lacks standing because there's no actual harm or injury alleged in the complaint to the asbestos claimants and the further argument that whatever injury there might be is speculative and hypothetical and would be so until an individual claimant has established the debtors' liability. Also argues that, the affiliates argued that the complaint doesn't allege that the debtors' current assets and resources would prove insufficient to pay. The ACC, of course, counters that the complaint does, in fact, describe both the injuries and the causes, the division of the old company's assets where almost all of them ended up in the hands of the non-debtor affiliate, and the

that's there.

debtor only got one or two percent of those assets, but all of the asbestos liabilities end up with the debtor corporations which then filed bankruptcy in short order and, effectively, that the claimants were harmed because their claims were separated from the assets that existed and had been paying them previously. As the ACC argues, I think that qualifies as an injury in fact. We can argue about, at the end of the day, whether they're going to come out as well in this case and I'll say a little more about that in a moment. But at least for purposes of standing to bring the cause of action, I think

There's an argument that you have to prove the liabilities before anyone can assert these injuries. I suppose the short answer to that is we may not know who individual, individually is owed what or how much they're owed, but we know as a group the claimants are owed and the Committee represents the claimants writ large. Old Trane and old IR -- excuse me -- Ingersoll Rand would not have paid the billion or so that they paid in the tort system if they didn't owe any of the money and they wouldn't have filed this case and be asking to deal with those liabilities if some liabilities didn't exist. I just don't think that one works.

The affiliates also argued that this wasn't ripe because it depends on the speculative and hypothetical assumptions that, that claimants have proven the debtors'

liabilities for the claims, those liabilities exceed the value 1 of the debtors' assets, and that the affiliates will breach 2 their obligations under the funding agreements and refuse to 3 provide the additional monies that are needed to pay, if any, 4 and that that makes all of this just totally unripe. 5 6 Y'all know what the standards are for ripeness, 7 definite and concrete injuries, etc. Here, I agree with the ACC again that as alleged, at least, all of the predicate facts 8 have already occurred. What you're talking about there is what 9 might happen that, at the end of the day, may make it 10 11 unnecessary to bring the claim and we've been through all of that and, and to what extent can you rely on the funding 12 agreement and the fact that it's not entered in favor of the, 13 the ACC or the claimant body, etc. But, but the bottom line is 14 15 as alleged, all of the facts have already occurred. So I think it is, in fact, ripe. 16 17 I don't think it's on the ACC to prove insolvency at 18 the pleading level. We've talked about that. I made a ruling in the, or found the fact in the injunction hearing, 19 preliminary though it may be, that basically said without the 20 funding agreement, then these liabilities couldn't be paid. 21 That is the way it looks at this point in time, at least on a 22

That is the way it looks at this point in time, at least on a pleadings level. And I agree that, theoretically, at least the injury occurs when the separation of the assets and the liabilities occurred prior to bankruptcy.

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So unless and until the claimants get paid in this bankruptcy, the right to challenge that divisive merger I think exists, including going through this avenue.

That's the same answer to the affiliates' other argument that there's no showing that they will breach their obligations and refuse to pay, same sort of thing. I don't think that's necessary, as the ACC argues, at the pleading stage for substantive consolidation and it's really more of almost, if you will, a defense of payment that might be asserted later on. Bottom line is, of course, the lawsuit goes away if all these folks get paid what they're entitled to.

There was an argument made by the affiliates that the Committee wouldn't suffer hardship if the Court held off on the consolidation action based on their assertion that the debtor possesses the assets and the financial resources to pay the claims. That's, more or less, the same as before, plus the argument, of course, is on a 12(b)(6) that was not pled in the complaint, nor relied on by the Committee. So that's not really to be considered at this point and I agree with those, those points.

I do hope that the resources exist. The Court doesn't enjoy going through years' worth of litigation, either here or in the tort system, knowing that there's some folks out there who need the money. I don't think you do, either, but the question is what is the best way and the quickest way to get

the money issues resolved so that those folks can be paid, the ones that have meritorious claims.

There's the argument by both the affiliates and the debtors that substantive consolidation can't preempt Texas law and unwind the corporate restructuring. If I read that right, I think that was a reference that the ACC made that, effectively, substantive consolidation would unwind the, the CR. Bottom line is that, effectively, as the ACC argues, state law governs unless there's a bankruptcy purpose that dictates otherwise in these cases or another federal law interest. The Texas merger law preserves the rights of creditors and that includes some fairly undefined remedies of suing for fraudulent conveyances or alter egos and the like, piercing the corporate veil, and trying to allocate some of the liabilities to someone else among them.

So the bottom line is I don't think the state law is an impediment to that. I don't know if, at the end of the day, if the, the action proceeded and succeeded, whether that would unwind the transaction. It would certainly make the assets available or at least put the liabilities on, on the other party. But in any event, I think we're, that gets fairly ethereal and, and at this point in time undefined and as it was effectively being stated, I don't think we need to decide what the exact extent is today of if the ACC prevailed.

There was also an affiliates argument about the, the

bad effects that would result on the affiliates' creditors and other stakeholders if this were to go through. Again, that's really was me saying what others were saying, contending, and it really doesn't apply to 12(b)(6) in this circumstance 'cause the complaint doesn't rely on that statement. And frankly, for, later on in the action, if this proceeds, that will be one of the things we have to consider. If it looks like grounds exist for consolidation, we're going to have to talk and take evidence on what would the effect of that be. What would it do to other creditors? And at that point I think it's appropriate to be considered, but not today.

The debtor also makes the argument that the complaint doesn't allege that asbestos creditors extended credit and the argument is, well, first of all, the standards for consolidation are, effectively, malleable and they're indicators. They're not requirements because this is equity and the, the idea is to make sure that you can adapt the law -- the -- excuse me -- the equitable standards to deal with the circumstances instead of having statutory requirements. The whole point of the remedy existing is to keep people from pleading around situations that the law doesn't really contemplate. And I agreed with the ACC that the tort creditors are, in fact, involuntary creditors who extended credit when they were armed and I, assuming that that is what happened, and that given the numerous cases where we had pre-petition

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settlements that were arrived at but not paid, that you might derive a, a credit relationship there. So again, I -- I don't -- I agree with the ACC on their argument.

Now as to what the Committee wants, the debtor makes the argument again that this is seeking a de facto dismissal. That may well be. The Committee has not been shy about telling us what they would like in this case and it may be appropriate. I don't know. The bottom line is each party has their own motivation for what they're doing here and I would assume the ACC would like to see the case dismissed, but I can't assume that everything that each of you do in this case, every party, is all based for trying to generate a dismissal, even though the prospect, if successful, of New Trane and New TTC having their assets subjected to bankruptcy might well have that effect. I don't know. Maybe they would, maybe they'd just go ahead and file a chapter 11 themselves or come in. idea. Maybe they would just agree to what I would assume would then be a very heightened compensation package. I don't know.

But the bottom line is I don't think that's either here nor there. It's not in the complaint. Again, we're on a 12(b)(6) and it's not clear that substantive consolidation to me would require a dismissal of the case. It might just augment the assets of the estate. So I don't think that works.

So that far, I, I agree with the ACC that that cause of action survives a motion to dismiss.

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I don't think the same thing for unconscionability basically for the same reasons I said in <u>DBMP</u>. I think it is a defense, not an affirmative remedy, not an affirmative cause of action. I do think there are enough facts pled there that it would cover, if that were a cause of action, but I just don't think there is one there.

Now there were a couple new arguments in Aldrich that weren't made in DBMP. Fortunately, I had the chance to read them before I announced a ruling in DBMP and it all had to do with this being a federal declaratory action suit and the contention by the ACC that that changed things as the ACC argued that that act allows an aggrieved party to request the court make a binding adjudication that establishes the rights and other legal relations of the parties without ordering enforcement, of course. That may be, but I don't think that's applicable here because I don't think the, the ACC is a party to that contract. They're not a third-party beneficiary and I don't know that they have standing to attack that, those agreements or to interpret the agreements that would bind the contract parties themselves, at least not until the point in time that one of the parties tried to bind the reps with those agreements.

And then there's the secondary problem that the, the merger itself is not a contract and this is a contract remedy.

I looked at the Great West Casualty Company case on which the,

the plaintiffs rely to, to establish standing and I don't think the facts are the facts that we have here and, therefore, the ruling is not applicable. Effectively, that was an insurance arrangement where you had an insurer and an insured and a tort victim and one of the parties to the contract, the insurer, was asserting the declaratory judgment action against the other party, the insured, and the tort victim got involved and that's just a different situation than what we have here. That's not even close to being a number of individual victims in an asbestos case with a white knight, if you will, raising the claims through the Committee.

So bottom line is I think that part gets dismissed.

In the main, I am ruling for the ACC. So again, I will give them the laboring oar, but for the other parties who moved, affiliates and debtors, FCR, who were opposed to the unconscionability count, please weigh in and provide language, if need to, okay?

One last more -- one more -- excuse me -- one last announcement.

.The last motion, the ACC was asking me to direct the production of documents as against the, the non-debtor affiliates effectively trying to get a creditor list and addresses as the parties had agreed to in an order to, so that a notice of the substantive consolidation action could be sent to those parties and they'd be invited to participate.

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I'm denying that one for the present time. I don't think it's ready yet. I don't think we need to do that at this point in time. I also think it, its primary purpose at this point would simply be to, to put pressure on the, the affiliates and the debtor to, to do something other than this case and that's not appropriate, either, at this point, at least not for me to arque. The reality is we just got the substantive consolidation complaint. We just decided the motions to dismiss and the answers have not been filed. No discovery's been had and that action is likely quite a ways away from being tried, if it ever gets tried at all. If the affiliates gave a creditor list today, by the time we got to trial that list wouldn't be good anymore. We'd have to do it all over again and I don't think that's necessary, in the first place. It would certainly be harmful, as argued, to the affiliates and it would be indirectly potentially harmful to the estate because that's the other source of funding for this case. I agree with courts like the S&G Financial case, the

I agree with courts like the <u>S&G Financial</u> case, the Florida court, that while notice needs to be given to creditors, if the Court is seriously going to undertake the prospect of, of consolidating, I don't know that those parties need to be joined to the action in the way of an intervention or a, or a joinder as named parties.

Now this gets a little bit fuzzy, I guess, because

some courts do consolidation by motion and others do it by 1 2 adversary, but the way I look at it under Mullane v. Central Hanover Bank, due process is a flexible concept and we need 3 some flexibility here. It doesn't do anyone good, any good to 4 send out to 60 or 70,000 people or companies a notice of 5 bankruptcy, get everyone stirred up, and then end up with 500 6 7 parties joining the action and trying to participate in all of the case discovery, the bulk of which would be irrelevant to 8 I think what we do, instead, as other courts have done, 9 is we go down the road and see how close we are to getting to 10 11 the point of getting to the issue. And we might even bifurcate this if we tried it. We might try the propriety of the 12 13 consolidation as seen between the relationships between the debtor and the affiliates and then send a notice out, invite 14 15 the other creditors of the affiliates to then, if they wish to, to come in and weigh in on the harmful effects of that decision 16 17 and any prejudice that would exist towards them.

I don't think we need to do that from the start of this case. I think it's just more a question of if you see a problem with this, this is what the Court's considering and we'll do it. I am influenced in that not only by the law, but the practicalities here. As I mentioned, the harmful effects, the confusion that would be caused by that if done early in the case, and the very clear reality that substantive consolidation is rarely appropriate and, as I said before, is even less

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frequently appropriate when you're trying to do this with a 1 nondebtor, much less a company or companies of the size and 2 magnitude of, of New Trane and, and New TTC. I think the, the 3 harm that would result from doing that now and the unlikelihood 4 that we ever get to this point -- I'm not ruling on the 5 consolidation's merits, mind you -- but we all know the case 6 7 law very clearly says this is a longshot and that's why I said earlier that I think this is the last arrow in the quiver, not 8 the first shot that you should take. 9 But the bottom line is I, I think there's a time for 10 11 that and we'll get there if we need to and at that point I'll require the list and the names and the like and we'll do the 12 13 notice and make sure those folks get a chance to participate. That's what I've got for you. Anything else? 14 Okay. 15 (No response) That one, that one I denied, effectively, 16 THE COURT: 17 the, the request and -- oh. I do need to say one last thing 18 about the, the 2004. I fully appreciate that y'all negotiated that on a 19 denial of the dismissal within 14 days the affiliates would 20 turn over that list and I signed the order, but the reality was 21 I still had to decide whether or not we were going to dismiss 22 this consolidation action and --23 MR. MASCITTI: Your Honor? 24

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THE COURT: Yes.

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MR. MASCITTI: I'm sorry to interrupt you. This is
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    Greq Mascitti on behalf of the non-debtor affiliates.
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             We did not agree to that in this case, your Honor.
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    think you may be referring to an order that was entered in
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    DBMP.
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                         I think you're right, come to think of it.
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             THE COURT:
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             But the point being I think there's a good reason not
    to do it here, even if, if there were discussions in one case
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    and, and it was done here. But the bottom line is that
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    circumstances change and the Court's not always able to tell
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    you when I sign an order that y'all've entered into that I've
    got other things in mind on, when we rule on a different
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             That's all I'm saying at this juncture, is that it
    really doesn't need to be -- there are going to be some times
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    on procedural orders that we all have to change course because
    it appears provident to do so.
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             So that's basically all the rulings that I have unless
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    there's something further.
             That one goes against the ACC. So I would ask the
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    debtor to draw the order.
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             MR. ERENS: We will do so, your Honor.
                         Anything else for today?
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             THE COURT:
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         (No response)
             THE COURT:
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                         Okay.
             Well, I thank you for your time and as always in these
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cases, it reminds me of like the multi-state part of the bar
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    exam. Even when you think you've got it right, nobody's ever
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    sure, so, with issues like these in the cases. But that's my
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    best take on all of them and, and we'll go forward from there,
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    so.
             Hope you all have a nice weekend.
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             If there's nothing else, we'll recess.
             MS. HARDMAN:
                            Thank you.
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             MR. RAYBURN:
                            Thank you.
         (Proceedings concluded at 2:51 p.m.)
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                               CERTIFICATE
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             I, court approved transcriber, certify that the
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    foregoing is a correct transcript from the official electronic
    sound recording of the proceedings in the above-entitled
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    matter.
    /s/ Janice Russell
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                                           April 4, 2022
    Janice Russell, Transcriber
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