

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re

ALDRICH PUMP LLC, *et al.*,¹

Debtors.

OFFICIAL COMMITTEE OF ASBESTOS
PERSONAL INJURY CLAIMANTS,

Plaintiff,

v.

ALDRICH PUMP LLC, MURRAY BOILER
LLC, TRANE TECHNOLOGIES COMPANY
LLC, and TRANE U.S. INC.,

Defendants.

OFFICIAL COMMITTEE OF ASBESTOS
PERSONAL INJURY CLAIMANTS, on behalf
of the estates of Aldrich Pump LLC and Murray
Boiler LLC,

Plaintiff,

v.

INGERSOLL-RAND GLOBAL HOLDING
COMPANY LIMITED, TRANE
TECHNOLOGIES HOLDCO INC., TRANE
TECHNOLOGIES COMPANY LLC, TRANE
INC., TUI HOLDINGS INC., TRANE U.S. INC.,
and MURRAY BOILER HOLDINGS LLC,

Defendants.

Chapter 11

Case No. 20-30608 (LMJ)

(Jointly Administered)

Adv. Pro. No. 21-03029

Adv. Pro. No. 22-03028

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



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OFFICIAL COMMITTEE OF ASBESTOS
PERSONAL INJURY CLAIMANTS on behalf of
the estates of Aldrich Pump LLC and Murray
Boiler LLC,

Plaintiff,

Adv. Pro. No. 22-03029

v.

TRANE TECHNOLOGIES PLC, INGERSOLL-
RAND GLOBAL HOLDING COMPANY
LIMITED, TRANE TECHNOLOGIES HOLDCO
INC., TRANE TECHNOLOGIES COMPANY
LLC, TRANE INC., TUI HOLDINGS INC.,
TRANE U.S. INC., MURRAY BOILER
HOLDINGS LLC, SARA BROWN, RICHARD
DAUDELIN, MARC DUFOUR, HEATHER
HOWLETT, CHRISTOPHER KUEHN,
MICHAEL LAMACH, RAY PITTARD, DAVID
REGNERY, AMY ROEDER, ALLAN
TANANBAUM, EVAN TURTZ, MANLIO
VALDES, and ROBERT ZAFARI

Defendants.

**PLAINTIFF'S OBJECTION TO DEFENDANTS'
MOTION TO STAY ADVERSARY PROCEEDINGS**

TABLE OF CONTENTS

	Page
PRELIMINARY STATEMENT.....	1
RELEVANT BACKGROUND.....	5
ARGUMENT.....	11
I. DEFENDANTS’ RENEWED STAY REQUEST IS PROCEDURALLY AND SUBSTANTIVELY IMPROPER.....	11
A. Prior Court Rulings Preclude the Requested Stay Relief.....	12
B. Defendants Fail to Make Required Showing for a Stay Pending Appeal	14
C. The Court Maintains Jurisdiction to Adjudicate the Adversary Proceedings	16
D. Defendants Fail to Articulate Any Other Grounds for a Stay Pending Appeal	21
i. Claims of Alternative Theories of Relief Are Not a Basis for a Stay	21
ii. The Adversary Proceedings Are Ripe for Adjudication.....	21
II. DEFENDANTS’ RULE 2004 DISCOVERY REQUESTS REGARDING THE ADVERSARY PROCEEDINGS ARE INAPPROPRIATE	23
CONCLUSION.....	24

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>In re Apex Int’l Mgmt. Servs., Inc.</i> , 215 B.R. 245 (Bankr. M.D. Fla. 1997)	13
<i>Apple, Inc. v. Samsung Elecs. Co.</i> , 2014 WL 6687122, at *6 (N.D. Cal. Nov. 25, 2014)	20
<i>Asbestosis Claimants v. Am. S.S. Owners Mut. Prot. & Indem. Ass’n (In re Prudential Lines, Inc.)</i> , 170 B.R. 222 (S.D.N.Y. 1994)	20
<i>Auto Money North LLC v. Parties Listed on App. A to Compl, and John and Jane Does 1-1000 (In re Auto Money N. LLC)</i> , 649 B.R. 704 (Bankr. D.S.C. 2023)	14
<i>BAE Sys. Tech. Sol. & Servs., Inc. v. Republic of Korea</i> , No. 14-3551, 2016 WL 6167914 (D. Md. Oct. 24, 2016)	16
<i>In re Baldwin-United Corp.</i> , 45 B.R. 382 (Bankr. S.D. Ohio 1984)	13
<i>In re Bestwall LLC</i> , 658 B.R. 348 (Bankr. W.D.N.C. 2024), <i>aff’d sub nom. Bestwall LLC v. Off. Comm. of Asbestos Claimants of Bestwall, LLC</i> , 148 F.4th 233 (4th Cir. 2025)	16, 17
<i>Betterroads Asphalt, LLC v. FirstBank P.R. (In re Betterroads Asphalt, LLC)</i> , No. 19-2019 (DRD), 2020 WL 3125274 (D.P.R. June 12, 2020)	20
<i>Bryant v. Smith (In re Bryant)</i> , 175 B.R. 9 (W.D. Va. 1994)	19
<i>Carlson v. Bos. Sci. Corp.</i> , 856 F.3d 320 (4th Cir. 2017)	14
<i>Carolin Corp. v. Miller</i> , 886 F.2d 693 (4th Cir. 1989)	19
<i>Casden v Burns</i> , 504 F. Supp. 2d 272 (N.D. Ohio 2007)	19
<i>Christianson v. Colt Indus. Operating Corp.</i> , 486 U.S. 800, 108 S. Ct. 2166 (1988)	14

<i>In re Cont'l Forge Co.,</i> 73 B.R. 1005 (Bankr. W.D. Pa. 1987).....	24
<i>Covington v. N. Carolina,</i> No. 1:15CV399, 2018 WL 604732 (M.D.N.C. Jan. 26, 2018).....	15
<i>In re Creative Hairdressers, Inc.,</i> 639 B.R. 310 (Bankr. D. Md. 2022).....	20
<i>Doe v. Pub. Citizen,</i> 749 F.3d 246 (4th Cir. 2014).....	17
<i>EEOC v. Lockheed Martin Corp.,</i> 116 F.3d 110 (4th Cir. 1997)	13
<i>Ellenberg v. First Nat'l Bank (In re Hollvey),</i> 15 B.R. 850 (Bankr. N.D. Ga. 1981).....	18
<i>Exxon Shipping Co. v. Baker,</i> 554 U.S. 471 (2008).....	14
<i>In re Forest Grove, LLC,</i> 448 B.R. 729 (Bankr. D.S.C. 2011)	15
<i>In re Frank Montique, Inc.,</i> No. 97-12086F, 2003 WL 25947338 (Bankr. E.D. Pa. Jan. 31, 2003)	13
<i>Glassman, Edwards, Wyatt, Tuttle & Cox, P.C. v. Wade (In re Wade),</i> 500 B.R. 896 (Bankr. W.D. Tenn. 2013).....	16
<i>Hayes v. Prudential Ins. Co. of Am.,</i> 60 F.4th 848 (4th Cir. 2023).....	3
<i>In re Heinze,</i> 2008 WL 6946639 (Bankr. M.D.N.C. Feb. 22, 2008)	13
<i>Impinj, Inc. v. NXP USA, Inc.,</i> 2023 WL 10351550 (N.D. Cal. Nov. 27, 2023).....	20
<i>Mar-Bow Value Partners, LLC v. McKinsey Recovery & Transformation Servs.</i> <i>U.S., LLC,</i> 469 F. Supp. 3d 505 (E.D. Va. 2020)	14
<i>Menerick v. Salem Heritage, LLC,</i> 2023 WL 3818391 (W.D. Va. June 5, 2023)	3
<i>Missoula Fed. Credit Union v. Reinertson (In re Reinertson),</i> 241 B.R. 451 (B.A.P. 9th Cir. 1999)	13

<i>New Eng. Dairies Inc. v. Dairy Mart Convenience Stores, Inc. (In re Dairy Mart Convenience Stores, Inc.),</i> 351 F.3d 86 (2d Cir. 2003).....	14,15
<i>Nken v. Holder,</i> 556 U.S. 418 (2009).....	15
<i>N.L.R.B. v. Cincinnati Bronze, Inc.,</i> 829 F.2d 585 (6th Cir. 1987).....	20
<i>In re Owens Corning,</i> 419 F.3d 195 (3d Cir. 2005)	13
<i>Pardee v. Consumer Portfolio Sers., Inc.,</i> 344 F. Supp. 2d 823(D.R.I. 2004)	22
<i>Prologo v. Flagstar Bank, FSB (In re Prologo),</i> 471 B.R. 115 (D. Md. 2012)	16
<i>In re Sabine Oil & Gas Corp.,</i> 548 B.R. 674 (Bankr. S.D.N.Y. 2016).....	8, 20
<i>In re Se. Materials, Inc.,</i> 2010 Bankr. LEXIS 4525 (Bankr. M.D.N.C. Dec. 10, 2010).....	24
<i>In re Smith,</i> No. 09-CV-0508, 2009 WL 366577 (E.D.N.Y. Feb. 12, 2009)	15
<i>In re Taub,</i> 470 B.R. 273 (E.D.N.Y. 2012)	15
<i>Taylor v. Davis (In re Davis),</i> Adv. Pro. No. 12-80034-DD, 2012 WL 434761 (Bankr. D.S.C. Sept. 21, 2012).....	15
<i>TFWS, Inc. v. Franchot,</i> 572 F.3d 186 (4th Cir. 2009).....	14
<i>Turner v. Frascella Enterprises, Inc. (In re Frascella Enters., Inc.),</i> 388 B.R. 619 (Bankr. E.D. Pa. 2008).....	15
<i>United States v. Rodriguez-Rosado,</i> 909 F.3d 472 (1st Cir. 2018)	17
<i>United States v. White,</i> 2014 WL 3898378 (D. Md. Aug. 7, 2014).....	3
<i>In re Wellington,</i> 631 B.R. 833 (Bankr. M.D.N.C. 2021).....	14, 15

<i>Whispering Pines Estates, Inc. v. Flash Island, Inc. (In re Whispering Pines Ests.), Inc.</i> , 369 B.R. 752 (B.A.P. 1st Cir. 2007).....	17
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Statutes

11 U.S.C. ch. 11	<i>passim</i>
11 U.S.C. § 105(a)	<i>passim</i>
11 U.S.C. § 524(g)	5

Other Authorities

9 Collier on Bankruptcy ¶ 2004.01 (16th ed. 2025)	24
Fed. R. Bankr. P. 2004.....	23, 24, 25
Fed. R. Bankr. P. 2004(b)(1)	24
Fed. R. Bankr. P. 2004(b)(2)	24
Fed. R. Bankr. P. 7008.....	3
Fed. R. Bankr. P. 8007	11, 15
Fed. R. Bankr. P. 9023.....	13
Fed. R. Bankr. P. 9024.....	13
Fed. R. Civ. P. 8.....	3
Fed. R. Civ. P. 26.....	24
Fed. R. Civ. P. 59(e)	13, 14
Fed. R. Civ. P. 60(b).....	13

The Official Committee of Asbestos Personal Injury Claimants (the “Committee” or “Plaintiff”), on behalf of the estates of Aldrich Pump LLC (“Aldrich”) and Murray Boiler LLC (“Murray” and together with Aldrich, the “Debtors”), by and through its undersigned attorneys, submits this objection to *Defendants’ Motion to Stay Adversary Proceedings* [ECF No. 2822]² (the “Motion to Stay”) filed by the Debtors, Trane Technologies Company LLC and Trane U.S. Inc. (collectively, “Defendants”), and states as follows:

PRELIMINARY STATEMENT

1. The Motion to Stay states clearly what was previously only implied: Defendants want to stay the Adversary Proceedings³ until they are “reassessed at a status conference held approximately 60 days after the Court’s opinion in the estimation proceeding.”⁴ This is Defendants’ *third* effort to litigate a stay of these Adversary Proceedings; Judge Whitley denied the two previous efforts, instructing the parties to move forward with both the Adversary Proceedings and estimation matter. Defendants’ request would delay the Adversary Proceedings for years; the estimation case management order requested by the Debtors (and entered by the Court) does not provide a schedule for the estimation hearing. Essentially, Defendants are proposing that the Adversary Proceedings be stayed indefinitely, maybe permanently.⁵

2. Simply put, a stay is antithetical to the Court’s stated desire to prosecute all aspects

² References herein to “ECF No.,” unless otherwise stated, shall refer to filings in the case *In re Aldrich Pump LLC*, No. 3:20-bk-30608 (LMJ) (Bankr. W.D.N.C.).

³ Adv. Pro. No. 21-03029 (LMJ) (the “SubCon Proceeding”); Adv. Pro. No. 22-03028 (LMJ) (the “Fraudulent Transfer Proceeding”); and Adv. Pro. No. 22-03029 (LMJ) (the “Fiduciary Duty Proceeding” and, together with the SubCon Proceeding and the Fraudulent Transfer Proceeding, the “Adversary Proceedings”).

⁴ Mot. to Stay at 7.

⁵ See *Second Amended Case Management Order for Estimation of Asbestos Claims* [ECF No. 2656] ¶¶ 3, 5, 6 (setting an “Interrogatory Response Deadline” of June 26, 2026, after which the parties are to negotiate a deadline for the completion of the remaining written discovery).

of these cases. Specifically, in addition to expressly articulating the Court’s ruling on this issue,⁶ this Court (1) approved the retention of the Committee’s special litigation counsel to investigate potential prepetition claims,⁷ (2) granted the Committee estate standing when the Debtors were hopelessly conflicted,⁸ (3) denied the Debtors’ motion to reconsider that standing,⁹ and—even after the Committee’s motion to dismiss these chapter 11 cases was filed¹⁰—(4) denied the Debtors’ motion seeking withdrawal of the Committee’s standing.¹¹ Throughout, and despite these veiled attempts to stay Plaintiff’s investigation and pursuit of claims intended to stress-test Defendants’ contentions, this Court has consistently authorized the continuation of the work leading to, and including prosecution of, these Adversary Proceedings.¹²

3. Thus, by the Motion to Stay, Defendants make a *third* attempt to relitigate issues the Court has already considered and consistently rejected, thereby asking this Court to reverse prior rulings without presenting any new facts or changed circumstances, let alone meet the

⁶ See Jan. 27, 2022, Hr’g Tr. at 21:22–22:5 (“As to the [] suggestion that we file the action [referring to the Adversary Proceedings] and then stay it while we pursue estimation, well . . . I’m not inclined to allow one without allowing the other. So I’d say no to that. If we’re going to litigate, we’ll litigate the matters that the parties bring before us and not just one side’s preferred dispute.”); see also Apr. 1, 2022 Hr’g Tr. at 7:14–19 (“[I]t’s not appropriate to enjoin one side and let the other side go forward with their preferred avenue of litigation . . . I still don’t think estimation is any more likely to produce an accord than proceeding with the 548 litigation.”).

⁷ *Ex Parte Order Authorizing the Retention and Employment of Winston & Strawn LLP as Special Litigation Counsel Effective as of July 6, 2020* [ECF No. 225] (the “Order Authorizing Retention”).

⁸ Jan. 27, 2022, Hr’g Tr. at 22:18–24; *Order Granting Motion of the Official Committee of Asbestos Personal Injury Claimants for Entry of an Order Granting Leave, Standing, and Authority to Investigate, Commence, Prosecute, and to Settle Certain Causes of Action* [ECF No. 1121] (the “Order Granting Standing”).

⁹ *Order Denying Motion of the Debtors to (I) Define the Scope of the Committee’s Standing, or (II) Reconsider Order Granting the Committee’s Request for Standing* [ECF No. 1120] (the “Order Denying Reconsideration”).

¹⁰ Defendants’ bold claim that the Court would have revisited the progression of the Adversary Proceedings had it known that the Committee would file a motion to dismiss (Mot. to Stay ¶ 21) is simply not borne out by the facts here, as the Court denied the Debtors’ motion to withdraw standing *after* the Committee filed its Motion to Dismiss. See, *infra*, ¶ 27.

¹¹ *Order Denying Debtor’s Motion to Withdraw Derivative Standing from the Official Committee of Asbestos Personal Injury Claimants* [ECF No. 2046] (the “Order Denying Motion to Withdraw”).

¹² See *infra*, ¶¶ 10–16.

standards for reconsideration or vacatur. In a novel theory, among other red herrings,¹³ Defendants now argue that the Adversary Proceedings should be stayed because this Court lacks jurisdiction due to the pending motion for leave to appeal the order denying motions to dismiss these chapter 11 cases. That argument lacks merit for at least four reasons. First, the Motion for Leave to Appeal¹⁴ is exactly that—a motion, which has yet to be adjudicated—so any perceived jurisdictional issue (however disputed) is not yet ripe. Second, the filing of (or even the request to file) an appeal does not automatically stay bankruptcy proceedings, and the divestiture principle does not apply to interlocutory orders. Third, the divestiture principle, established and governed by case law, exists to safeguard the integrity of the *appellate* process; and here, even assuming, *arguendo*, that the Adversary Proceedings are fully adjudicated before the appeal is resolved, the claims for substantive consolidation, fraudulent transfer, and breach of fiduciary duty do not have a case-dispositive effect or otherwise alter the appealed order. Fourth, if Defendants’ request were granted, by its logic, all matters before this Court would need to be stayed, including Defendants’ estimation matter.

4. The request for a stay is plainly strategic: Defendants do not seek to pause all proceedings—only those they perceive as unfavorable. As Judge Whitley already ruled, if the

¹³ Despite pages dedicated to the issue, Defendants’ objection to the Committee’s pursuit of alternative theories of relief is a red herring. See Mot. to Stay at 5, 23–31. In response to Defendants’ previous attempts to raise this issue, this Court (Judge Whitley) made clear that there is nothing improper about pleading alternative legal theories, particularly when they are grounded in Defendants’ own contradictory positions. See, e.g., Order Denying Motion to Withdraw (denying Motion to Withdraw despite Defendants’ arguments of alternative legal theories); see also *Menerick v. Salem Heritage, LLC*, 2023 WL 3818391, at *3 (W.D. Va. June 5, 2023) (“[T]he plaintiff may bring alternative theories of relief . . . based on alternative facts even if inconsistent and even if the party may not prevail on the alternative theories.” (citing *Hayes v. Prudential Ins. Co. of Am.*, 60 F.4th 848, 855 (4th Cir. 2023))); *United States v. White*, 2014 WL 3898378, at *8 (D. Md. Aug. 7, 2014) (“The doctrine of judicial estoppel, however, does not prevent the Defendant from arguing alternative theories of her case.”); Fed. R. Bankr. P. 7008 (incorporating Fed. R. Civ. P. 8 and reserving a party’s right to advance alternative theories).

¹⁴ *Consolidated Motion for Leave to Appeal the Orders Denying the Aldrich Committee’s, Mr. Robert Semian and Forty-Six Other MRHFM Plaintiffs’, and Mr. Wilson Buckingham and Ms. Angelika Weiss’s Motion to Dismiss*, [Case No. 3:24-cv-00284 (FWV), ECF No. 39] (the “Motion for Leave to Appeal”).

parties are going to pursue their respective litigation paths, “we’ll litigate the matters that the parties bring before us and not just one side’s preferred dispute,” as “it’s not appropriate to enjoin one side and let the other side go forward with their preferred avenue of litigation [because] estimation is [not] any more likely to produce an accord than proceeding with the 548 litigation.” Jan. 27, 2022, Hr’g Tr. at 21:22–22:5; Apr. 1, 2022, Hr’g Tr. at 7:14–19. Thus, both estimation and the Adversary Proceedings should progress as previously adjudicated by this Court.

5. Although Defendants make a series of accusations claiming that the Committee is responsible for delays in the Adversary Proceedings,¹⁵ or that the discovery Plaintiff seeks in the pending Adversary Proceedings is “wasteful,”¹⁶ the Committee must adamantly and respectfully disagree. Without assigning blame, and saving any such issues for motions to compel,¹⁷ a stay now would only further delay adjudication of the pending Adversary Proceedings. Plaintiff’s goal is simple: to advance the Adversary Proceedings toward a fair and timely outcome.

6. Defendants’ Motion to Stay reflects the position made clear to Plaintiff as late as October 2, 2025, when Plaintiff filed the CMO Motion: If Plaintiff sought to proceed with an amended case management order before this Court,¹⁸ establishing dates and deadlines to progress the pending Adversary Proceedings (as Plaintiff understood is the Court’s preference), Defendants would attempt (again) to stay those proceedings. Taking it one step further, Defendants have also filed a motion demanding discovery from the Committee to manufacture another purported (yet

¹⁵ Mot. to Stay ¶ 14, 18–20.

¹⁶ *Id.* at 6; *id.* ¶ 60.

¹⁷ As noted in *Plaintiff’s Motion to Amend Case Management Order*, [Adv. Pro. No. 21-03029, ECF No. 168; Adv. Pro. No. 22-03028, ECF No. 97; Adv. Pro. No. 22-03029, ECF No. 80] (the “CMO Motion”), Plaintiff provided a timeline to file certain motions to compel. *See, e.g.*, CMO Mot., Ex. A, at 8. While the parties have clearly reached an impasse on certain issues, Plaintiff intends to proceed with a streamlined set of pleadings to ensure that as many issues can be resolved at once before this Court.

¹⁸ CMO Mot. at Ex. A (the “Proposed Amended CMO”).

disputed) basis for the requested stay relief.¹⁹ Plaintiff's opposition to such discovery, including to the extent it relates to these Adversary Proceedings, is previewed here and addressed more fully in Plaintiff's concurrently filed objection (incorporated herein by reference).

7. For the reasons set forth herein, these Adversary Proceedings must move forward.

RELEVANT BACKGROUND

8. On June 18, 2020 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). *See In re Aldrich Pump LLC*, No. 3:20-bk-30608 (LMJ) (Bankr. W.D.N.C.); *In re Murray Boiler LLC*, No. 20-30609 (LMJ) (Bankr. W.D.N.C.).

9. On that same day (i.e., the Petition Date), the Debtors sought to protect their non-debtor parents, affiliates, indemnified parties, and insurers, including all of the Defendants, through a temporary restraining order and preliminary injunction, to enjoin the filing of prosecution of asbestos claims, "for the period through and including 30 days after the effective date of a confirmed plan of reorganization" that provides for a section 524(g) permanent channeling injunction.²⁰ After truncated discovery and litigation, the Court held a three-day hearing on May 5–7, 2021, and on August 23, 2021, and entered the Findings and Conclusions granting the preliminary injunction.²¹ In the Findings and Conclusions, the Court stated, among other things:

- "[Curtis] Huff's analysis contemplates our current dispute and how it should be addressed: 'if in a merger with multiple survivors, the parties allocate a creditor's claim to an inadequately capitalized or insolvent

¹⁹ *Debtors' Motion for Bankruptcy Rule 2004 Examination of the Official Committee of Asbestos Personal Injury Claimants* [ECF No. 2824] (the "2004 Motion").

²⁰ *Motion of the Debtors for an Order (I) Preliminarily Enjoining Certain Actions Against Non-Debtors, or (II) Declaring that the Automatic Stay Applies to Such Actions, and (III) Granting a Temporary Restraining Order Pending a Final Hearing* [Adv. Pro. No. 20-03041, ECF No. 2], Ex. A ¶ 11; *see id.* at 28, 35.

²¹ *Findings of Fact and Conclusions of Law Regarding Order: (I) Declaring that the Automatic Stay Applies to Certain Actions Against Non-Debtors, (II) Preliminarily Enjoining Such Actions, and (III) Granting in Part Denying in Part the Motion to Compel* [Adv. Pro. No. 20-03041, ECF No. 308] ("Findings and Conclusions").

corporation, that creditor will have the right to challenge the merger as a fraudulent transfer.” Findings and Conclusions ¶ 169.

- “[I]f a corporation uses a divisional merger to dump its liabilities into a newly created ‘bad’ company that lacks the ability to pay creditors while its ‘good’ twin walks away with the enterprise’s assets, a fraudulent transfer avoidance action lies.” *Id.* ¶ 171.
- The circular nature of the funding arrangement, by and among related parties, and how “[o]nly the Debtors can enforce these agreements. And practically, no one can enforce them absent the consent of New TTC/New Trane. As Aldrich and New TTC are owned by the same corporate parent and Murray is owned by New Trane, each is subject to the dictates of the parent or sister company against whom enforcement must be sought. Since the Debtors have no employees of their own and are consigned to borrow staff from New TTC, under the Funding Agreements, the people who would have to enforce the agreement against New TTC and/or New Trane are in fact officers and employees of New TTC.” *Id.* ¶ 73.
- “Creating two companies with no employees evidences the fact that Aldrich and Murray were simply inert vessels designed to carry their predecessors’ asbestos liabilities into bankruptcy. This lack of employees, but for the handful loaned to the Debtors by New TTC, appears intended to set up the argument in then contemplated (now present) bankruptcy cases that a preliminary injunction is necessary to avoid overwhelming the Debtors’ employees.” *Id.* ¶ 87.

10. On October 18, 2021, the Committee filed the Standing Motion.²² Over Defendants’ strenuous opposition,²³ the Court granted the Standing Motion on January 27, 2022,²⁴ which was reflected by order dated April 14, 2022.²⁵ In granting the Standing Motion, the Court

²² *Motion of the Official Committee of Asbestos Personal Injury Claimants for Entry of an Order Granting Leave, Standing, and Authority to Investigate, Commence, Prosecute, and to Settle Certain Causes of Action* [ECF No. 848] (the “Standing Motion”).

²³ *See Debtors’ Opposition to ACC’s Motion for Leave, Standing, and Authority to Investigate, Commence, Prosecute, and Settle Certain Causes of Action* [ECF No. 893], at 1–5 (arguing, among other things, that derivative standing was unnecessary because the “ACC acknowledges that these are ‘full-pay’ cases given the resources available to the Debtors through the respective funding agreements,” that there was a lack of colorable claims, and that granting derivative standing would not benefit the bankruptcy estates); *see also, e.g., Non-Debtor Affiliates’ Objections to the Motion of the Official Committee of Asbestos Personal Injury Claimants for Entry of an Order Granting Leave, Standing, and Authority to Investigate, Commence, Prosecute, and to Settle Certain Causes of Action* [ECF No. 895].

²⁴ Jan. 27, 2022, Hr’g Tr. 22:6–7; *see also* Order Granting Standing.

²⁵ *See* Order Granting Standing.

specifically found:

- “[T]here are colorable claims and . . . the debtor and affiliates can hardly complain that a claimant’s fiduciary committee be empowered to examine [the restructuring] transactions and, if appropriate, contest them.” Jan. 27, 2022 Hr’g Tr. at 16:16–23.
- “The debtor and its professionals, in my opinion, are conflicted here. A lot of the same participants are, were engaged in that, those transactions. The debtor, of course, is controlled by its parents and the affiliated entities and it have an insider relationship. The debtor sought the injunction to prevent the assertion of the causes of action, the ones that the movants want to investigate.” *Id.* at 16:24–17:5.
- “[I]f it is, in fact, that, an effort to avoid paying, then the only way for the claimants to be sure that they’re going to get sufficient funding to pay their claims would appear to me to be through the litigation course, the 548, alter ego, pierce-the-corporate veil avenue. And in that event, I would say that the benefit to the litigation clearly outweighs the cost.” *Id.* at 21:6–12.

11. With respect to Defendants’ suggestion that the Adversary Proceedings should be stayed while the parties pursue estimation, the Court already held:

[A]s long as the parties disagree and want to go different courses to try to seek resolution of this case, as I said before, I’m not inclined to allow one without allowing the other. So I’d say no to that. If we’re going to litigate, we’ll litigate the matters that the parties bring before us and not just one side’s preferred dispute.

Jan. 27, 2022, Hr’g Tr. at 21:24–22:5.

12. Despite the Court’s clear grant of authority to the Committee to proceed with investigating and prosecuting the Adversary Proceedings, on February 15, 2022, the Debtors filed the Reconsideration Motion, seeking to reargue derivative standing and narrow the scope of claims that the Committee could bring.²⁶ Among other things, the Debtors sought to preclude constructive fraudulent transfer claims on the basis that, among other things, Plaintiff could not establish

²⁶ *Motion of the Debtors to (I) Define the Scope of the Court’s January 27, 2022 Derivative Standing Ruling or (II) Reconsider Order Granting the Committee’s Request for Derivative Standing* [ECF No. 995] (the “Reconsideration Motion”), ¶ 3.

“whether the Corporate Restructuring was a constructive fraudulent transfer without a final estimation of the Debtors’ asbestos liabilities.” Reconsideration Mot. ¶ 8.²⁷

13. On April 1, 2022, the Court stated its intention to deny the Reconsideration Motion.²⁸ With respect to the Debtors’ argument that estimation should precede the Adversary Proceedings, the Court specifically found that “estimation alone won’t result in a compromise as long as the challenges to the merger are still untested.” Apr. 1, 2022, Hr’g Tr. at 8:9–11, *see also id.* at 22:1–3 (“[U]nless and until the claimants get paid in this bankruptcy, the right to challenge that divisive merger I think exists[.]”).

14. During this period and shortly thereafter, the Committee commenced the SubCon Proceeding,²⁹ the Fraudulent Transfer Proceeding,³⁰ and the Fiduciary Duty Proceeding.³¹

15. On January 10, 2023, the Court entered the Adversary CMO.³² The Adversary CMO provides that the discovery completed in the preliminary injunction proceeding will be deemed to have been conducted in the Adversary Proceedings.³³ The Adversary CMO further provides that discovery conducted after the date of the Order as part of the Fraudulent Transfer Proceeding or the SubCon Proceeding is deemed to have occurred in all Adversary Proceedings, including the Fiduciary Duty Proceeding.³⁴ The Adversary CMO does not include any deadlines for the completion of discovery, further motion practice, or trial.

²⁷ The Committee opposed the Reconsideration Motion. *Opposition of the Official Committee of Asbestos Personal Injury Claimants to the Debtors’ Motion for Reconsideration* [ECF No. 1004].

²⁸ Apr. 1, 2022, Hr’g Tr. at 15:3–6; *see also* Order Denying Reconsideration.

²⁹ Adv. Pro. No. 21-03029, ECF Nos. 1–2 (Oct. 18, 2021).

³⁰ Adv. Pro. No. 22-03028, ECF No. 1 (June 18, 2022) (the “Fraudulent Transfer Complaint”).

³¹ Adv. Pro. No. 22-03029, ECF No. 1 (June 18, 2022).

³² *Case Management Order* [Adv. Pro. No. 21-03029, ECF No. 117; Adv. Pro. 22-03028, ECF No. 39; Adv. Pro. 22-03029, ECF No. 35] (the “Adversary CMO”).

³³ Adversary CMO ¶ C.2.

³⁴ *Id.* ¶ C.1.i.

16. The Court entered an *Order Establishing Joint Discovery Plan and Report (ESI Protocol)* (“Discovery Plan Order”) in both the SubCon and the Fraudulent Transfer Proceeding on April 24, 2023.³⁵ The Discovery Plan Order sets forth limitations on discovery, parameters for document production, and a protocol for electronically stored information. The Discovery Plan Order does not set any deadlines for the completion of discovery, further motion practice, or trial.

17. On May 15, 2023, the Committee filed a motion to dismiss the Debtors’ chapter 11 bankruptcy cases [ECF No. 1756] (the “Motion to Dismiss”), which is the subject of the pending Motion for Leave to Appeal.

18. On June 15, 2023, the Debtors filed the Motion to Withdraw Standing [ECF No. 1814], arguing again, among other things, that the Committee should be estopped from pursuing its claims in the Adversary Proceedings.³⁶ On December 28, 2023, the Court denied the Debtors’ motion, concluding that “there is no basis to remove the Committee’s derivative standing,” including because “the Debtor’s solvency status does not affect all of the Committee’s colorable claims” and “[a]n actual fraudulent transfer claim does not require an insolvent Debtor, but an intent to utilize the Bankruptcy system to hinder or delay payments to Creditors.” *See Order Denying Motion to Withdraw*, at 2–3.

19. Significant discovery requests and responses, and meet-and-confer efforts, have been undertaken in the Adversary Proceedings. Written discovery has been propounded and responded to, and the parties have held multiple calls and engaged in extensive communications

³⁵ Adv. Pro. No. 21-03029, ECF No. 142; Adv. Pro. No. 22-03028, ECF No. 69.

³⁶ The Committee opposed the motion and argued, among other things, that (i) this was the Debtors’ second improper attempt to revisit the Court’s prior ruling granting the Committee derivative standing; and (ii) if the motion to withdraw standing were granted, the Debtors (who are hopelessly conflicted) would be tasked with prosecuting the Fraudulent Transfer Proceeding against their own parents and affiliates, which they are in no position to do. *See Objection of the Official Committee of Asbestos Personal Injury Claimants to the Debtors’ Motion to Withdraw Derivative Standing and Related Joinder* [ECF No. 1886].

to address and negotiate various discovery disputes. While the parties continue to work through certain discovery issues, there remain threshold disputes that require this Court's intervention before discovery can meaningfully proceed. For example, Plaintiff first raised concerns regarding custodians more than a year ago and reiterated those concerns repeatedly, including most recently on August 25, 2025 and September 10, 2025. Defendants committed to respond by October 1, 2025, and ultimately provided their responses on October 10, 2025. Plaintiff expects to be able to finalize any necessary motions to compel in short order on these gating discovery issues.

20. On June 26, 2024, Judge Whitley retired.³⁷ Prior to his retirement, Judge Whitley was mindful of his limited window to resolve pending issues, noting that the briefing, hearing, and decision timeline posed a practical issue for the Court. Apr. 17, 2024, Hr'g Tr. at 120:17–24 (“[I]f I were going to be here for the next two years, then I might be more inclined to go forward, but I also have to factor in what happens if we get this teed up and we do our briefing and we have our hearing [and], then I’ve got, basically, less than a month to try to get all the . . . issues resolved and written up.”). Judge Whitley likewise expressed concern that, should motion practice on various issues partially proceed before him but not reach complete resolution prior to his retirement, he would be “putting [his] fingerprints on an issue and then [his] successor [would be] stuck with what we’ve done and that’s never a good thing, either.” *Id.* at 122:3–5.

21. On September 17, 2024, the case was reassigned to this Court. Order Reassigning Case. On March 27, 2025, this Court stated on the record that it viewed deadlines as necessary and appropriate to move matters along in these cases. Mar. 27, 2025, Hr'g Tr. at 7:16–17.

22. Following a series of meet-and-confers and exchanges on various discovery issues, on August 7, 2025, Plaintiff sent an initial draft of the Proposed Amended CMO to Defendants and

³⁷ *Order Reassigning Case and Setting Status Hearing* [ECF No. 2363] (the “Order Reassigning Case”), at 1.

the parties subsequently engaged in negotiations over its terms.³⁸ Ultimately, as of October 2, 2025,³⁹ the parties reached an impasse on certain provisions—namely (and without limitation), whether the Proposed Amended CMO should include deadlines extending beyond the end of fact discovery. As of that date, the Debtors advised Plaintiff that, unless Plaintiff removed the post-discovery deadlines, Defendants would seek a stay of the Adversary Proceedings. Plaintiff responded that, in light of the Court’s desire for dates and deadlines, and Plaintiff’s intention to pursue adjudication of various outstanding discovery disputes thereafter, it would proceed with submitting the Proposed Amended CMO to facilitate resolution.

23. On October 2, 2025, Plaintiff filed the CMO Motion. In return, Defendants filed the Motion to Stay and the 2004 Motion.

ARGUMENT

I. DEFENDANTS’ RENEWED STAY REQUEST IS PROCEDURALLY AND SUBSTANTIVELY IMPROPER

24. Defendants’ request for stay relief has no merit, procedurally or substantively. While Plaintiff does not dispute the Court’s authority to issue stays,⁴⁰ the relief sought here has already been repeatedly adjudicated in this case, and Defendants present no new facts or legal developments, let alone meet or even plead the well-established legal standards, to justify revisiting those prior rulings or imposing a stay pending appeal. The Adversary Proceedings remain squarely within this Court’s jurisdiction, and Defendants’ latest attempt to delay their

³⁸ The prior version of the Proposed Amended CMO that Plaintiff exchanged with Defendants contained shorter deadlines. However, after considering Defendants’ feedback and in an effort to reach consensus, Plaintiff has extended the deadlines.

³⁹ At Defendants’ request, Plaintiff agreed to delay the filing of the CMO Motion by one month in an effort to reach a resolution.

⁴⁰ While the Court has the inherent authority to issue stays, Plaintiff respectfully submits that section 105(a) of the Bankruptcy Code may not be utilized to circumvent the requirements under Fed. R. Bankr. P. 8007, as further described herein. *See, infra*, note 47.

resolution is improper.

A. Prior Court Rulings Preclude the Requested Stay Relief

25. As noted above, the Court unambiguously and repeatedly ruled that the Adversary Proceedings should progress. Judge Whitley has already considered and rejected Defendants' repeated attempts to stay the Adversary Proceedings in favor of estimation. Judge Whitley made clear that both tracks in these Texas Two-Step cases must proceed concurrently.⁴¹

26. Moreover, the Court has taken multiple actions that affirm the ruling permitting the Adversary Proceedings to advance. The Court (1) approved the retention of the Committee's special litigation counsel to investigate the claims that ultimately formed the basis of the Adversary Proceedings,⁴² (2) granted the Committee estate standing when the Debtors were deemed to be hopelessly conflicted,⁴³ (3) denied the Debtors' motion to reconsider the Order Granting Standing,⁴⁴ and (4) denied the Debtors' subsequent motion to withdraw standing (while the Motion to Dismiss was pending—now the subject of the Motion for Leave to Appeal).⁴⁵ The Court would not have issued any one of these rulings if a stay of the Adversary Proceedings were appropriate.

27. Notably, while acknowledging only one of Judge Whitley's express rulings on this issue (Mot. to Stay ¶ 64), Defendants claim that the dismissal motions somehow justify deviating from the rulings the Court repeatedly made to permit each party to pursue their chosen litigation

⁴¹ See, e.g., Jan. 27, 2022, Hr'g Tr. at 21:22–22:5 (“As to the [] suggestion that we file the action [referring to the Adversary Proceedings] and then stay it while we pursue estimation, well, . . . I'm not inclined to allow one without allowing the other. So I'd say no to that. If we're going to litigate, we'll litigate the matters that the parties bring before us and not just one side's preferred dispute.”); Apr. 1, 2022, Hr'g Tr. at 7:14–19 (“[I]t's not appropriate to enjoin one side and let the other side go forward with their preferred avenue of litigation . . . I still don't think estimation is any more likely to produce an accord than proceeding with the 548 litigation.”); see also Oct. 14, 2021, Hr'g Tr. at 84:24–25, *In re DBMP LLC*, Case No. 20-30080 (“I view us as having two paths.”).

⁴² See Order Authorizing Retention.

⁴³ See Order Granting Standing.

⁴⁴ See Order Denying Reconsideration.

⁴⁵ See Order Denying Motion to Withdraw.

paths. *Id.* Further, Defendants cite no authority to justify relief from the Court’s rulings that the Adversary Proceedings should progress. *See* Mot. to Stay ¶¶ 63–64.⁴⁶ Instead, Defendants rely on *In re Baldwin-United Corp.*, 45 B.R. 382 (Bankr. S.D. Ohio 1984), an out-of-circuit decision that authorized a ***negotiated and mutually approved agreement*** among the affected parties for, among other things, a standstill of competing claims for ninety days. *See* Mot. to Stay ¶ 65 n.32. The *Baldwin* court described the standstill as the “product of difficult negotiations” and as essential to avoiding litigation that would render reorganization “virtually hopeless.” *In re Baldwin*, 45 B.R. at 383. None of those circumstances are present here.

28. Federal Rules of Civil Procedure 59(e) and 60(b), made applicable by Rules 9023 and 9024 of the Federal Rules of Bankruptcy Procedure, govern the relief sought here, and the use of section 105(a) of the Bankruptcy Code may not be used to circumvent the limitations set forth therein.⁴⁷ But Defendants have failed to meet the standard for reconsideration. A motion for reconsideration may be granted only to (1) accommodate intervening changes in the law, (2) account for new evidence not available at trial, (3) correct clear error of law, or (4) prevent manifest injustice.⁴⁸ Defendants have not identified any change in law, newly discovered evidence, legal

⁴⁶ Instead, Defendants cite *Owens Corning* to note that substantive consolidation is a “remedy . . . of last resort which should be used sparingly.” Mot. to Stay ¶ 64 (citing *In re Owens Corning*, 419 F.3d 195, 208–09, 2011 (3d Cir. 2005)). No party disputes the law on this issue, nor does it justify a stay.

⁴⁷ *See, e.g., Missoula Fed. Credit Union v. Reinertson (In re Reinertson)*, 241 B.R. 451, 456 (B.A.P. 9th Cir. 1999) (“Debtors missed the one-year cutoff for seeking relief from a judgment on the grounds of mistake under FRCP 60(b)(1), and neither § 105(a) nor the bankruptcy court’s inherent equitable power authorized disregard of FRCP 60.”); *In re Frank Montique, Inc.*, No. 97-12086F, 2003 WL 25947338, at *7 (Bankr. E.D. Pa. Jan. 31, 2003) (“[T]he bankruptcy court’s inherent power to reconsider orders has been merged into the Federal Rules of Bankruptcy Procedure and the Federal Rules of Civil Procedure. Accordingly, final orders may be set aside only under FRCP 60(b) applicable via Rule 9024; the bankruptcy court may not use its inherent power [under section 105(a)] to circumvent the limitations of those rules.”) (alterations in original); *In re Apex Int’l Mgmt. Servs., Inc.*, 215 B.R. 245, 250 (Bankr. M.D. Fla. 1997) (“bankruptcy court declined “to exercise its equitable powers to nullify fraudulent document under 11 U.S.C. § 105(a)”, since timely relief was no longer available pursuant to Rule 60(b), and powers under § 105(a) were limited to actions authorized by Code or Rules).

⁴⁸ *See In re Heinze*, 2008 WL 6946639, at *1 (Bankr. M.D.N.C. Feb. 22, 2008) (citing *EEOC v. Lockheed Martin Corp.*, 116 F.3d 110, 112 (4th Cir. 1997)).

error, or manifest injustice that would warrant reconsideration.⁴⁹

29. Importantly, such a motion for reconsideration “does not allow an opportunity to reargue a case”—which is precisely what Defendants aspire to do here, without identifying any circumstance that satisfies the applicable standard for reconsideration.⁵⁰

30. Moreover, the decisions Defendants now seek to revisit through their Motion to Stay are law of the case, having been litigated repeatedly and summarily rejected by the Court (*see supra* ¶ 29).⁵¹ Defendants cannot circumvent decisions of this Court simply by repackaging previously rejected arguments, and their requested relief should be denied.

B. Defendants Fail to Make the Required Showing for a Stay Pending Appeal

31. To the extent Defendants now seek a stay pending appeal, more than twenty months after this Court certified the order denying motions to dismiss for direct appeal to the Fourth Circuit (*see 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)* [ECF No. 2111]), Defendants ignore the applicable legal standard.⁵² And for good reason, as a stay pending appeal is considered

⁴⁹ *See, e.g., TFWS, Inc. v. Franchot*, 572 F.3d 186, 191 (4th Cir. 2009) (declining to reverse prior decision where no exception to the law-of-the-case doctrine).

⁵⁰ *See Auto Money North LLC v. Parties Listed on App. A to Compl., and John and Jane Does 1-1000 (In re Auto Money N. LLC)*, 649 B.R. 704, 707 (Bankr. D.S.C. 2023) (citing *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 486 n.5 (2008) (“Rule 59(e) permits a court to alter or amend a judgment, but it may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment.”) (internal quotation marks and citations omitted)).

⁵¹ *See also Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 815–16 (1988); *Carlson v. Bos. Sci. Corp.*, 856 F.3d 320, 325 (4th Cir. 2017) (affirming district court denial of motion to reconsider where “late revelation” did not constitute clear error causing manifest injustice in summary judgment ruling that would serve as an exception to the law-of-the-case doctrine); *Mar-Bow Value Partners, LLC v. McKinsey Recovery & Transformation Servs. U.S., LLC*, 469 F. Supp. 3d 505, 525 (E.D. Va. 2020) (holding that prior dismissal based on lack of standing was law of the case and rejecting the argument that an exception applied to standing decisions under the law of the case doctrine).

⁵² While section 105(a) of the Bankruptcy Code provides broad authority to the Court to “issue any order, process, or judgment . . . necessary or appropriate” to facilitate the administration of these chapter 11 cases, Plaintiff respectfully submits that there are limits to the application of section 105(a). For instance, section 105(a) may not be utilized to circumvent the requirements set forth in applicable statute or rule. *See In re Wellington*, 631 B.R. 833, 847 (Bankr. M.D.N.C. 2021) (declining to issuing a stay pending appeal based on its inherent powers); *see also New Eng. Dairies Inc. v. Dairy Mart Convenience Stores, Inc. (In re Dairy Mart Convenience Stores, Inc.)*, 351 F.3d 86, 91–92 (2d Cir. 2003) (holding that section 105 does not “authorize the bankruptcy courts to create substantive rights that

“extraordinary relief” for which the moving party bears a “heavy burden.”⁵³ “A stay is not a matter of right, even if irreparable injury might otherwise result. It is instead an exercise of judicial discretion, and the propriety of its issue is dependent upon the circumstances of the particular case.” *In re Wellington*, 631 B.R. at 838 (Bankr. M.D.N.C. 2021) (citing *Nken*, 556 U.S. at 433).

32. Such a motion is evaluated under the same criteria as a motion for a preliminary injunction.⁵⁴ To obtain a stay, the moving party must demonstrate (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm absent a stay; (3) that the balance of equities tips in its favor; and (4) that a stay is in the public interest. *Id.* And at least one court has stated, where “the order being appealed is interlocutory, the relevant likelihood of success looks to whether ‘the [appellate court] will grant the [party’s] leave to file an interlocutory appeal, not the possibility that the [appealing party] will succeed on the merits of that appeal.’” *Turner v. Frascella Enterprises, Inc. (In re Frascella Enters., Inc.)*, 388 B.R. 619, 623 (Bankr. E.D. Pa. 2008) (citations omitted).

33. Defendants fail to meet any of the elements of the aforementioned standard. In fact, this procedural posture underscores the weakness of Defendants’ position: It is the Committee—not Defendants—that has sought leave to appeal. Accordingly, Defendants bear the burden of showing that such leave is likely to be granted—i.e., that there is a likelihood of success on *Plaintiff’s* appeal. *See id.*⁵⁵ In fact, Defendants actually posit the opposite of their required

are otherwise unavailable under applicable law, or constitute a roving commission to do equity”) (internal citations omitted). Here, because Fed. R. Bankr. P. 8007 governs the relief requested, Plaintiff submits that section 105(a) may not be utilized to circumvent the elements to establish a stay pending appeal.

⁵³ *Covington v. N. Carolina*, No. 1:15CV399, 2018 WL 604732, at *3 (M.D.N.C. Jan. 26, 2018); *see also Nken v. Holder*, 556 U.S. 418, 433–34 (noting “[t]he party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion.”); *In re Taub*, 470 B.R. 273, 277 (E.D.N.Y. 2012) (holding that “‘stays pending an appeal are only granted in limited circumstances.’” (quoting *In re Smith*, No. 09-CV-0508, 2009 WL 366577, at *2 (E.D.N.Y. Feb. 12, 2009))).

⁵⁴ *See, e.g., Taylor v. Davis (In re Davis)*, Adv. Pro. No. 12-80034-DD, 2012 WL 4343761, at *2–3 (Bankr. D.S.C. Sept. 21, 2012) (citing *In re Forest Grove, LLC*, 448 B.R. 729, 743 (Bankr. D.S.C. 2011)).

⁵⁵ Plaintiff posits that an analysis of the elements for the stay—particularly the balance of equities and public interest—weighs in favor of denying Defendants’ requested relief.

burden, arguing the supposed implausibility of the Committee's claims. *See* Mot. to Stay ¶¶ 53–54. Defendants' claims that the fraudulent transfer and substantive consolidation claims are implausible fail, given that the SubCon Proceeding survived a motion to dismiss,⁵⁶ and the Court already held that there were colorable claims for fraudulent transfer.⁵⁷ In any case, because Defendants fail to carry their burden to establish the elements, let alone even attempt to do so, a stay pending appeal is not warranted.

C. The Court Maintains Jurisdiction to Adjudicate the Adversary Proceedings

34. Defendants spend much of the Motion to Stay arguing a new approach to the same stay request, asserting that this Court lacks jurisdiction due to the pending Motion for Leave to Appeal. *See* Mot. to Stay ¶ 45. For a number of reasons, Defendants' position lacks merit.

35. First, as of the filing of this Objection, the Motion for Leave to Appeal remains pending and has not yet been adjudicated. When such a motion is pending, the district court does not yet have appellate jurisdiction over the interlocutory order submitted for appeal.⁵⁸

36. Second, as a further threshold matter, it is black letter law that the divestiture principle does not apply to interlocutory orders.⁵⁹ As the Motion for Leave to Appeal makes clear, leave is being sought to appeal an "interlocutory" order. Mot. for Leave at 8, 15. The divestiture

⁵⁶ *Order Denying in Part and Granting in Part the Motions of the Debtors and Non-Debtor Affiliates to Dismiss the Adversary Complaint*, Adv. Pro. No. 21-03029 [ECF No. 71] (Apr. 14, 2022).

⁵⁷ *See* Jan. 27, 2022, Hr'g Tr. at 16:16–23; *see also* Order Denying Motion to Withdraw, ECF No. 2046, at 2–3.

⁵⁸ *See Prologo v. Flagstar Bank, FSB (In re Prologo)*, 471 B.R. 115, 129 (D. Md. 2012) (stating that a district court has "appellate jurisdiction over interlocutory, non-final orders of the Bankruptcy Court, so long as [the district court] grants leave to appeal"); *Glassman, Edwards, Wyatt, Tuttle & Cox, P.C. v. Wade (In re Wade)*, 500 B.R. 896, 902 (Bankr. W.D. Tenn. 2013) ("[T]he district court has appellate jurisdiction over an appeal of an interlocutory order only after the district court grants leave to appeal upon a properly filed motion for leave to appeal.").

⁵⁹ *See In re Bestwall LLC*, 658 B.R. 348, 361 (Bankr. W.D.N.C. 2024), *aff'd sub nom. Bestwall LLC v. Off. Comm. of Asbestos Claimants of Bestwall, LLC*, 148 F.4th 233 (4th Cir. 2025) ("There is an exception to the divestment rule if the appeal is interlocutory."); *BAE Sys. Tech. Sol. & Servs., Inc. v. Republic of Korea*, No. 14-3551, 2016 WL 6167914, at *3 (D. Md. Oct. 24, 2016) ("Interlocutory appeals do not divest [lower] courts of jurisdiction." (citing *Columbus-Am. Discovery Grp. v. Atl. Mut. Ins. Co.*, 203 F.3d 291, 302 (4th Cir. 2000))).

principle therefore does not apply.

37. Third, the divestiture principle exists to protect the *appellate* process, not to impede the administration of the underlying bankruptcy process. As one court explained:

[B]ecause the judge-made divestiture rule isn't based on a statute, it's not a hard-and-fast jurisdictional rule[.] The rule, rather, is rooted in concerns of judicial economy, crafted by courts to avoid the confusion and inefficiency that would inevitably result if two courts at the same time handled the same issues in the same case[.] Hence its application turns on concerns of efficiency and isn't mandatory.

United States v. Rodriguez-Rosado, 909 F.3d 472, 477–78 (1st Cir. 2018) (citations omitted). For that reason, courts routinely caution against broadly applying the divestiture principle—particularly in the context of interlocutory appeals—as doing so can “severely hamper a bankruptcy court’s ability to administer its cases in a timely manner.” *See In re Bestwall*, 658 B.R. at 360 (citing *Whispering Pines Estates, Inc. v. Flash Island, Inc. (In re Whispering Pines Ests., Inc.)*, 369 B.R. 752, 758 (B.A.P. 1st Cir. 2007)). The prevailing approach is functional: A bankruptcy court retains jurisdiction over matters not directly implicated by the appeal, unless its actions would interfere with or circumvent the appellate process. *See id.* (stating that “purpose” of rule is to “preserve the integrity of the appeal process”).

38. Defendants speculate that if leave is granted, rulings in the Adversary Proceedings could “impact the appeal so as to interfere with or effectively circumvent the appeal process.” Mot. to Stay ¶ 46 (internal citation omitted). But Defendants fail to identify any aspect of the Adversary Proceedings that would specifically interfere with the appeal. No pending motion is asking this Court to resolve the very same issue that is the subject of the Motion for Leave to Appeal.⁶⁰ While the appeal may potentially and ultimately lead to the dismissal of the bankruptcy

⁶⁰ *See, e.g., Doe v. Pub. Citizen*, 749 F.3d 246, 258 (4th Cir. 2014) (noting that the divestiture principle “fosters judicial economy and guards against the confusion and inefficiency that would result if two courts simultaneously were considering the same issues”).

cases (assuming leave is granted) none of the relief Plaintiff seeks in the Adversary Proceedings would result in a similar outcome. The relevant question is not whether the possible appeal could affect the Adversary Proceedings but whether the Adversary Proceedings could affect the appeal. The answer is no.

39. Defendants also speculate that if the Motion for Leave to Appeal is denied, the underlying Order Denying Dismissal⁶¹ would become “law of the case,” and any further challenges in the Adversary Proceedings would constitute a “collateral attack.” Mot. to Stay ¶ 47.⁶² This argument is equally flawed. A determination by the district court with respect to whether the *Carolin* standard has been met is not dispositive as to whether a fraudulent transfer or breaches of fiduciary duty occurred or whether substantive consolidation is appropriate. See *In re Sabine Oil & Gas Corp.*, 548 B.R. 674, 679 (Bankr. S.D.N.Y. 2016) (stating that, during the pendency of an appeal, bankruptcy courts are not divested of jurisdiction to decide issues and proceedings “collateral to those involved in the appeal”) (internal citation omitted). If accepted, Defendants’ position would lead to absurd results—effectively barring the Committee from pursuing valid estate claims based solely on a jurisdictional challenge to the bankruptcy filings.⁶³ Such a result would undermine the Committee’s role and authority to seek relief on behalf of the Debtors’ estates,⁶⁴ especially since the Debtors are hopelessly conflicted and in no position to prosecute

⁶¹ *Order Denying Motions to Dismiss* [ECF No. 2047] (the “Order Denying Dismissal”).

⁶² On that same score, Defendants seemingly argue that if the Order Denying Dismissal remains intact, it somehow immunizes or blesses the Texas Two-Step that was implemented and executed in connection with the Corporate Restructuring and resulting bankruptcy. Mot. to Stay ¶¶ 50–51. Defendants misapply the law-of-the-case doctrine in this instance, as a debtor may be eligible to file for bankruptcy relief and still have committed a fraudulent transfer or be substantively consolidated. None of the cases cited by Defendants suggest otherwise.

⁶³ See, e.g., *Sabine*, 548 B.R. at 680 (rejecting the application of the divestiture principle because it would lead to an “absurd result” and “would effectively cede control of the conduct of a chapter 11 case to disappointed litigants,” an outcome which “cannot be, and is not, the law”); *Ellenberg v. First Nat’l Bank (In re Hollvey)*, 15 B.R. 850, 852 (Bankr. N.D. Ga. 1981) (rejecting arguments that would “exalt form over substance and lead to an absurd result discordant with the equitable nature of bankruptcy proceedings”).

⁶⁴ See Order Granting Standing.

their own parents and affiliates.

40. Defendants' reliance on *Casden v Burns*, 504 F. Supp. 2d 272 (N.D. Ohio 2007), is similarly misplaced. Unlike *Casden*, which dismissed state law causes of action as preempted by a pending federal bankruptcy case, the causes of action pending in these Adversary Proceedings involve federal claims for substantive consolidation and fraudulent transfer, along with attendant state law claims, all brought in a federal forum under the bankruptcy court's (i.e., this Court's) jurisdiction. The *Casden* scenario, thus, bears no resemblance to the present case, where all proceedings are properly before this Court.

41. Moreover, the Adversary Proceedings and the Motion for Leave to Appeal involve distinct procedural postures and legal issues. These matters are not so "closely related" that a stay of the Adversary Proceedings is required.⁶⁵ Unlike the appellate arguments, moving forward with discovery for the claims for substantive consolidation, fraudulent transfer, and breach of fiduciary duty will not have a case-dispositive effect. Said differently, chapter 11 cases can proceed even if a party is successful in prosecuting claims of substantive consolidation, fraudulent transfer, or breach of fiduciary duty.

42. While the underlying facts may overlap—because these matters are necessarily in the same bankruptcy case—each Adversary Proceeding presents distinct legal theories, separate from those raised in the Defendants' pending motion. The Motion for Leave to Appeal seeks permission to address whether the Debtors met the standard of good faith under *Carolin Corp. v. Miller*, 886 F.2d 693 (4th Cir. 1989), and challenges the interpretation of "bad faith" within the Fourth Circuit.⁶⁶ In contrast, the Adversary Proceedings do not concern *Carolin*. Rather, they

⁶⁵ Mot. for Stay ¶ 42 (quoting *Bryant v. Smith (In re Bryant)*, 175 B.R. 9, 12–13 (W.D. Va. 1994)).

⁶⁶ See, e.g., Mot. for Leave to Appeal at 2 ("But the bankruptcy courts in the Western District of North Carolina have adopted a different standard, permitting cash-flush enterprises to avoid scrutiny of their good faith (or determination of their bad faith) prior to confirmation."); *id.* at 11 ("This appeal involves whether, as a matter of law, companies that

focus on whether Defendants engaged in fraudulent transfers and breaches of fiduciary duty or should otherwise be subject to substantive consolidation. This is not a situation where two courts are addressing the same issue at the same time. Defendants cite no authority supporting a stay under these circumstances, where common facts underlie distinct legal theories.⁶⁷ Plaintiff submits that no authority is cited because no such authority exists; otherwise, every time a party appeals any decision in a bankruptcy case, the entire case would be stayed.

43. Moreover, when applying the divestiture principle, courts routinely distinguish “between acts undertaken to enforce the [order] and acts which expand upon or alter it; the former being permissible and the latter prohibited.”⁶⁸ Here, allowing the Adversary Proceedings to move forward does not alter the appealed order in any way. Rather, it enforces and implements the order, consistent with the Court’s jurisdiction over the bankruptcy cases. Continuing with the Adversary Proceedings merely preserves the status quo at the time the Motion for Leave to Appeal was filed.

44. Notably, and finally, if applying Defendants’ logic, the thread unravels. Defendants

have been found to have the ability to pay all creditors in full outside bankruptcy—while shielding their wealthy parents’ assets behind the Texas Two-step’s circular funding arrangements and bankruptcy’s automatic stay—have sought Chapter 11’s safe harbor in good faith.”); *id.* at 13 (“As it recognized, the *Aldrich* court’s application of *Carolyn*’s test to *Aldrich* and *Murray* leads to absurd results—the *more profitable* and less financially distressed a ‘debtor’ is, the *more* immune from dismissal its petition becomes.”).

⁶⁷ See *In re Creative Hairdressers, Inc.*, 639 B.R. 310, 314 (Bankr. D. Md. 2022) (declining to apply divestiture principle where “related” issues did not undermine the appealed order and delay would undermine judicial efficiency), *rev’d on other grounds sub nom. Olsen v. Nesse*, No. TDC-21-3289, 2022 WL 17404968 (D. Md. Dec. 1, 2022); *Sabine*, 548 B.R. at 679 (rejecting application of the divestiture principle where issues were simply “relevant” to the subject of the pending appeal); see also *Impinj, Inc. v. NXP USA, Inc.*, 2023 WL 10351550, at *2 (N.D. Cal. Nov. 27, 2023) (“[T]he mere fact that there may be some factual overlap between the two issues ‘does not demonstrate that those issues are “inextricably bound” to each other.’” (quoting *Apple, Inc. v. Samsung Elecs. Co.*, 2014 WL 6687122, at *6 (N.D. Cal. Nov. 25, 2014))).

⁶⁸ *Betterroads Asphalt, LLC v. FirstBank P.R. (In re Betterroads Asphalt, LLC)*, No. 19-2019 (DRD), 2020 WL 3125274, at *4 (D.P.R. June 12, 2020) (quoting *Asbestosis Claimants v. Am. S.S. Owners Mut. Prot. & Indem. Ass’n (In re Prudential Lines, Inc.)*, 170 B.R. 222, 243 (S.D.N.Y. 1994)) (citing *N.L.R.B. v. Cincinnati Bronze, Inc.*, 829 F.2d 585, 588 (6th Cir. 1987)); see also *Sabine*, 548 B.R. at 679 (“The application of the distinction in the case law between acts of enforcement and acts of alteration is most germane in the context of a Chapter 11 bankruptcy case which involves the court’s issuance of innumerable orders involving a myriad of issues, one or more of which may be on appeal at any given moment.”) (internal citations omitted).

argue that the Adversary Proceedings should be stayed because, if the district court ultimately grants leave to appeal and ultimately finds the bankruptcies were filed in bad faith, the Adversary Proceedings may become “moot.” Mot. to Stay ¶ 65. But by that same logic, the estimation matter should also be stayed—after all, if there is no bankruptcy, there is nothing to estimate. Yet Defendants do not seek to stay estimation (which is steeped in the same set of facts), undermining the very rationale they offer for staying the Adversary Proceedings. Thus, as Defendants wish for estimation to proceed, so too should the Adversary Proceedings.

D. Defendants Fail to Articulate Any Other Grounds for a Stay Pending Appeal

i. Claims of Alternative Theories of Relief is Not a Basis for a Stay

45. As the procedural posture of this case makes clear, Judge Whitley has already addressed and repeatedly rejected Defendants’ attempts to suspend the Adversary Proceedings based on the Committee’s pursuit of alternative theories of relief. *See, e.g., Order Denying Motion to Withdraw* (denying Motion to Withdraw despite Defendants’ arguments of alternative legal theories). As noted above, Defendants provide no justification to vacate Judge Whitley’s prior rulings.⁶⁹ As Defendants concede, “[w]hen a court decides a matter at issue in the case, that decision should continue to govern the same issues in subsequent stages in the same case.” Mot. to Stay ¶ 39 (internal citations omitted).⁷⁰

ii. The Adversary Proceedings Are Ripe for Adjudication

46. Defendants’ position that the Adversary Proceedings are not yet ripe because of the dispute as to whether the Debtors were manufactured with and contain sufficient assets (Mot. to Stay ¶¶ 55–62) is irrelevant as to Plaintiff’s contentions in the Adversary Proceedings. Specifically,

⁶⁹ *See, supra*, ¶¶ 25–27.

⁷⁰ *See, supra*, note 47.

Defendants posit that (1) asbestos liabilities would need to be determined and (2) that requests by the Debtors under the Funding Agreements to satisfy those claims would need to be refused, withheld, limited, or otherwise insufficiently satisfied, in order for fraudulent transfer claims to ripen.⁷¹ As noted many times before this Court, the sufficiency of assets is determined *at the time* of the fraudulent transactions, not after.⁷² Plaintiff's position is nuanced here: it is not whether the Funding Agreement will be sufficient to pay asbestos claims, but rather whether the replacement of access to the direct assets of the enterprise with a funding agreement ensured "those assets were placed beyond the reach of asbestos creditors,"⁷³ thereby rendering a fraudulent transfer. This Court has previously said yes:

The Debtors maintain that nothing like this has happened; they contend that they have the same funding capacity after the 2020 Corporate Restructuring as did Old IRNJ and Old Trane immediately before that restructuring based upon the Funding Agreements and the other assets allocated to Aldrich and Murray. Therefore, the Divisional Merger was not injurious to asbestos claimants.

Possibly, but that is not the relevant question. Under the TBOC, the proper question is, "Were the rights of creditors, here asbestos claimants and holders of future demands, materially affected by the Divisional Merger and its asset and liability allocations?" The preliminary answer to that question would have to be, "Yes."

⁷¹ See Mot. to Stay at ¶ 57 ("The question of whether those assets alone will prove sufficient to pay their liabilities will depend on the amount of those liabilities and on the [non-debtor affiliates'] funding of any necessary additional amounts through the Funding Agreements."). Defendants claim *Pardee v. Consumer Portfolio Sers., Inc.*, 344 F. Supp. 2d 823, 833 (D.R.I. 2004) is "instructive;" however, *Pardee* does not support Defendants' position. That case involved an indemnification claim in a Rhode Island federal district court, where the scope and amount of indemnity depended on whether the plaintiffs would be held liable in two separate cases being litigated in parallel in out-of-state courts. Absent findings in those cases, the parties could not possibly resolve the scope or amount of indemnification. That is not the situation here, as claims for fraudulent transfer, breach of fiduciary duty, and substantive consolidation do not have a condition precedent element like a claim for indemnification. Moreover, unlike *Pardee*, where discovery was extensive and largely complete and summary judgment motions had been filed, we are merely seeking to proceed with discovery so that progress can begin.

⁷² See Fraudulent Transfer Complaint at 27 n.12 ("the relevant Funding Agreements for purposes of this Complaint and Plaintiff's claims are the Funding Agreements in effect at the time of the Corporate Restructuring"); see also 11 U.S.C. § 548(a)(1); 6 Del. Code Ann. § 1304(a); N.C. Gen. Stat. § 3923.4(a); 12 Pa. Cons. Stat. Ann. § 5104(a); Tex. Bus. & Com. Code Ann. § 24.005(a).

⁷³ Findings and Conclusions ¶ 174 ("As a result of the 2020 Corporate Restructuring, those assets were placed beyond the reach of asbestos creditors, and recovery was made dependent on the Debtors' willingness to press their rights under these Funding Agreements").

Findings and Conclusions ¶¶ 172-73. Thus, whether the non-debtor affiliates sufficiently fund any of the Debtors' requests under their Funding Agreements in the future is irrelevant to the merits of the fraudulent transfer claims, and certainly has no bearing on the claims that the Debtors should be substantively consolidated with their non-debtor affiliates.⁷⁴

47. Further, it is worth noting that Defendants appear to reserve their "right to seek dismissal of the Committee's [purportedly] unripe claims in the future" (Mot. to Stay ¶ 62), signaling Defendants' intention to continue to relitigate these issues through improper motions to dismiss or otherwise. Defendants' continued attempts to block Plaintiff's Adversary Proceedings—which are wholly intended to stress-test Defendants' *own* contentions throughout these chapter 11 cases that the prepetition actions were all unassailable—truly call into question the propriety of Defendants' protests. If the Corporate Restructuring were so inviolable, one wonders why Defendants continue to resist scrutiny so vigorously.

II. DEFENDANTS' RULE 2004 DISCOVERY REQUESTS REGARDING THE ADVERSARY PROCEEDINGS ARE IMPROPER AND INAPPROPRIATE

48. As further addressed in the Committee's concurrently filed opposition to Defendants' 2004 Motion, Plaintiff opposes what appears to be a collateral attack on the Adversary Proceedings via a purported "challenge" to the Committee's authority to commence the Adversary Proceedings in the first place.

49. First, the Debtors' discovery is falsely premised on the implicit assumption that the current Committee and its members do not agree with the Committee's current positions and prior actions which, as the Committee's objection to the 2004 Motion explains, is false.

⁷⁴ In fact, it is feasible that the enmeshment between the non-debtor affiliates and the Debtors, including pursuant to these Funding Agreements, speaks to the merits of substantively consolidating the Debtors with their non-debtor affiliates.

50. Second, discovery under Federal Rule of Bankruptcy Procedure 2004 that effectively seeks discovery that would form the basis of a challenge to the jurisdiction of the Adversary Proceedings is improper.⁷⁵ Here, discovery regarding claims that the Adversary Proceedings' complaints were not authorized is obviously related to the Adversary Proceedings themselves. Any such discovery is thus subject to Federal Rule of Civil Procedure 26, and expressly not to be obtained by Federal Rule of Bankruptcy Procedure 2004.⁷⁶

51. Third, the scope of the requested examination has no credible tie to the purpose of Federal Rule of Bankruptcy Procedure 2004. "The purpose generally of Rule 2004 is to enable parties in interest to locate assets of the debtor and to make those assets available for the creditors of the estate." *In re Cont'l Forge Co.*, 73 B.R. 1005, 1007 (Bankr. W.D. Pa. 1987); *see also* 9 Collier on Bankruptcy ¶ 2004.01 (16th ed. 2025) (noting that the scope of a Rule 2004 examination may be limited when a non-debtor is the target, and that the party seeking the examination must demonstrate "good cause"). Here, the discovery sought in the 2004 Motion has no bearing whatsoever in the marshaling of assets available for creditors, and, for the reasons described in the Plaintiff's concurrently filed objection, no "good cause" exists to grant the relief requested.

CONCLUSION

52. For the reasons stated herein, Plaintiff submits that (A) the Motion to Stay should be denied in its entirety, and (B) the 2004 Motion should be denied as and to the extent it seeks

⁷⁵ *See In re Se. Materials, Inc.*, 2010 Bankr. LEXIS 4525, at *8–9 (Bankr. M.D.N.C. Dec. 10, 2010) ("The majority of courts prohibit Rule 2004 examinations of parties involved in or affected by an adversary proceeding while it is pending.") (internal citations omitted); *In re Braxton*, 516 B.R. 787, 795 (E.D.N.C. 2014) ("[O]nce an adversary proceeding or contested matter has been commenced, discovery is made pursuant to [Bankruptcy Rule 7026], rather than by a Rule 2004 Examination." (quoting *In re Washington Mut., Inc.*, 408 B.R. at 50)); *In re Symington*, 209 B.R. 678, 685 (Bankr. D. Md. 1997) (same).

⁷⁶ *See In re Sabbatical, Inc.*, No. 3:16-BK-30247, 2021 WL 4048733, at *5 (Bankr. S.D.W. Va. Sept. 2, 2021) (Rule 2004 examinations are limited to "issues in addition or beyond the scope of [any] pending adversary proceeding." (quoting *In re Se. Materials, Inc.*, No. 09–52606, 2010 WL 5128608, at *4 (Bankr. M.D.N.C. December 10, 2010))).

discovery related to the authorization to commence the Adversary Proceedings.

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