UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re	Chapter 11
ALDRICH PUMP LLC, *et al.*,[1]	Case No. 20-_____ (__)
Debtors.	(Joint Administration Requested)

INFORMATIONAL BRIEF OF ALDRICH PUMP LLC AND MURRAY BOILER LLC

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Dated: June 18, 2020

[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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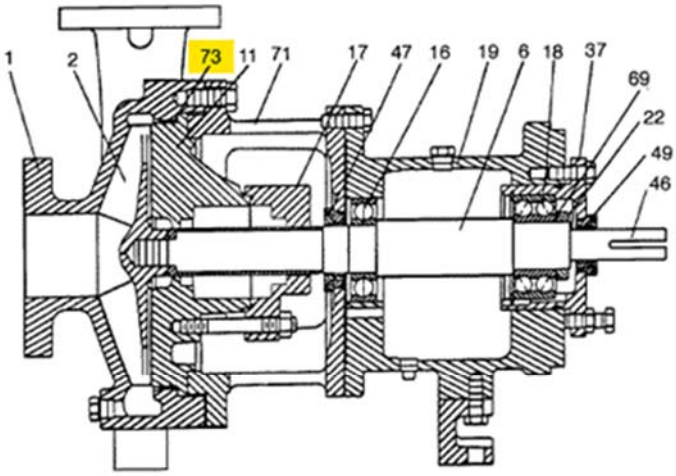
I. Introduction

The debtors in these chapter 11 cases are Aldrich Pump LLC ("Aldrich") and Murray Boiler LLC ("Murray," and together with Aldrich, the "Debtors").[2] The Debtors are subsidiaries of Trane Technologies plc, a publicly traded company ("Trane Technologies"). Trane Technologies is a global climate innovator that brings efficient and sustainable climate solutions to buildings, homes, and transportation. The North American headquarters of Trane Technologies, as well as the Debtors, are located in Davidson, North Carolina. The Debtors have filed these chapter 11 cases to address the unrelenting burden of asbestos claims that have been pursued against them.

The Debtors never mined asbestos, nor did they use asbestos to manufacture a product. Rather, the Debtors made industrial equipment that, in some instances, incorporated certain asbestos-containing components manufactured and designed by third parties.

Aldrich's asbestos litigation history largely surrounds its manufacture of pumps and compressors that incorporated metal piping through which liquids or gases flowed. Where such pipes connected to each other, or to other metal surfaces, leaks could occur. A ring-shaped sealing product known as a gasket was inserted into the connection between the pipes or metal surfaces to avoid such leaks and to protect against sealing failures that could cause injury, death, and catastrophic losses. The gaskets spent their entire lives inserted between two pieces of metal except when the equipment needed repair. An example of typical gasket placement is depicted below.

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



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Until roughly 30 years ago, certain gasket materials available in the marketplace contained asbestos. Aldrich itself had no profit motive or other incentive to use asbestos-containing gaskets over anything else. Such gaskets were merely the industry standard at the time, and Aldrich—and all of its competitors—purchased them for use in their equipment. In nearly all instances, the type of asbestos fiber used in gaskets purchased by Aldrich was chrysotile, a form of asbestos widely recognized as either incapable of causing, or far less likely than other forms of asbestos (such as amphibole) to cause, mesothelioma. Any asbestos fibers contained in gaskets were encapsulated, meaning the fibers could not be released into the air under normal conditions. And, on the rare occasions when the gaskets might be disturbed to conduct equipment repairs, any potential exposure to asbestos fibers was well below the government's permissible exposure levels for asbestos. For pumps, a sealing product called

"packing" also was used to prevent leaks around moving shafts. Any asbestos fibers contained in such packing, like in gaskets, were encapsulated and typically chrysotile.

Murray asbestos claims primarily have arisen from its sale of heating and cooling equipment, such as commercial and industrial HVAC compressors, furnaces, and related equipment, that also incorporated gaskets or other sealing products for the same reasons that Aldrich's equipment used such products. Before the mid-1950s—almost 70 years ago—Murray also designed and sold some boilers that may have been insulated with external asbestos-containing insulation. As with Aldrich, any asbestos products associated with Murray equipment would have been purchased from third parties. Various parts of Murray's operations that incorporated sealing products were either shut down or sold, or largely eliminated the use of asbestos-containing sealing products, during the 1970s and 1980s.

Asbestos litigation today is dominated by claims from individuals who have mesothelioma, a fatal cancer. Exposure to certain types of friable, amphibole asbestos, such as existed in certain insulation and other asbestos-containing products manufactured before 1975, can cause mesothelioma. However, whether mesothelioma can be caused by exposure to chrysotile asbestos at all, and, if so, how intense and prolonged such exposure would need to be, is a topic of scientific debate, though there is consensus that chrysotile is far less toxic than the amphiboles. Further, in many individuals, mesothelioma occurs without any history of occupational exposure to asbestos. In fact, an increasing percentage of mesotheliomas diagnosed in the United States are unrelated to asbestos. As a result, now decades after asbestos was effectively eliminated from the marketplace and the workplace, mesothelioma occurrences have continued and will continue indefinitely into the future.

In this country, asbestos personal-injury litigation commenced in earnest during the 1970s and has become an industry all to itself, with now over 10,000 companies having been named in asbestos lawsuits.[3] Initially, and through the late 1990s, the primary defendants were the miners and sellers of raw asbestos and the companies that used raw asbestos to manufacture other products, like thermal insulation (the so-called "big dusties"). These primary defendants were named in almost every asbestos-related lawsuit and collectively paid hundreds of millions of dollars annually to resolve mesothelioma and other asbestos-related claims. During that same period, collectively, Aldrich and Murray paid less than $4 million to settle the mesothelioma claims brought against them, a clear indication that the Debtors' products were not the likely cause of, or significant contributor to, the occurrence of mesothelioma.

By the early 2000s, however, virtually all of the primary defendants had filed for bankruptcy and exited the tort system. Defendants would eventually establish asbestos trusts under section 524(g) of the Bankruptcy Code that, even after paying tens of billions of dollars of compensation, still held over $36 billion as of 2011.[4] Despite the presence of this administrative system of compensation, the predominant plaintiff firms set their sights on additional sources of recovery. In the words of one plaintiffs' lawyer, asbestos litigation became the "endless search for the solvent bystander."[5] Almost immediately after the commencement of the primary defendant bankruptcies in the early 2000s, individual plaintiffs began to curtail disclosure in their tort cases of their overall asbestos exposure. As a result, even though no facts regarding the manufacture, sale, or use of the Debtors' equipment had changed, claims against the Debtors,

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3 Joseph J. Welter, *et al*., *Alive and Strong in 2014*, Toxic Torts and Environmental Law, Asbestos Litigation, 50 (April 2014).

4 U.S. Government Accountability Office, *Asbestos Injury Compensation: The Role and Administration of Asbestos Trusts*, GAO-11-819, 3 (2011) (By 2011, there were over 60 asbestos personal injury trusts with a combined total of over $36.8 billion assets).

5 'Medical Monitoring and Asbestos Litigation'–A Discussion with Richard Scruggs and Victor Schwartz, Mealey's Litigation Report: Asbestos, at 5 (Mar. 1, 2002) (quoting Mr. Scruggs).

along with settlement and trial demands, began to be made as if the primary defendants had never existed, exposure to their products had never occurred, and recovery against those primary defendants was not available through the tens of billions of dollars in the bankruptcy trusts.

From 2001 to 2002, the number of mesothelioma claims asserted against each of the Debtors doubled in the span of one year. Within just a few years, the Debtors routinely would be named in over 2,500 mesothelioma claims every year, equating to a new claim asserted against the Debtors essentially every working hour of every weekday, every week of the year. A typical complaint indiscriminately named the Debtors alongside scores of other defendants, without any pleading of specific facts alleging exposure to any defendant's products. The Debtors were also now being named in the vast majority of all mesothelioma claims asserted across the country, a percentage that could not plausibly be warranted given the nature of the largely encapsulated products the Debtors predominantly purchased, and, further, given that these products were the industry standard across a multitude of industries and among the thousands of asbestos-containing products in the marketplace.

Because of the individual nature of personal injury claims, every asbestos suit is an individual case that must be separately defended or otherwise resolved. Defending a single mesothelioma suit through trial and appeal can cost $1 million or more. As such, the Debtors now had so many claims asserted against them that the cost of taking each claim to trial would have cost billions of dollars per year in defense costs. Despite the new avalanche of asbestos litigation, the Debtors were successful in getting about two-thirds of their mesothelioma cases dismissed. However, obtaining these dismissals was not costless and, more importantly, the remaining cases against them had undergone an undeniable change. Before the primary defendants' exodus from the tort system, ancillary defendants like the Debtors could reliably

expect that asbestos claimants would identify exposures to amphibole-containing asbestos products manufactured or sold by the primary defendants. Juries would typically find these products to be the real cause of the plaintiffs' disease. That evidence, however, now largely disappeared in tort cases after the primary defendants filed for bankruptcy.

Judge Hodges' seminal decision in *In re Garlock Sealing Technologies, LLC*, 504 B.R. 71 (Bankr. W.D.N.C. 2014), detailed a "widespread" pattern on the part of plaintiffs to not divulge evidence related to the alternative asbestos exposures.[6] While claimants would assert exposures only to products made or sold by defendants who remained in the tort system, many would at the same time, or later, assert claims against the bankruptcy trusts of the former primary defendants. Indeed, the court found that "[i]t was a regular practice by many plaintiffs' firms to delay filing Trust claims for their clients so that remaining tort system defendants would not have that information."[7]

The Debtors are confident that they were subject to similar practices, particularly since the asbestos-containing components in the Debtors' products were largely the same type of sealing products at issue in *Garlock*. As in *Garlock*, since the Debtors' equipment typically was installed in the type of industrial environments where piping systems and their attendant friable thermal insulation were prevalent, including in U.S. Navy ships, shipyards, and power plants, the Debtors were particularly susceptible to these practices. In those cases where a relatively complete picture of a claimant's exposure history was available, the inconsequential contribution of the Debtors' equipment to the claimants' asbestos exposure was self-evident when compared to the claimants' exposure to friable thermal insulation that inevitably would have occurred. But, the plaintiffs' failure to divulge that evidence left the Debtors with the need to either incur

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6 *In re Garlock Sealing Techs. LLC*, 504 B.R. 71, 85-87, 94 (Bankr. W.D.N.C. 2014).

7 *Id*., at 85.

staggering legal fees to develop such evidence, or resolve claims to avoid those legal fees and the risk of a trial that presented an incomplete picture. The Debtors detail examples of cases where they have been subject to these practices later in this Information Brief.

Given the complications of defending claims in this litigation environment, the cost of defense was, of necessity, a critical factor to the Debtors when considering resolution of a claim. On average, plaintiffs asserting mesothelioma claims were willing to accept from the Debtors settlement payments in the mid-five figures, a small fraction of the multi-million dollar award that a plaintiff might receive in total damages if successful in pursuing a mesothelioma claim, and also a small fraction of the likely legal fees the Debtors would incur to take a case through trial. In total, the Debtors resolved roughly 99% of such claims for less than $250,000, an amount that is still a fraction of the likely cost to take a case through trial.

The problem for the Debtors, however, is that even with dismissals without payment in roughly two-thirds of mesothelioma cases, given the vast number of claims asserted against the Debtors, average settlements in the mid-five figures still mean that the Debtors are spending approximately $70 million per year on asbestos-related settlements.[8] This is in addition to approximately $25 million per year in defense costs, for a total nearing $100 million per year. Given that the Debtors eliminated asbestos components from their equipment decades ago and the primary defendants long ago filed for bankruptcy and created trusts for asbestos claimants, one would have expected a precipitous decline in mesothelioma claims against the Debtors. That, however, has not occurred. Instead, the assertion on average of a new mesothelioma claim against the Debtors every working hour of every weekday continues like clockwork. If this high level of mesothelioma claims continues, it will remain much cheaper for the Debtors to pay

[8] This figure includes amounts the Debtors were spending on thousands of lower dollar figure, non-mesothelioma asbestos-related claims, mostly lung cancer claims.

settlements in line with historical payments for cases they cannot get dismissed rather than expend the significant legal fees required to take any one of those cases through trial. And this process will go on year after year, many expect for at least three or four more decades, at which point the Debtors will have been involved in asbestos litigation for 70 or more years.

The Debtors have filed these chapter 11 cases to instead achieve a rational resolution of the asbestos litigation being asserted against them. The current system is not even beneficial for legitimate asbestos claimants, as studies have shown that less than half of the money spent by defendants in the tort system actually goes to compensate individual plaintiffs. In the current environment, section 524(g)'s collective process—which is specifically designed to permanently resolve mass asbestos litigation—provides the best mechanism to resolve the Debtors' asbestos liability. At the end of these cases, the Debtors intend to fund a section 524(g) asbestos trust in an amount that will fully compensate all legitimate asbestos claimants. That amount will be based on an agreement between the Debtors (with the anticipated support and participation of their insurers) and the asbestos claimants and their representatives or through the Court's estimation of the Debtors' asbestos liability. The asbestos claimants will then have access to an administrative process to seek reimbursement from the trust, promptly and without the cost and delay of litigation. The Debtors are committed to achieving this result as soon as possible.

II. The Debtors' Corporate and Relevant Product History

A. Aldrich

Corporate History

Aldrich's historical operations date back to 1905. Aldrich created or acquired certain entities that manufactured, sold, or distributed products—primarily pumps and compressors—that in some cases incorporated asbestos-containing component parts manufactured and designed by third parties. The principal brand names involved in the asbestos claims brought against Aldrich include Cameron Steam Pump ("Cameron Pump"), acquired in the early 1900s, the Aldrich Pump Company, acquired in 1961, and Ingersoll-Rand Company. All of these product lines, along with a few others, are included in the history of what was Aldrich's pump division.

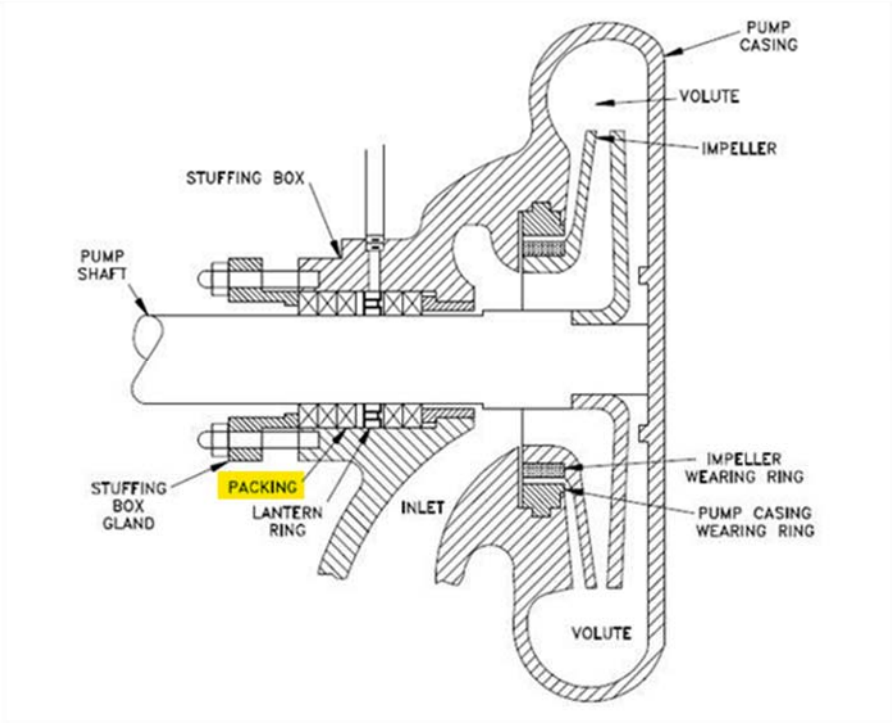
Aldrich Equipment Alleged to Have Created Asbestos Exposure

Asbestos-related claims against Aldrich have most commonly alleged exposure to asbestos from sealing products (*i.e.*, gaskets and, to a lesser degree, packing) used in pumps and compressors located on U.S. Navy ships or in industrial facilities or other commercial buildings. Historically, Aldrich manufactured a variety of pumps, from large boiler feed pumps to smaller motor pumps, as well as reciprocating, centrifugal, and rotary compressors. In substantially all cases, any asbestos used in sealing product components incorporated into Aldrich equipment was chrysotile and non-friable. These components spend their entire useful life fixed between metal surfaces and are generally inaccessible outside of removal and replacement.

A gasket is a thin piece of material (usually 1/32" to 1/8" thick) used to create a seal between metal surfaces that would otherwise leak. The gaskets used in the pumps and compressors at issue came in two types—pre-formed spiral wound gaskets and sheet gaskets, which could be cut to fit the particular need. The gaskets used in Aldrich equipment may have contained asbestos depending on operational temperature and pressure (*e.g.*, industry standards

of the time typically did not necessitate asbestos-containing gaskets for pumps operating at low temperatures and pressures). Regardless, when these gaskets contained asbestos, it was almost always the chrysotile form of asbestos and the gaskets were manufactured in such a way that any asbestos fibers contained therein were coated or otherwise bound within the gasket such that no hazardous release of asbestos fibers occurred during normal use. In this regard, it should also be noted that asbestos-containing gaskets are still legally sold and used in certain industrial applications where the physical and chemical properties of asbestos cannot easily be replaced.

Packing is a braided material that is wrapped around the moving shaft of a pump to prevent leaks. An example of typical packing placement is depicted below.



Packing can be made of various materials, including vegetable fibers, cotton, Teflon, and asbestos. Like the gaskets described above, to the extent packing incorporated into Aldrich products contained asbestos, the asbestos was encapsulated and was generally the chrysotile

form. Aldrich pumps operating at low temperatures and pressures did not use asbestos-containing packing, nor did Aldrich compressors.

Aldrich's operations generally eliminated the use of asbestos-containing products by the mid-1980s.

B. Murray

Corporate History

Two separate corporate histories are relevant to Murray's historical asbestos liabilities: the first relates to historic Murray and the second relates to American Standard, Inc. ("American Standard").

Murray's operations date back to 1913. The principal business of historic Murray was the design and manufacture of what today is known as climate control (HVAC) equipment.[9] Some of this HVAC and related equipment, at times, included asbestos-containing internal component parts—primarily gaskets—manufactured and designed by third parties.

In 1984, Murray merged with American Standard, which traced its roots back to the 1890s. For most of its history, American Standard's primary business included, *inter alia*, the manufacture and sale of hydronics equipment, such as boilers and ancillary products, certain of which incorporated asbestos-containing component parts purchased from third parties. American Standard exited this business by 1975.

Murray Equipment Alleged to Have Created Asbestos Exposure

Historic Murray Equipment. The vast majority of claims asserted against historic Murray allege exposure to asbestos-containing gaskets in connection with servicing commercial and

[9] Additionally, in 1970 Murray acquired the assets of Murray Iron Works and thereafter manufactured and sold a line of commercial and industrial boilers and steam turbines. Murray ceased or sold these operations in the late 1970s and early 1980s.

industrial HVAC compressors and related equipment.[10] Gaskets incorporated into this HVAC equipment were contained within the unit. Where gaskets contained asbestos, the asbestos typically was chrysotile and bound in a matrix. The historic Murray operations that once incorporated asbestos-containing products were either shut down or sold, or largely eliminated the use of asbestos-containing products, during the 1970s and 1980s.

American Standard Boilers. Most of Murray's asbestos litigation spending has related to various brands of American Standard boilers. Most claims concerning such boilers involve persons who encountered them as owners, installers, or service providers. These boilers, at times, may have incorporated certain asbestos-containing sealing products (*e.g.*, gaskets) as internal components. Prior to the mid-1950s, some of these boilers also may have been insulated externally with standard asbestos-containing insulation of that time period. American Standard did not participate in the design or manufacture of any of these asbestos-containing products. Moreover, the internal components were contained within the equipment unit and generally inaccessible during day-to-day use. Where internal components contained asbestos, the asbestos typically was chrysotile and bound in a matrix. American Standard no longer made boilers as of the mid-1970s, and, as noted above, American Standard boilers have not incorporated external asbestos insulation for almost 70 years.

[10] A limited number of claims also have arisen from allegations of the use of asbestos-containing sealing products purchased from third parties in connection with Murray Iron Works-related product lines.

III. The Claims Against the Debtors Allege Exposure to Products Unlikely to be a Substantial Cause of Disease

A. Asbestos Generally

Asbestos historically has been used in thousands of products.[11] Examples range from friable products like insulation and refractory cements to ubiquitous non-friable products like floor tile and roofing shingles. And, because asbestos is a naturally occurring mineral that is exposed through the process of erosion from wind and weather and as a result of urban development, asbestos is in the air and water at all times.[12] Virtually everyone in the United States has been exposed to asbestos and all forms of asbestos can be found in the lungs of the general population.[13] As with many dusts, it is only when exposures to specific types of asbestos fibers are significant enough to overwhelm the body's defenses that disease occurs.

There are several types of mineral substances within the asbestos family. The most commercially relevant asbestos minerals are chrysotile, amosite, and crocidolite. Chrysotile is in the serpentine family of minerals. Amosite and crocidolite are in the amphibole family of minerals. The vast majority of asbestos claims against the Debtors assert exposure to sealing products—primarily gaskets and packing—that typically would have contained chrysotile asbestos. Chrysotile is distinctly different in microscopic appearance and chemical composition from the amphibole family of asbestos minerals. Chrysotile is classified as a serpentine mineral because its fibers have a curvy shape, whereas individual amphibole fibers are thin and needle- or spear-like. In addition to physical and other differences, chrysotile "tends to accumulate to only a very limited extent in lung tissue despite continuous exposure, whereas

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11 THURLBECK'S PATHOLOGY OF THE LUNG, at 811-12 (Andrew M. Churg, *et al.* eds., 3d ed. 2005) (hereafter "THURLBECK'S").

12 *Id.*, at 811-13.

13 *Id.*, at 812-13.

continuous exposure to amphiboles leads to a continuous increase in the amphibole fiber concentration in the lung."[14] Although the body breaks down chrysotile into short particles that clear from the body in hours, days, or weeks, long amosite and crocidolite fibers are not broken into shorter fibers and persist for decades.[15]

Asbestos exposure may lead to disease when asbestos fibers are inhaled in sufficiently large numbers. Products that allow asbestos fibers to be released easily are known as "friable" products. Friable products, such as asbestos insulation, may be crumbled, pulverized, or reduced to powder by hand pressure.[16] Other asbestos-containing products—like the gaskets and packing incorporated into the Debtors' equipment—are non-friable and, because the fibers are encapsulated or "locked in," do not result in significant asbestos fiber release during their normal use.[17] Even when fibers are released from encapsulated products, which may occur during removal and replacement of packing or gaskets, the amount of fibers released during such procedures is much lower than the friable asbestos products.

B. Asbestos Exposure Sufficient to Cause Mesothelioma

Mesothelioma, a cancer that starts in cells in the linings of certain parts of the body, has long been the main driver of the Debtors' defense and indemnity costs. Approximately 3,000 new cases are diagnosed each year in the United States.[18]

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14 *Id.*, at 811.

15 *Id.*

16 Occupational Safety and Health Standards Toxic and Hazardous Substances, 29 C.F.R. § 1910.1001, Appendix G (2008) ("Friable means that the material can be crumbled with hand pressure and is therefore likely to emit fibers.").

17 In April 1970, Dr. Irving Selikoff, a pioneer on the health effects of asbestos exposure, wrote that it was "fortunate that the greatest part of [the asbestos in construction materials] has been in products in which the asbestos is locked in—that is, it is bound with cement or plastics or other binder so that there is no release, certainly no significant release, of asbestos fiber in either working areas or general air." Irving J. Selikoff, *Partnership for Prevention – The Insulation Industry Hygiene Research Program*, Indus. Med., Vol. 39, No. 4 at 164 (Apr. 1970).

18 Key Statistics About Malignant Mesothelioma, American Cancer Society, at https://www.cancer.org/cancer/malignant-mesothelioma/about/key-statistics.html (last accessed Jun. 17, 2020).

Excess incidence of mesothelioma has been documented in association with certain occupations, such as those manufacturing amphibole products or working in settings with high exposures to amphibole-containing insulation.[19] The association of mesothelioma with amphibole asbestos exposure, however, does not mean that asbestos exposure is required to cause mesothelioma. Other naturally-occurring substances have been implicated as mesothelioma-causing agents, and there is general consensus that certain kinds of therapeutic radiation can cause mesothelioma.[20] Moreover, like nearly all cancers, mesothelioma can occur naturally and for reasons unrelated to exposure to any substance. A natural rate of mesothelioma exists, and "idiopathic" cases will occur in the absence of exposure to proven mesothelioma-causing agents. Estimates of the rate of mesothelioma not caused by asbestos exposure vary but are increasing.[21] For example, it has been estimated that at least 70-80% of female mesotheliomas are not caused by asbestos exposure.[22]

Broad consensus has long existed that exposure to products made from amphibole asbestos, such as thermal insulation products, can cause mesothelioma. Study after study, however, has failed to prove mesothelioma incidence attributable to chrysotile alone.[23] Indeed,

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19 *See*, *e.g.*, Herbert Seidman, *et al*., Mortality Experience of Amosite Asbestos Factory Workers: Dose-Response Relationships 5 to 40 Years After Onset of Short-Term Work Exposure, 10 AM. J. INDUS. MED. 479 (1986); G. Berry, *et al.*, Mortality from all cancers of asbestos factory workers in east London 1933-80, 57 OCCUP. ENVIRON. MED. 782 (2000).

20 S. Boussios, M. Moschetta, A. Karathanasi, A.K. Tsiouris, F.S. Kanellos, K. Tatsi, K.H. Katsanos, D.K Christodoulou, *Malignant peritoneal mesothelioma: Clinical aspects, and therapeutic perspectives*, Ann. Gastroenterol. 31(6) 659-69 (2018); Eugene J. Mark & Richard L. Kradin, *Pathological recognition of diffuse malignant mesothelioma of the pleura: the significance of the historical perspective as regards this signal tumor*, 23 SEM. DIAG. PATH. 25, 26 (2006).

21 One analysis of U.S. population data reported that the spontaneous or natural mesothelioma rate around the time of the study was at least 27%. Bertram Price & Adam Ware, *Time Trend of Mesothelioma Incidence in the United States and Projection of Future Cases: an Update Based on SEER Data for 1973 Through 2005*, 39(7) CRIT. REV. TOXICOL. 576, 584 (2009).

22 Michele Carbone, *et al.*, *Malignant Mesothelioma: Facts, Myths and Hypotheses*, 227(1) J. CELL. PHYSIOL. 44, 44 (2012).

23 *See, e.g.,* Charles Yarborough, *Chrysotile as a Cause of Mesothelioma: An Assessment Based on Epidemiology*, 36 Critical Revs. Toxicology 165, 165 (2006) (stating that "review of 71 asbestos cohorts exposed to free asbestos fibers does not support the hypothesis that chrysotile, uncontaminated by amphibolic substances, causes mesothelioma."). In fact, there is an absence of reliable studies reporting an

there is no valid dispute that, if chrysotile causes mesothelioma at all, its potency is substantially lower than the potency of amphiboles.[24] Even long-time plaintiffs' expert Dr. Arnold Brody testified in *Garlock* that he does not dispute that amphiboles are 500 times more potent mesothelioma-causing agents than chrysotile.[25] As the court held in *Garlock*, "it is clear under any scenario that chrysotile is far less toxic than other forms of asbestos."[26]

Even if chrysotile asbestos could cause mesothelioma at sufficiently high rates of exposure, the encapsulated nature of the asbestos contained in gaskets and packing limits potential exposure. The binders and lubricants that coat the asbestos fibers inhibit their release, even during removal and replacement—the source of exposure that plaintiffs typically cite. Studies have shown that even close work with gaskets and packing results in exposures well below current and historical exposure limits and levels associated with asbestos disease.[27] In 2001, Aldrich commissioned a study by a certified industrial hygienist to evaluate asbestos exposure resulting from gasket and packing replacement on its products.[28] The study used a reciprocating air compressor manufactured and delivered to the US Army in 1943 and a motor-driven pump manufactured for refinery service and delivered to a customer in 1971. The

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increased incidence of mesothelioma in populations exposed to chrysotile fibers unless there was also substantial exposure to other suspected mesothelioma-causing minerals. To the contrary, many studies of groups primarily exposed to chrysotile in mining, manufacturing, and use of end products report no increased incidence of mesothelioma.

24 THURLBECK'S, *supra* note 11, at 811 (stating that "chrysotile is a very much weaker mesothelial carcinogen than is amphibole in humans.").

25 Deposition of Dr. Arnold Brody in *In re Garlock,* on May 31, 2013 at 75:22-76:16; James K. Toohey, A Response to Alani Golanski and Jerry Kristal's Reply, Mealey's Litigation Report, 46 (2011) (stating that "even plaintiff's most zealous testifying expert witnesses agree that chrysotile creates a lower risk of mesothelioma than do amphibole fiber types. Some dispute only the extent of the difference while others dispute only whether chrysotile can be a co-cause at lower exposures.").

26 *In re Garlock*, 504 B.R. at 75.

27 *See e.g.,* L.R. Liukonen, *Asbestos Exposure from Gasket Operations* 1–67 (1978); R.T. Cheng & H.J. McDermott, *Exposure to Asbestos from Asbestos Gaskets*, 6(7) Applied Occupational & Envtl. Hygiene 588 (1991).

28 John W. Spencer, CIH, CSP, Report of Findings, Exposure Assessment: An Evaluation of the Actual Contribution of Airborne Asbestos Fibers from the Removal and Installation of Gaskets and Packing from Ingersoll-Rand Compressors and Pumps, Aug. 27, 2001.

study found that, while some asbestos could be released in the course of removing and replacing either packing or gaskets, the release of asbestos fibers during these procedures was minimal and fell well below relevant OSHA standards.[29]

Plaintiffs asserting exposure to the Debtors' products on U.S. Navy ships, in industrial facilities, or in other commercial buildings were almost certainly exposed to a variety of alternative asbestos products. In light of the low potency of chrysotile and the minimal exposure risk attributable to gaskets and packing, it is much more likely that exposure to other potent, friable asbestos products was the cause of mesothelioma or other asbestos-related disease. This would be true for the vast bulk of the asbestos claims made against the Debtors. Moreover, given the elimination of asbestos-containing components from the Debtors' products decades ago—and, in the case of American Standard boilers, the elimination of asbestos-containing external insulation nearly seven decades ago—claims recently asserted against the Debtors are particularly suspect.

IV. The Debtors' Experience in the Tort System

A. The Primary Defendants' Exit from the Tort System

The Debtors' involvement in asbestos litigation began after the 1982 bankruptcy of Johns-Manville, the largest asbestos company in the world—Aldrich and Murray were served with their first asbestos complaints in 1983 and 1986, respectively. Until the early 2000s, the Debtors were simply not material asbestos defendants. Rather, the tort system recognized that the Debtors' products were not the cause of mesothelioma. The primary payors of mesothelioma

[29] Similar studies have been commissioned by Garlock and published in peer-reviewed industrial hygiene literature demonstrating consistent outcomes (*i.e.*, asbestos exposure during gasket and packing operations falls below relevant OSHA standards). *See, e.g.,* C.A. Mangold, K. Clark, A. Madl, & D. Paustenbauch, *An Exposure Study of Bystanders and Workers During the Installation and Removal of Asbestos Gaskets and Packing*, 3 J. Occupational & Envtl. Hygiene 87 (2006); F. Boelter, G. Crawford, & D. Podraza, *Airborne Fiber Exposure Assessment of Dry Asbestos-Containing Gaskets and Packings Found in Intact Industrial and Maritime Fittings*, 63(6) Am. Indus. Hygiene Assoc. J. 732 (2002).

claims were instead the miners, sellers, and manufacturers of asbestos and asbestos-containing products, particularly the "big dusty" thermal insulation manufacturers, who, collectively, were paying hundreds of millions—if not billions—of dollars annually to resolve mesothelioma and other asbestos claims in the tort system. The Debtors, by contrast, collectively paid less than $4 million to resolve mesothelioma claims (Aldrich paid approximately $2.5 million in mesothelioma settlements and Murray paid approximately $1 million) in the tort system from the mid-1980s through 2000.

Beginning in the early 1990s, a significant number of prominent defendants sought bankruptcy protection, thereby exiting the tort system. This included, among others, Celotex Corp., Raymark Industries, National Gypsum Company, Eagle Picher Industries, H.K. Porter Co., and Keene Corporation. This initial "wave" of bankruptcy filings resulted in increased claims being asserted against the Debtors, although most claims were brought by claimants who alleged non-malignant disease and were "unimpaired" – *i.e.* claimants who had yet to evidence any symptoms of disease. But because many of the primary defendants remained in the tort system, this initial wave did not materially impact the Debtors' costs to resolve claims.[30]

Beginning in 2000, however, the bulk of the remaining primary defendants initiated bankruptcy filings, which has come to be known as the "Bankruptcy Wave." These primary defendants included, among others, Babcock & Wilcox Company, Pittsburgh Corning Corporation, Owens Corning Fiberglas Corporation, Armstrong World Industries, W.R. Grace & Co., United States Gypsum, Federal-Mogul Corporation, and GAF Corporation, all of which filed bankruptcy in a two year span from 2000 to 2001. Many of these companies manufactured

[30] The Debtors were able to obtain dismissals of the vast majority of these "unimpaired" claims, and, when the Debtors did pay on a non-malignant claim, the settlement amounts were minimal. From the inception of the asbestos litigation to 2000, Aldrich and Murray were dismissed without payment or resolved over 100,000 non-malignant claims, with an average cost of less than $400 per claim.

amphibole-containing products. Some had been part of a consortium known as the Center for Claims Resolution, which, together with other top tier defendants, had historically made most of the payments to mesothelioma plaintiffs.[31] These bankruptcies precipitated dozens of others. Almost all of the primary defendants that had been miners or manufacturers of asbestos-containing products eventually filed for bankruptcy protection.

The Bankruptcy Wave had a swift and significant impact on the Debtors' roles in the tort system, resulting in an immediate and permanent spike in the Debtors' defense and indemnity costs. Mesothelioma claims were by far the largest driver of these increased costs. In the absence of primary defendants in the tort system, there was a dramatic increase in both the number of mesothelioma claims asserted against the Debtors and the cost to resolve them. Between 2001 and 2002, mesothelioma claims against both Aldrich and Murray more than doubled such that, in 2002, approximately 2,000 mesothelioma claims were asserted against the Debtors. By the late 2000s, that number had jumped to over 2,500 mesothelioma claims annually. In 2019, Aldrich was pursued in roughly 80% and Murray was pursued in almost 60% of all mesothelioma claims estimated to have been made in the United States. Given the nature of the Debtors' products and the thousands of other asbestos-containing products that have been in the market, this extensive naming of the Debtors in mesothelioma claims is simply not defensible.

The increase in claim volume is only part of the story. With the primary defendants no longer in the tort system, the payments made by the Debtors were no longer minimal. As noted, in their entire history prior to 2000, the Debtors collectively paid less than $4 million to resolve

[31] *See In re Garlock*, 504 B.R. at 83-84 ("The combination of the bankruptcies of the remaining 'big dusties' and the dissolution of the Center for Claims Resolution removed from the system most of the funding for liability payments.").

mesothelioma claims. But, by 2004, Aldrich's and Murray's payments on account of mesothelioma claims were running approximately $30 million and $15 million per year, respectively. Over the last four years, Aldrich and Murray have been paying, on average, approximately $40 million and $20 million per year, respectively, to resolve the mesothelioma claims against them.[32] These *yearly* amounts are over 15 times what the Debtors paid *during the entire*, roughly 15 year period prior to the Bankruptcy Wave. And the cost to the Debtors shows no sign of abating.

Because none of the facts had changed during this period with respect to the Debtors' equipment or manufacturing history, the post-Bankruptcy Wave increase in claims against the Debtors had no rational relationship to their actual liability. Instead, the increase in the Debtors' costs was indisputably related to the absence in the tort system of alternative defendants more likely to have caused plaintiffs' diseases. And, as discussed next, plaintiffs' evolving litigation practices exacerbated the problem.

B. Evolving Plaintiff Litigation Practices

Various evolving litigation practices have contributed significantly to the steep rise in the Debtors' costs to defend and resolve asbestos claims. Of particular note are practices related to the naming of the Debtors as defendants without a sufficient basis to do so, unwarranted settlement demands, unreliable (and potentially "coached") product identification, and the failure to divulge alternative exposure evidence.

Over-naming

The typical mesothelioma complaint names dozens of defendants, with no specific allegations of exposure to any defendant's products. As noted in a recent article, the

[32] The Debtors pay more than 80% of all settlement dollars on account of mesothelioma claims.

"over-naming problem has become an epidemic, driving up costs for those entities that simply do not belong as defendants."[33] The Debtors have substantial experience with this practice, as both are named in over half (and Aldrich is named in the vast majority) of all mesothelioma claims filed every year, often alongside scores of other defendants and typically without any specific allegations concerning exposure to their products. While the Debtors have been able to obtain dismissals in approximately two-thirds of cases post-Bankruptcy Wave—due, largely, to plaintiff naming practices with no basis in reality—the aggregate cost of the process is substantial.

The true cost of over-naming is illustrated by the transaction costs imposed on the Debtors for claims of little or no value. There is no doubt that driving these costs is an integral part of the plaintiffs' litigation strategy. Knowing the Debtors face a caseload that is impossible to defend in full, plaintiffs often demand outrageous settlements, which forces the Debtors to commit resources and defense costs to a particular claim, regardless of its merit. In many courts in which the plaintiffs file complaints, any ruling on dispositive motions is delayed until immediately before trial. Under such circumstances, the Debtors are compelled to expend substantial defense costs to demonstrate the lack of merit of any claim relating to their products—effectively, to prove their innocence before the claimants have plead a valid claim against the Debtors. This typically results in a drastically reduced settlement, but at substantial cost.

As just a few of many examples from 2018 and 2019:

- Aldrich was recently faced with a case in Washington state where there was absolutely no proof of exposure to Aldrich's products. In response to Aldrich's request for dismissal from counsel for the plaintiff, Aldrich received a $700,000

[33] James Lowery, *The Scourge Of Over-Naming In Asbestos Litigation: The Costs to Litigants and the Impact on Justice*, Mealey's (Jan. 18, 2018). The article discusses a case where the complaint listed 118 separate defendants. After being deposed for the better part of a day, the plaintiff could identify only five premises where he may have encountered some asbestos-containing materials and just three manufacturers that he believed incorporated any asbestos into their products that he worked with or around during his career.

settlement demand. With a trial date set and approaching, and with no reasonable opportunity to settle the case, Aldrich had no choice but to prepare the case for dispositive motions and trial. On the eve of the hearing for dispositive motions, Aldrich settled the case for $10,000, but only after expending over $300,000 in defense costs.

- In Illinois, Murray received a $1,000,000 settlement demand in a case with trivial allegations of exposure to asbestos-containing components contained in Murray equipment. After claimant's counsel rebuffed numerous requests to resolve the case for a reasonable value, Murray had little choice but to engage experts and otherwise prepare the case for a defense. Only after spending over $115,000 in defense costs was Murray able to settle the case for $50,000.

- In Ohio, Murray was faced with a $700,000 settlement demand from a plaintiff alleging exposure to asbestos-containing components contained in HVAC equipment located at an Air Force base. The identified HVAC equipment, however, was not the type to contain asbestos-containing components, and Murray was just one of several HVAC manufacturers identified by the plaintiffs. After repeated continuances of Murray's motion for summary judgment and after incurring over $90,000 in defense costs, Murray settled the case for $15,000.

To date, there has been no global solution to eradicate over-naming practices,[34] and the Debtors have every reason to believe that they will continue to drive the Debtors' costs in the future.

Selective and Incomplete Product Identification

The Debtors further believe that they have been subject to some of the selective and incomplete product identification practices that were described in the *Garlock* case. In fact, over three quarters of the mesothelioma claims filed against the Debtors in the decade prior to Garlock's petition date also were filed against Garlock. The *Garlock* court noted that "[o]ne of the leading plaintiffs law firms with a national practice published a 23-page set of directions for

[34] A 2019 survey of over 175 recent asbestos personal injury tort cases in New York that proceeded to trial revealed that, on average, about 50 defendants were named in each complaint, and in some instances plaintiffs named as many as 122 defendants. However, only 1 defendant remained at the time of the verdict. Margaret Mary Gay & Sarah Beth Jones, *A Matter of Trust? How Access to Asbestos Trust Claims Information Affects Cases in New York Courts*, New York Civil Justice Institute, 9 (2019) ("Our review indicates that plaintiffs are exposed to more culpable defendants who are now bankrupt, and the tendency of plaintiffs to overname viable [non-bankrupt] defendants in their complaints is a grasping of straws to have a viable defendant…").

instructing their clients on how to testify in discovery."[35] The memo gave plaintiffs a script for depositions, including ten pages of detailed product descriptions for plaintiffs to memorize. It explained to clients that "[h]ow well you know the name of each product and how you were exposed to it will determine whether that defendant will want to offer you a settlement."[36] Because the Debtors' equipment was sold through distributors, the Debtors often do not have records indicating the locations where their equipment was installed decades before. Without this information, it has often been impossible for the Debtors to properly evaluate or present evidence refuting faulty identification of their products at a particular location.

Plaintiffs' capacity for providing detailed recollections of alleged asbestos exposures attributable to the Debtors and other tort-system defendants often stands in stark contrast to a professed inability to recall specifics about exposures to products manufactured, sold, or distributed by bankrupt entities no longer in the tort system.[37] Take, for example, a case filed against Aldrich in California in January 2004. The plaintiff's primary allegations related to his 29 years working as a shipfitter, chipper/caulker, and pneumatic tool operator on Navy and commercial vessels in California shipyards, where he claimed exposure to asbestos-containing components (*e.g.*, gaskets and packing) within boilers, turbines, and pumps and thermal insulation used on and around that equipment.[38] While the plaintiff could identify 14 specific

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35 *In re Garlock*, 504 B.R. at 84.

36 Copy of Baron & Budd Memo, attached to Judiciary Committee Report on the Fairness In Asbestos Injury Resolution Act of 2003, Senate Rpt. 108-118, at 109 ("Baron & Budd Memo"). Reportedly, members of the firm separately encouraged clients to avoid identifying the products of bankrupt defendants. Christine Biederman, *et al.*, *Toxic Justice*, Dallas Observer (Aug. 13, 1998) (former Baron & Budd paralegal describing discouragement of identification of Johns-Manville exposure).

37 Defendants typically have the burden of establishing that other potentially responsible parties not named in the lawsuit were the legal cause of the plaintiff's injuries and the percentage of fault to be allocated to those entities. Defendants must by necessity rely in large part on evidence from the plaintiff to establish alternative shares of liability. But to minimize the extent to which damages can be apportioned to absent entities—and maximize potential recoveries against the named defendants—plaintiffs are incentivized to avoid identifying the names and products manufactured by non-defendants.

38 He also alleged exposure to joint compounds from doing "intermittent" drywall work on his home and from unnamed "reusable asbestos boards" while working as a die finisher. Source material for the language

manufacturers of equipment, his stated recollection of the manufacturers, suppliers, or brand names of the insulation was limited to three solvent companies named in his suit (Thorpe Insulation, JT Thorpe & Sons, and Quigley)—none of which were the predominant manufacturers of insulation products commonly used in shipyards of that era. And when asked to identify all entities whose asbestos-containing products he had been exposed to but which were not named in the lawsuit, plaintiff identified only Babcock and Wilcox. Based on this evidentiary record, Aldrich settled the case for several hundred thousand dollars.

The plaintiff's recollection of specific insulation brands improved considerably after the conclusion of this tort suit. From the information gathered in the *Garlock* bankruptcy, we now know that the plaintiff would—in the weeks and months after the conclusion of this tort suit—file some 20 bankruptcy trust claims that referenced asbestos exposure related to his 29 years working in California shipyards, 17 of which were filed in the bankruptcy cases of companies who were not sued or otherwise disclosed in the tort suit. This includes several submissions to insulation manufacturers and suppliers, some of which the plaintiff *expressly denied* any recollection during his tort suit.

This example, of what could be many, illustrates a recurring contraction experienced by the Debtors in the tort system: the plaintiff's inability (or unwillingness) to recall or detail asbestos-related exposures to products associated with bankrupt entities, while at the same time having the capacity to recall alleged exposures to the Debtors' products in detail.

Absence of Alternative Exposure Evidence

Likewise, the Debtors believe that they, like Garlock, have been subject in the tort system to the recognized practice of claimants simply withholding evidence of alternative asbestos

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quoted in this Section IV.B for which no citation is provided can be made available to appropriate interested parties subject to suitable confidentiality undertakings.

exposures. This includes, in particular, exposures to products manufactured by companies that filed bankruptcy. Many plaintiffs fail to disclose (and sometimes affirmatively deny) their exposures to bankrupt entities' products during their tort suits against the Debtors. These same plaintiffs later—after resolution of their tort suits—submit claims to the section 524(g) trusts established by those bankrupt entities, expressly claiming exposure to those bankrupt entities' products. Ultimately, the *Garlock* court found that, "often the evidence of exposure to . . . insulation companies' products also 'disappeared'" after the Bankruptcy Wave.[39] The court noted that the disappearing evidence "was a result of the effort by some plaintiffs and their lawyers to withhold evidence of exposure to other asbestos products and to delay filing claims against bankrupt defendants' asbestos trusts until after obtaining recoveries from Garlock (and other viable defendants)."[40]

The *Garlock* court found such misrepresentations by plaintiffs and their lawyers to be "sufficiently widespread to have a significant impact on Garlock's settlement practices and results."[41] The court's finding was based on evidence involving hundreds of cases resulting in high-value settlements where the plaintiff's discovery responses conflicted with trust claims or bankruptcy ballots; 15 cases where the court granted full discovery of the case records and found "demonstrable misrepresentation"; and even testimony of plaintiff lawyers who attested to practices of delaying trust claims to deprive tort-system defendants of relevant evidence.[42] Given the significant overlap in claims asserted against the Debtors and Garlock and the fact that the majority of asbestos claims against the Debtors concern products (*i.e.*, gaskets) similar to

39 *In re Garlock*, 504 B.R. at 84-85.
40 *Id*.
41 *Id.*, at 85.
42 *Id.*, at 85-86.

those at issue in *Garlock*—indeed, Garlock was a substantial supplier of gaskets to the Debtors—the Debtors have undoubtedly been affected by the same litigation practices.

In fact, speculation is unnecessary. The Debtors again have identified examples of the foregoing behavior in the prepetition information available from the *Garlock* record as compared to the Debtors' litigation history. One such case involves a complaint filed against Aldrich in June of 2009, where the plaintiff alleged exposure to asbestos during his time as a laborer and pipefitter at the Philadelphia Naval Yard. The plaintiff's interrogatory responses swore that he "presently ha[d] no personal knowledge" of exposure to asbestos from any product made, sold, distributed, or installed by any entity that had not been named in the lawsuit. But unbeknownst to Aldrich at the time, a mere month *before* filing the lawsuit and 13 weeks *before* verifying his interrogatory responses, the plaintiff had submitted, under penalty of perjury, *14* affidavits and statements to bankruptcy trusts alleging asbestos exposure from products made, sold, distributed, or installed by various entities that were *not* named in his tort suit. In each submission, the plaintiff swore that he "frequently and regularly breathed asbestos dust emitted from" the bankrupt entities' products during his time at the Naval Yard.

Having failed to disclose his 14 submissions to the bankruptcy trusts in response to written discovery specifically directed to exposures to products of parties not sued, the plaintiff thereafter repeatedly disclaimed or minimized alternative sources of asbestos exposure during his deposition.[43] Despite the extensive network of insulated piping on seagoing vessels, plaintiff repeatedly disclaimed any suggestion that he had seen or been exposed to any insulation products, including those made by Johns-Manville, Owens-Corning, Pittsburgh Corning, and Fibreboard. On redirect examination at the end of his trial testimony, he testified:

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[43] While he recalled the initials "JM" or the name "Johns-Manville," he did not recall working with any specific Johns-Manville product.

> Q: [Defense counsel] asked you about the pipe covering on the ships. Can you state on the video record now as you observed the pipe covering on piping throughout the many ships that you worked on the condition of the pipe covering?
>
> A: The condition [] was wonderful. There was a cast and everything was painted.
>
> Q: Okay. Did you ever observe these miles of pipe covering to be dusty or flaky?
>
> A: No.

These denials are belied by the undisclosed affidavits and statements the plaintiff had submitted just weeks before his testimony. For example, in one of those statements, he swore:

> During the course and scope of my employment, I frequently and regularly worked in close proximity with workers who installed, repaired and removed Pabco asbestos-containing pipecovering manufactured by Fibreboard [and] I frequently, regularly [] breathed asbestos dust emitted from Fibreboard's Pabco asbestos-containing pipecovering.

Plaintiff made separate, similarly detailed statements attesting to his exposure to asbestos pipecovering products manufactured by Philip Carey, Owens Corning, Armstrong World Industries, and Johns-Manville.

Plaintiff's selective memory was not limited to insulation products. While he recalled working around boilers of Foster Wheeler, a named defendant in his tort suit, he denied working around any other boilers. Yet weeks earlier he had signed a statement swearing that he "regularly [] breathed asbestos dust emitted from … Babcock & Wilcox boilers" during his time at the Philadelphia Naval Yard. And three days later he had executed an affidavit attesting that he had been exposed to asbestos dust from Combustion Engineering boilers.

The plaintiff eventually filed trust claims against *20* bankrupt entities, including seven entities he specifically denied knowing about in his deposition. He also filed ballots as a holder of an asbestos personal injury claim in six other asbestos bankruptcies, including Pittsburgh Corning.

With this incomplete and inaccurate information regarding the plaintiff's exposures to asbestos products, Aldrich resolved the case in May 2010 for a significant six-figure sum. The distortion of this particular plaintiff's full asbestos exposure to inflate the settlement value of his claim was neither a coincidence nor an aberration. In testimony provided in the *Garlock* case, the plaintiff's counsel acknowledged that it was his widespread practice to "file trust claims after the completion of the tort litigation" in order to "maximize [the clients'] recovery."[44]

Another example involves a case filed against Aldrich in April of 2008. The plaintiff's verified complaint alleged that he was exposed to asbestos "by coming into contact with his father and his father's work clothes." Plaintiff's sworn interrogatory responses were definitive in claiming exposure through his father's work, stating without qualification that he was "exposed to asbestos dust and fiber from 1956 to 1959 when he frequently and regularly came into contact with his father and his father's work clothes."

Plaintiff's responses also described his employment history and purported to respond to inquiries regarding his potential exposures to asbestos at various work sites. Beyond stating that he "may" have been exposed to asbestos insulation during his time at the Air Force from 1978 to 2003, the plaintiff disclaimed any known alternative exposures to asbestos. During his July 2, 2008, deposition and trial testimony, the plaintiff testified that he personally "never worked directly with [asbestos], as far as I know," and stated that the Air Force "was very proactive as far as asbestos abatement and things like that." He repeatedly denied any direct occupational exposure to asbestos, including any exposure to pipe-covering while at the Air Force.

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[44] *See also In re Garlock*, 504 B.R. at 84 ("It was a regular practice by many plaintiffs' firms to delay filing Trust claims for their clients so that remaining tort system defendants would not have that information. One plaintiff's lawyer stated his practice as seemingly some perverted ethical duty: 'My duty to these clients is to maximize their recovery, okay, and the best way for me to maximize their recovery is to proceed against solvent viable non-bankrupt defendants first, and then, if appropriate, to proceed against bankrupt companies.'").

On June 5, 2009, the plaintiff testified briefly again on videotape to update his health developments. There was no testimony in regard to asbestos exposure and the defendants did not cross examine on the medical issues. What Aldrich did not know at that time, however, was that the plaintiff had recently signed an affidavit for his submissions to both the Shook & Fletcher and Fibreboard trusts to support his recovery from those trusts that told a very different story concerning his exposure to asbestos from his time at the Air Force. In that affidavit, the plaintiff swore that "[he] was employed by the United States Air Force from 1978-2003 as a power engineer and was exposed to asbestos containing products." The affidavit further stated that he "worked with and in the vicinity [of (sic)] other tradesmen who used asbestos containing products during [his] job of maintaining and testing the backup power equipment," and that the use of those products "created dust which [he] inhaled." The affidavit identified three Air Force bases (Lackland AFB, Shepherd AFB, and Dover AFB) as to which the plaintiff had previously specifically denied exposure in his deposition.

In January 2010, with incomplete and inaccurate knowledge regarding the totality of plaintiff's exposure to asbestos products, Aldrich reached an agreement with plaintiff's counsel to resolve the claim for a significant six figure sum. By then, unknown to Aldrich—and undisclosed in the tort claim discovery—plaintiff had submitted votes as a "holder of a PI claim" on the bankruptcy plans in four bankruptcy cases of asbestos-producing companies and had filed claims in six asbestos trusts.

The Debtors were able to identify these examples solely from the evidentiary record established in *Garlock*. Given the significant overlap in plaintiffs' counsel and the type of asbestos-containing products at issue in that case and this one, the Debtors suspect that these examples reflect a widespread pattern across many cases settled for material sums. Discovery,

including into the claims that plaintiffs have submitted confidentially to bankruptcy trusts, would be necessary to determine the full extent to which the Debtors were subjected to these practices.[45]

C. The Unrelenting Burden of Defending Asbestos Claims

Despite the sheer volume of cases that remaining asbestos defendants continue to face, they have no prospect of a holistic solution in the tort system. The United States Supreme Court has held that class actions are not an available means to resolve current and future asbestos claims. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591 (1997); *Ortiz v. Fibreboard Corp.*, 527 U.S. 815 (1999). However, given the deluge of new claims asserted every year against the Debtors, litigating each of the asbestos claims individually is not feasible.

The Debtors are named in approximately 2,500 mesothelioma claims every year (on average, this equates to a new mesothelioma claim asserted against the Debtors more than every working hour of every weekday). This number essentially doubles to 5,000 claims per year when you include claims involving lung cancer and other diseases. Currently, the Debtors remain defendants in over 8,200 mesothelioma claims. That is in addition to approximately 90,000 non-mesothelioma claims pending on various dockets in courts around the country.[46]

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[45] The foregoing discussion does not mean that the Debtors did not take reasonable steps to protect against meritless claims. They did. One need look no further than the fact that the Debtors were able to obtain dismissal of approximately two-thirds of all claims filed against them without payment. Further, the Debtors routinely required that plaintiffs provide a medical diagnosis and some putative basis to support exposure to a Debtor product. Nonetheless, the Debtors' ability to ferret out claims where manipulation or mischaracterization of evidence had occurred was constrained by numerous factors, including the confidentiality of trust submissions; the difficulty of developing evidence to verify or challenge a plaintiff's product identification and causation theories, largely caused by the passage of time (typically decades) between alleged exposure and the onset of illness; the nature of the Debtors' products and the fact that they did not themselves manufacture the asbestos-containing components; and the substantial costs associated with investigating claims. The Debtors had to make calculated settlement decisions under the circumstances.

[46] There are approximately 39,000 claims that are either on formal inactive dockets created in some jurisdictions or have been designated as inactive by counsel. The vast majority of claims designated as inactive are on the NYCAL inactive docket and are either non-malignant claims or claims where the disease process is unknown.

To combat the onslaught of claims, the Debtors engage the services of over thirty outside defense firms who then employ, among other service providers, countless attorneys, legal assistants, support staff, testifying experts, consulting experts, investigators, court reporters, and document management firms.[47] In total, Aldrich and Murray have paid almost $2 billion in asbestos-related indemnity and defense costs (over $1.3 billion in indemnity and nearly $600 million in defense costs) since the inception of the litigation against them.[48]

Given the high cost of litigating literally thousands of claims, the most cost-effective approach for the Debtors has been to settle, regardless of underlying merit, cases that cannot be quickly dismissed. Overall, plaintiff firms typically are willing to take settlement payments in the mid-five figures per mesothelioma claim and, in roughly 1% of mesothelioma cases where the Debtors have been named, have the Debtors paid more than $250,000—further indication that the Debtors' products are not the likely cause of mesothelioma where liability can result in a multi-million dollar verdict. Contrasted with the potential $1 million it may cost to defend a case through trial, these settlement payments represent the Debtors' best option in a tort system where the Debtors are named in the bulk of all cases filed.

Despite their best efforts—and regardless of their actual liability—given how many asbestos-related claims are asserted against the Debtors each year, the Debtors are still paying nearly $100 million annually (roughly $70 million in indemnity payments and $25 million in defense costs) to defend and resolve asbestos claims—primarily mesothelioma claims. Even with a dismissal rate of around two-thirds, the Debtors are required to settle approximately

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[47] As one example of the collateral effect of the mass of claims asserted against them, in 2019, alone, over 4,000 depositions were noticed in asbestos cases involving the Debtors, equating to more than ten depositions noticed each day of the year.

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

900 mesothelioma claims each year. The remaining indemnity payments are used to settle the mass of other claims against the Debtors of which there also are thousands, with the majority of these payments made to claimants alleging lung cancer.

And there is no end in sight. Even though substantially all asbestos products have been removed from the market for decades, the expected decline in new mesothelioma lawsuits has not occurred. As noted, mesothelioma incidence will continue to occur in this country every year going forward regardless of cause (or no cause). These diagnoses have now become a disease in search of an exposure, and the Debtors have every reason to believe that, as a result, mesothelioma lawsuits will continue to be filed long into the future. If so, based on past history of over-naming, the Debtors will almost certainly be named in many of those cases notwithstanding the nature of the encapsulated asbestos products incorporated into the Debtors' equipment decades ago and the fact that such products represented a tiny fraction of all historical asbestos-containing products. As has been true to date for any case not dismissed, it will continue to be more cost effective for the Debtors to pay modest settlements, regardless of their actual liability, than to spend much more money in defense of these costly cases—a "cost saving" process that still requires the Debtors to spend nearly $100 million per year.

At this point, asbestos litigation has devolved into a "sue and settle" factory system. The merits of individual claims have little bearing on the outcome and the cases are too costly and too numerous to try. With new claims projected for years to come, absent change, the Debtors are likely to be stuck in this system into a seventh decade.

V. The Debtors' Objectives in these Chapter 11 Cases

The Debtors commenced these chapter 11 cases to instead bring about a rational resolution to the asbestos litigation against them in a manner beneficial to both the Debtors and legitimate claimants. A vast majority of the money spent on asbestos litigation today does not

benefit claimants. In 2005, the RAND Institute for Civil Justice estimated that for every dollar spent on asbestos litigation, claimants received 42 cents, 31 cents went to defense costs, and 27 cents went to plaintiffs' attorney fees and costs.[49] Further, due to the volume of claims, the tort system is forced to prioritize claims in a way that can result in legitimate claimants suffering delay in the prosecution of their cases and, therefore, the receipt of any recovery. The Debtors' goal in these chapter 11 cases is to provide current and future claimants with a simpler, more streamlined process to get funds to legitimate claimants in a timely manner.

Section 524(g), which was modeled after the plan of reorganization ultimately approved in the *Johns-Manville* bankruptcy case, affords a better solution. It provides a debtor with the opportunity to fund a trust for the payment of current and future asbestos claims, in return for a permanent injunction that enjoins such claimants from filing or continuing to prosecute lawsuits against the debtor. Debtors are not the only ones benefited by establishing a section 524(g) trust. Asbestos claimants are able to resolve their claims through an administrative process that reduces transaction costs and spares claimants the delay, uncertainty, and stress of litigation.[50]

To facilitate their ability to respond to the asbestos claims against them, including through a potential section 524(g) resolution, Aldrich's predecessor, the former Trane Technologies Company LLC, successor by merger to Ingersoll-Rand Company (a former New Jersey corporation) ("Old IRNJ"), and Murray's predecessor, the former Trane U.S. Inc. ("Old Trane") underwent corporate restructurings on May 1, 2020 (together, the "2020 Corporate

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49 *See* Stephen J. Carroll, *et al.*, RAND Institute for Civil Justice, *Asbestos Litigation* (2005) at xxvi.

50 *See In re Federal-Mogul Global, Inc.*, 684 F.3d 355, 362 (3d Cir. 2012) ("[T]he trusts appear to have fulfilled Congress's expectation that they would serve the interests of both current and future asbestos claimants and corporations saddled with asbestos liability. In particular, observers have noted the trusts' effectiveness in remedying some of the intractable pathologies of asbestos litigation, especially given the continued lack of a viable alternative providing a just and comprehensive resolution. Empirical research suggests the trusts considerably reduce transaction costs and attorneys' fees over comparable rates in the tort system.") (citing studies).

Restructuring"). As a result of the 2020 Corporate Restructuring, Old IRNJ and Old Trane ceased to exist and four new entities were formed:

(a) Aldrich, to which certain assets and liabilities of Old IRNJ, including insurance assets and asbestos liabilities (other than claims for which the exclusive remedy is provided under a workers' compensation statute or similar laws) were allocated;

(b) Trane Technologies Company LLC ("New Trane Technologies"), a Delaware limited liability company, to which the other assets and liabilities of Old IRNJ were allocated;

(c) Murray, to which certain assets and liabilities of Old Trane, including insurance assets and asbestos liabilities (other than claims for which the exclusive remedy is provided under a workers' compensation statute or similar laws) were allocated; and

(d) a new Delaware corporation, also named Trane U.S. Inc. ("New Trane"), to which the other assets and liabilities of Old Trane were allocated.

The 2020 Corporate Restructuring is described in greater detail in the *Declaration of Ray Pittard in Support of First Day Pleadings* filed contemporaneously herewith. As further described therein, (a) the combination of assets owned by Aldrich and Murray, including legacy insurance assets, and (b) certain funding agreements that are in place between (i) Aldrich and New Trane Technologies and (ii) Murray and New Trane ensure that each of the Debtors has the same ability to satisfy asbestos claims that Old IRNJ and Old Trane had prior to the restructurings. As a result, asbestos claimants' ability to recover on their claims has not been adversely affected by the 2020 Corporate Restructuring.

Old IRNJ and Old Trane implemented the 2020 Corporate Restructuring to provide additional flexibility to address asbestos-related claims, including through the commencement of a chapter 11 reorganization proceeding to globally resolve these claims without subjecting their

entire enterprises to chapter 11. After considering the circumstances, each of the Debtors, through its respective board, ultimately chose to seek such resolution by filing these cases. As the Court is likely aware, the validity of a very similar chapter 11 filing was recently affirmed by Judge Beyer in connection with a motion to dismiss the chapter 11 case of *Bestwall LLC* as a "bad faith filing."[51]

The Debtors intend to pursue the following steps to achieve their goal of establishing a section 524(g) trust.

A. Preliminary Injunction

The Debtors immediately will request the entry of an order preliminarily enjoining actions against the Debtors' non-debtor affiliates and certain other parties, including the Debtors' insurers, where such actions would seek recoveries against those third parties on account of asbestos claims against the Debtors. Courts consistently have granted such injunctions to ensure that the entirety of a debtor's asbestos liability is addressed in the chapter 11 case and the potential for a global resolution under section 524(g) of the Bankruptcy Code is preserved.[52]

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[51] *See In re Bestwall*, Case No. 17-31795 (LTB) (Bankr. W.D.N.C.), Memorandum Opinion and Order Denying The Official Committee of Asbestos Claimants' Motion for Dismissal, or Alternatively, Venue Transfer, Dkt. 891. The Fourth Circuit denied the petition of the Official Committee of Asbestos Claimants in *Bestwall* for a direct review of the bankruptcy court's ruling denying the motion to dismiss. *See Official Committee of Asbestos Claimants of Bestwall, LLC vs. Bestwall LLC*, Case No. 19-408 (4th Cir. Nov. 14, 2019). The Bestwall Official Committee of Asbestos Claimants has sought leave to appeal the denial of the motion to dismiss with the district court, which motion is pending.

[52] *See In re Bestwall LLC*, Case No. 17-31795 (LTB), Adv. No. 17-03105 (Bankr. W.D.N.C. Dec. 7, 2017); *In re Kaiser Gypsum Co., Inc.*, Case No. 16-31602 (JCW), Adv. No. 16-03313 (Bankr. W.D.N.C. Oct. 7, 2016); *In re Garlock Sealing Techs. LLC*, Case No. 10-31607 (JCW), Adv. No. 10-3145 (Bankr. W.D.N.C. June 7, 2010); *In re Leslie Controls, Inc.*, Case No. 10-12199 (CSS), Adv. No. 10-51394 (Bankr. D. Del. July 14, 2010); *In re Specialty Prods. Holding Corp.*, Case No. 10-11780 (PJW), Adv. No. 10-51085 (Bankr. D. Del. June 4, 2010); *In re Quigley Co., Inc.*, Case No. 04-15739 (SMB), Adv. No. 04-04262 (Bankr. S.D.N.Y. Dec. 17, 2004); *In re Combustion Eng'g, Inc.*, Case No. 03-10495 (KG), Adv. No. 03-50839 (Bankr. D. Del. Mar. 7, 2003); *In re Harbison-Walker Refractories Co.*, Case No. 02-21627 (JFK), Adv. No. 02-02080 (Bankr. W.D. Pa. Feb. 14, 2002); *In re W.R. Grace & Co.*, Case No. 01-01139 (AMC), Adv. No. 01-00771 (Bankr. D. Del. May 3, 2001); *In re Pittsburgh Corning Corp.*, Case No. 00-22876 (TPA), Adv. No. 00-02161 (Bankr. W.D. Pa. Apr. 16, 2000 and Apr. 22, 2003).

B. Asbestos Claimants' Committee, Future Claimants' Representative, and Claimant Representative Diligence

One of the initial steps in this chapter 11 case is the appointment of an official asbestos claimants' committee (the "ACC"). The Debtors are prepared to quickly engage in discussions with the ACC regarding the selection of a future claimants' representative (the "FCR") to represent future asbestos claimants. Once the ACC and the FCR have been appointed and retained their respective professionals, the Debtors will work cooperatively with these representatives. Throughout this process, the Debtors are also committed to working cooperatively with their insurers toward the goal of a consensual plan.

Both the Debtors (for themselves and their insurers) and the claimants' representatives will need information to prepare for negotiations and move forward with the case. Therefore, the Debtors expect to engage in early discussions regarding information that the claimants' representatives will need. The Debtors will make every effort to expedite this information gathering process by, among other things, making appropriate information available to the ACC and the FCR without the need for formal discovery, but subject to an agreed-upon protective order.

C. Liability Determination

Consistent with their intent to move these chapter 11 cases forward from the start, the Debtors intend to promptly ask this Court to begin the process to help determine the aggregate amount of the Debtors' current and future asbestos liability for plan purposes. This process will involve discovery. As to some of the discovery the Debtors intend to seek from current claimants, while the Debtors usually have basic information regarding these claimants (such as the claimants' age and disease diagnosis), in most cases they lack information necessary to accurately assess the merit and value of these claims. This includes, for example, the claimants'

work histories, alleged exposures to the Debtors' and other companies' asbestos-containing products, and any claims filed against other sources of potential recovery.

The Debtors are committed to working with the other parties to manage the discovery process as efficiently as possible. In addition, at all appropriate times the Debtors will be willing to explore settlement opportunities with the ACC and the FCR.

D. Plan of Reorganization

Ultimately, the Debtors' objective is to negotiate and develop a confirmable plan of reorganization that resolves current and future asbestos claims by establishing a section 524(g) asbestos trust. Achieving a confirmed plan of reorganization in these chapter 11 cases would benefit all parties in interest. The Debtors would benefit by a full and final resolution of their current and future asbestos liabilities and the related savings in substantial defense costs. Legitimate claimants would likewise benefit because the cost, uncertainty, and delay of litigation would be eliminated. Instead, claimants would follow streamlined trust distribution procedures that enable fair compensation payments faster and more efficiently. The Debtors (with the anticipated support and cooperation of their insurers) will work with the ACC and the FCR to establish a process for negotiating a plan. The Debtors also are willing to consider mediation if the parties are otherwise unable to reach an agreement.

E. Conclusion

Chapter 11 provides the best mechanism for a debtor to permanently and efficiently address its asbestos liabilities in a manner that is fair and equitable. In marked contrast to how these claims are currently adjudicated (if at all) in the tort system, an ability to reach a resolution through section 524(g) of the Bankruptcy Code is beneficial to all interested parties, including asbestos claimants. With this Court's assistance, and through negotiations with the ACC and the FCR, the Debtors will attempt to achieve as soon as possible a resolution that finally, fairly, and

equitably resolves their current and future asbestos claims through a confirmed chapter 11 plan of reorganization.

[Signature Page Follows]

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Charlotte, North Carolina

Respectfully submitted,

/s/ *John R. Miller, Jr.*

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