

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re:

ALDRICH PUMP LLC, et al.,¹

Debtor.

Chapter 11

Case No. 20-30608

(Jointly Administered)

STATUS REPORT

Mesothelioma claimants represented by Maune Raichle Hartley French & Mudd LLC (“MRHFM”), including forty-six who filed proofs of claim and who previously moved to dismiss this proceeding,² hereby submit this Status Report.³ In the interests of judicial economy, MRHFM largely joins the Status Report (Dkt. 2376) submitted by the Official Committee of Asbestos Personal Injury Claimants (“ACC”), which sets forth in more detail this case’s procedural and factual background and proposed next steps.

CASE INFORMATION

This is *not* a bankruptcy; this is a \$54 billion corporation’s frontal assault on the Seventh Amendment rights of the people it poisoned to death with asbestos dust. It is an

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.

² An appeal of the Bankruptcy Court’s denial of MRHFM’s motion to dismiss is pending before the District Court. *See* “Pending Matters,” No. 2, *infra*.

³ This Report is in accordance with the *Notice Of Cancellation Of Hearing Of Matters Scheduled For Hearing On Thursday, September 26, 2024, At 9:30 A.M.* (Dkt. No. 2368) filed on September 20, 2024.



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attack on states' powers to govern conduct within their borders and an affront to the foundational principle that the primary purpose of Chapter 11 is to resuscitate a financially troubled debtor. *See Carolin Corp. v. Miller*, 886 F.2d 698, 700-02 (4th Cir. 1989).

The Debtors here, by contrast, are not and never were financially troubled. They were successful businesses that easily managed their asbestos liabilities in the tort system without distress for decades. These companies were very profitable, and they assured their shareholders and the Securities and Exchange Commission they had insurance coverage for their worst-case estimations of their present and future asbestos liabilities and that they had fully reserved cash for any uninsured portion that could arise. *See Robert Semian's Motion to Dismiss* at 4, 22 (Dkt. 1712); *Findings of Fact & Conclusions of Law re: Automatic Stay & Prelim. Injunction*, ("Findings") at ¶ 47 (Adv. No. 20-03041, Adv. Pro. Dkt. 308).

But the Debtors' predecessors were unhappy with the tort system. They wanted to pay less to their asbestos victims than they were required to under state law, and they feared answering for their negligence in front of juries. So, they instituted the Texas-Two-Step, which attempts to transform the Bankruptcy Code and bankruptcy courts into a vehicle for sweeping asbestos tort-reform—reform Congress has repeatedly considered and *rejected*.

This proceeding, while filed in a bankruptcy court, has *nothing* to do with bankruptcy's purpose—providing an honest, financially distressed debtor an

opportunity for a fresh start that maximizes the assets available for creditors. *See Truck Ins. Exchange v. Kaiser Gypsum Company, Inc.*, 602 U.S. ___, 144 S. Ct. 1414, 1420–21 (2024).

These Debtors, Murray Boiler and Aldrich Pump, armed with Funding Agreements from their corporate affiliates within the Trane plc enterprise, are non-distressed multi-billionaires that can easily pay *all* their current and future asbestos claimants in *full*, inside *or* outside of bankruptcy. *See* Dkt. No. 2047 at 14 (“Order”).⁴⁵ The Debtors just prefer to avoid the civil jury system. Their own representative says so:

Q: Assuming that Aldrich and Murray enforce the funding agreements and that New Trane and New Trane Technologies honor the funding agreements, sitting here today there is no concern that future claimants could not be paid in the tort system ten years from now; is that right?

A: I guess I’m going to agree with you, but with the proviso that those future claimants would be subject to the vagaries of the tort system, right? There would be disparate results in arguably similar cases depending on where the claims were filed, for a variety of reasons that you and I discussed a few minutes ago.

Q: Understood

A: So I think there would be lots of consistency, but could the claims be satisfied? I believe they could.

⁴ Noting the Debtors’ affiliates’ annual sales revenues of \$12.5 billion, dividends over \$550 million, market cap of \$54 billion, and that three years into the bankruptcy case, the Trane enterprise’s “ability to pay appears even stronger.” The factual basis for dismissal in part was Judge Whitley’s own detailed findings in his 2021 decision extending the preliminary injunction.

⁵ Judge Whitley found the ability of “New Trane” and “New TTC” —the respective Trane affiliates specifically obligated to pay asbestos claims—is “not in doubt,” but the claimants’ ability to collect from them directly is “uncertain.” Order at 15. The ACC is actively and properly litigating fraudulent transfer and substantive consolidation actions as a remedy for such concerns. *See* ACC Status Report at ¶¶ 39-48 (Dkt. 2376).

See Tananbaum Dep. 7/6/2023 at 167:6-168:1 (Dkt.1909-3).⁶

Chapter 11 is *not* a menu-choice for wealthy conglomerates that are dissatisfied with state law and jury trials. These Debtors do not seek to resuscitate a troubled company—what the Code requires—but to “abuse the reorganization process,” “cause hardship [and] delay [their] creditors,” and hide behind the automatic stay in hopes they can force renegotiation of debts they can easily pay in full. *Carolin*, 886 F.2d at 701-02; *In re Premier Auto Services*, 492 F.3d 274, 280-81 (4th Cir. 2007) (defining what constitutes subjective bad faith in filing for bankruptcy).

Trane’s strategy to overcome the tort system, the Texas Two-Step, is being carried out in two other proceedings in this District, *Bestwall* and *DBMP*. These cases have resulted in billions of dollars in windfall to equity holders and over \$500 million in fees to bankruptcy professionals.⁷ And *nothing* has been paid to a single victim of mesothelioma.

Why? Because the Debtors and Trane demand an unconstitutional “capped trust” plan and a channeling injunction under 11 U.S.C. § 524(g) that would forever bar jury

⁶ Judge Whitley specifically found that Trane can “afford to pay [] asbestos liabilities in the tort system.” Order at 29.

⁷ Ames Alexander, *Profitable companies are dodging asbestos lawsuits. A Charlotte court has helped them*, THE CHARLOTTE OBSERVER, July 24, 2024, <https://www.charlotteobserver.com/news/local/crime/article289390884.html> (last accessed 8/6/24); Jeff Tiberri, *Legal maneuvers used in Charlotte bankruptcy court hold up lawsuits by victims of asbestos exposure*, NORTH CAROLINA PUBLIC RADIO (July 30, 2024), <https://www.wunc.org/show/due-south/2024-07-30/legal-maneuvers-used-in-charlotte-bankruptcy-court-hold-up-lawsuits-by-victims-of-asbestos-exposure> (last accessed 8/16/24).

trials and eliminate state tort law liability against them and their affiliates. Judge Whitley recognized that “[i]f neither Aldrich nor Murray are insolvent nor financially distressed, the question lies: is that plan constitutional?” Order at 40.

The answer to that question—not before Judge Whitley in the motions to dismiss—is *no*. The Supreme Court has said so. In the late 1990s, *after* passage of Section 524(g), the Court rejected attempts to use the judicial system (via class-action settlement) to enact asbestos tort-reform or to limit the Seventh Amendment rights of asbestos victims in the absence of a proven limited fund. *See Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 117 S. Ct. 2231 (1997), and *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 117 S. Ct. 2231 (1999).

The Supreme Court held that tort-reform regarding asbestos litigation, beyond the unique remedy found in Section 524(g)—which is available *only* to distressed companies properly in bankruptcy and overwhelmed⁸ by current and future asbestos liabilities—must come from Congress. *See Amchem*, 521 U.S. at 598–99, 628–29; *Ortiz*, 527 U.S. at 865 (Rehnquist, J., *concurring*). In the years after *Amchem* and *Ortiz*, Congress repeatedly considered and *rejected* asbestos litigation tort-reform.⁹

In *Air & Liquid Systems Corp. v. DeVries*, 586 U.S. 446, 139 S. Ct. 986 (2019), Aldrich’s predecessor (Ingersoll-Rand or “Old IRNJ”) argued it owed no duty to warn sailors about

⁸ *See* H.R. Rep. 103-835 at 40–41 (the “asbestos trust/injunction mechanism established” by Section 524(g) is available to companies facing “overwhelming” asbestos liabilities).

⁹ *See e.g.* Fairness in Asbestos Injury Resolution Act of 2005, S. 852, 109th Cong. (2005), Fairness in Asbestos Compensation Act of 1999, S. 758, 106th Cong. (1999); Asbestos Compensation Act of 2000, H.R. 1283, 106th Cong. (1999), and Asbestos Claims Criteria and Compensation Act of 2003, S. 413, 108th Cong. (2003).

exposure to asbestos from its equipment aboard Navy vessels. Justice Kavanaugh found instead that (1) Old IRNJ's product required the incorporation of asbestos; (2) it has reason to know the integrated product with asbestos is likely to be dangerous for its intended uses; and (3) it has no reason to believe the product's users will realize that danger. *DeVries*, 586 U.S. at 457.

Therefore, only *after* the Supreme Court rejected judicial efforts at tort reform in *Amchem* and *Ortiz* in the late 1990s, only *after* Congress repeatedly rejected (in the early 2000s) the very same policy-based arguments about the tort system the Debtors and the FCR make now, and only *after* the Debtors' predecessor failed to reduce its tort liability in Article III courts in 2019, did Aldrich, Murray, and Trane launch their Two-Step "bankruptcy" in this District in 2020.

The Two-Step has drawn bipartisan condemnation in Congress and rebuke from two dozen state attorneys general (including North Carolina's). See Brief of Members of Congress as Amici Curiae in Support of Petitioner, *Off. Comm. of Asbestos Claimants v. Bestwall LLC*, 2024 WL 2116276 (U.S. May 13, 2024) (No. 23-675);¹⁰ Amicus Brief of [24 States and D.C.] in Support of Petitioner, *Off. Comm. of Asbestos Claimants v. Bestwall LLC*, 2024 WL 2116276 (U.S. May 13, 2024) (No. 23-675).¹¹

¹⁰ <https://www.judiciary.senate.gov/imo/media/doc/23-675%20Bestwall%20amicus%20FINAL.pdf>.

¹¹ https://www.supremecourt.gov/DocketPDF/23/23-675/298347/20240122164305807_Bestwall%20-%20NC%20et%20al.%20amicus.pdf; see also Dietrich Knauth, *US Senate bill aims to curb Texas Two-Step bankruptcies*, REUTERS, July 23, 2024 ("The new legislation aims to end the 'dirty back-room deals' that companies use to shield themselves from answering for corporate misconduct, [Senator] Hawley said.");

The only appellate court to address a Two-Step bankruptcy rejected it. *Twice*. See *In re LTL Management, LLC*, 64 F.4th 84 (3d Cir. 2023); see also *In re LTL Management LLC*, No. 23-2971, 2024 WL 3540467 (3d Cir. July 25, 2024) (affirming bankruptcy court).¹² In its most recent term, the Supreme Court restated a common theme: Chapter 11 relief is for honest companies in financial distress (*Kaiser*, 144 S. Ct. at 1420–21) who subject all (or virtually all) of their assets to bankruptcy court jurisdiction. See *Harrington v. Purdue Pharma L.P.*, 603 U.S. ___, 144 S. Ct. 2071, 2077–78 (2024). That’s *not* these Debtors or their affiliates.

The ACC proposes several ways forward. Over four years into this case, this much is undeniable: these Debtors do *not* belong in bankruptcy and MRHFM’s claimants (and likely thousands of others like them) refuse to waive their Constitutional rights to uncapped state remedies and jury trials. MRHFM’s claimants further reject the premise that they can be forced to negotiate away what they are owed under state law in this bad faith bankruptcy proceeding. Negotiations with a gun to one’s head are not fair negotiations; and the gun of indefinite delay is precisely what Trane and its subservient Debtors are using to try and force a re-negotiation of liabilities they can easily pay in full in the tort system.

<https://www.reuters.com/legal/government/us-senate-bill-aims-curb-texas-two-step-bankruptcies-2024-07-23/#:~:text=The%20proposed%20legislation%20would%20stop,a%20Texas%20two%2Dstep%20debtor.>

¹² LTL is the debtor created to send Johnson & Johnson’s asbestos liabilities (but not Johnson & Johnson) into bankruptcy. The Two-Step playbook is the same as here, run by the same lawyers. The Johnson & Johnson entities have not appealed to the Supreme Court regarding the strategy they so stridently claim—in the press—to be magnanimous, well-intentioned, lawful, and in good faith.

In *Premier Auto*, the Fourth Circuit expressly rejected attempts by non-distressed companies to leverage the Bankruptcy Code and automatic stay to compel renegotiation of state-law rights to which the non-distressed debtor is not entitled under state law. *Premier Auto*, 492 F.3d at 280-81.

These bad faith Debtors seek an unconstitutional and unconfirmable “resolution” that never withstand appeal. This “bankruptcy” is a colossal waste of time the victims do not have, and the only beneficiaries are the wealthy tortfeasors who continue to pay their equity-holders and all other creditors in due course. This is wrong, and it must end.

PENDING MATTERS

1. ROBERT SEMIAN’S MOTION FOR RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(D) [Dkt. No. 1588]

- a. Filed on January 24, 2023;
- b. Oral argument took place on March 30, 2023, and a bench ruling denying the Motion was entered on the same day;
- c. Currently waiting on written order denying the motion to be entered.

2. MOTION TO DISMISS ON BEHALF OF ROBERT SEMIAN AND OTHER CLIENTS OF MRHFM [Dkt. No. 1712]

- a. Filed on April 6, 2023;
- b. Various Joinders in Support filed by claimants:
 - 1) Joinder filed by Richard I. Nemeroff [Dkt. No. 1746];
 - 2) Joinder filed by Galiher DeRobertis & Waxman LLP [Dkt. No. 1778];
 - 3) Joinder of Family of Dana W. Hazelwood [Dkt. No. 1810].
- c. Oral argument took place on July 14, 2023;
- d. Order Denying Motion to Dismiss entered on December 28, 2024 [Dkt. No. 2047];
- e. Notice of Appeal filed on January 11, 2024 [Dkt. No. 2058];

- f. Motion and Memorandum for Leave to Appeal filed on January 11, 2024 [Dkt. Nos. 2059-60];
- g. Certification of Direct Appeal to Court of Appeals filed on January 11, 2024 [Dkt. No. 2061];
 - 1) Oral argument took place on February 9, 2024;
 - 2) Certification of the Order Denying Motion to Dismiss for Direct Appeal to the Court of Appeals for the Fourth Circuit Under 28 U.S.C. § 158(d)(2) entered on February 9, 2024 [Dkt. No. 2111].
- h. Fourth Circuit Case: ***Robert Semian And Forty-Six Other Claimants Represented By Maune Raichle Hartley French & Mudd, LLC vs. Aldrich Pump LLC, Murray Boiler LLC and Joseph W. Grier, III, In His Capacity As Legal Representative For Future Asbestos Claimants, 24-129***
 - 1) Permission for Petition to Appeal filed on March 12, 2024;
 - 2) Case was consolidated with the Official Committee Of Asbestos Personal Injury Claimants' (ACC) appeal and all filings were made in the ACC's appeal, ***Official Committee Of Asbestos Personal Injury Claimants v. Aldrich Pump LLC, a Texas limited liability company; Murray Boiler Holdings LLC; Joseph W. Grier, III, Future Claimants' Representative, 24-128 (L)***;
 - 3) Order Denying Petitions for Permission to Appeal entered on April 17, 2024 [Dkt. No. 2208];
 - 4) Order Denying Rehearing entered on May 15, 2024 [24-128 (L), Dkt. No. 74].
- i. District Court Case: ***Robert Semian and Other Clients of MRHFM v. Aldrich Pump LLC, et al., 24-cv-00044***
 - 1) Notice of Appeal transmitted on January 12, 2024 [24-cv-00044, Dkt. No. 1];
 - 2) Motion and Memorandum for Leave to Appeal Order Denying Motion Mr. Robert Semian and Forty-Six Other MRHFM Plaintiffs' Motion to Dismiss transmitted on January 12, 2024 [24-cv-00044, Dkt. Nos. 2-3];
 - 3) Joint Motion of Appellants and Appellees to Defer Briefing on Appellants' Motion for Leave to Appeal filed on January 17, 2024 [24-cv-00044, Dkt. No. 4] and granted on January 24, 2024 [24-cv-00044, Dkt. No. 8];

- 4) Notice of Deferral Termination by Robert Semian and Other Clients of MRHFM filed on May 16, 2024 [24-cv-00044, Dkt. No. 20];
- 5) Motion for Leave to Appeal is fully briefed [24-cv-00044, Dkt. Nos. 23, 30]; and Notice of Completion of Briefing and Status Conference Request by Robert Semian and Other Clients of MRHFM was filed on June 14, 2024, requesting oral argument and status conference [24-cv-00044, Dkt. No. 31].

3. ROBERT SEMIAN AND ALL MRHFM'S CLAIMANTS' MOTION TO REQUIRE THE DEBTORS AND TRANE TO MAKE IRREVOCABLE, UNEQUIVOCAL, AND UNCONDITIONAL ADMISSIONS ABOUT THE ENFORCEABILITY OF THE FUNDING AGREEMENTS [Dkt. No. 2172]

- a. Filed on April 3, 2024;
- b. Oral argument took place on April 25, 2024, and bench ruling denying the Motion entered on the same day;
- c. Currently waiting on written order to be entered denying the motion.

Dated: October 10, 2024.

Respectfully submitted,

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*Counsel to Various Claimants Holding Mesothelioma
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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am, and at all times hereafter mentioned was, more than 18 years of age and that on this day I caused a copy of the foregoing **Status Report** to be served via this Court's CM/ECF system on those parties registered to receive electronic notices for this case.

Dated: October 10, 2024.

/s/ Thomas W. Waldrep, Jr.

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