



Quigley Company, Inc. (“Quigley”) and Pfizer Inc. (“Pfizer”) submit this memorandum of law in support of their joint motion (the “Motion”) for entry of an order under section 157(d) of title 28 of the United States Code and sections 105(a), 524(g), 1129 and 1142 of title 11 of the United States Code (the “Bankruptcy Code”), partially withdrawing the reference of Quigley’s chapter 11 case to allow this Court to issue an order confirming Quigley’s plan of reorganization (the “Plan”) under section 524(g)(3)(A) of the Bankruptcy Code. Quigley and Pfizer request that the reference not be withdrawn with respect to all other matters relating to Quigley’s Plan. Quigley and Pfizer also request that this Court preside over Quigley’s confirmation hearing concurrently with the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”), and respectfully state as follows:

#### INTRODUCTION

On September 3, 2004 (the “Petition Date”), Quigley filed with the Bankruptcy Court a petition for relief under chapter 11 of the Bankruptcy Code. Quigley’s chapter 11 filing was prompted by the significant costs and expenses associated with the defense of hundreds of thousand of asbestos personal injury claims pending against it.

On October 6, 2005, Quigley filed the Plan with the Bankruptcy Court, and on October 17, 2005, Quigley filed its fourth amended disclosure statement with respect to the Plan (the “Disclosure Statement”). The creditors of Quigley’s estate have voted in the requisite numbers and amounts to accept the Plan. A hearing on the confirmation of the Plan is scheduled to commence in the Bankruptcy Court on May 25, 2006 at 11:00 a.m.

The Plan seeks to implement permanent channeling injunctions under Bankruptcy Code section 524(g), enjoining all present holders of asbestos personal injury claims and holders of future asbestos demands arising from exposure to Quigley’s asbestos-containing products from taking any action on account of such claims or demands against Quigley, Pfizer, various settling insurance companies and

certain other entities identified in the Plan. Pursuant to Bankruptcy Code section 524(g)(3)(A), any plan that implements an injunction under section 524(g) must be issued or affirmed by a district court.

Quigley and Pfizer request in the Motion that the Court enter an order only partially withdrawing the reference of Quigley's chapter 11 case to enable this Court to issue an order confirming Quigley's Plan, while leaving all other matters relating to Quigley's case and Plan for determination by the Bankruptcy Court. Quigley and Pfizer also request that this Court preside over Quigley's confirmation hearing concurrently with the Bankruptcy Court. A single confirmation hearing on the Plan with both this Court and the Bankruptcy Court presiding clearly is the most efficient and cost effective procedure for confirming the Plan. Further, this approach will expedite the confirmation process, conserve the assets of Quigley's estate for the benefit of Quigley's creditors and future demand holders by minimizing legal expenses, and provide this Court and the Bankruptcy Court with a unitary forum in which to hear argument, take evidence, and, ultimately, make the necessary findings under section 524(g) with respect to the Plan.

This procedure has been followed by other courts presiding over other chapter 11 cases in which the debtor sought to implement an injunction under Bankruptcy Code section 524(g), including this Court in the bankruptcy case of Keene Corporation. Moreover, the proposed approach is more efficient and cost effective than any other confirmation process, such as requesting the Bankruptcy Court to first issue findings of fact and conclusions of law and then asking this Court to subsequently affirm those findings. Quigley and Pfizer thus request that the Court (i) enter an order partially withdrawing the reference of Quigley's chapter 11 case and (ii) simultaneously preside over the confirmation hearing with the Bankruptcy Court.

#### STATEMENT OF FACTS

##### Asbestos Personal Injury Claims

Prior to 1992, Quigley was engaged in the refractories business. It developed, produced and marketed primarily monolithic refractories and related products for and to various industries, including the glass, steel and iron industries. Certain of these products contained asbestos. Over the last twenty-

five years, these asbestos-containing products have given rise to hundreds of thousands of claims against Quigley alleging personal injury or wrongful death based on exposure to asbestos. As of the date Quigley commenced its chapter 11 case, there were in excess of two hundred thousand asbestos personal injury claims pending against Quigley.

While Pfizer, Quigley's parent company, never manufactured or sold any of Quigley's products, it has been named as a defendant in numerous actions for personal injuries allegedly arising from exposure to Quigley's asbestos products. As of the Petition Date, over one hundred thousand claimants had pending asbestos personal injury claims naming Pfizer as a defendant.

Over the years, Quigley funded the majority of the costs associated with defending and settling hundreds of thousands of asbestos personal injury claims with insurance coverage purchased by Pfizer under which Quigley is an additional named insured. In the years leading up to the filing of Quigley's chapter 11 case, Pfizer and Quigley were forced to draw down on the shared insurance coverage at an accelerating rate in connection with the defense and resolution of an ever-increasing number of asbestos personal injury claims. Eventually, in the months leading up to Quigley's chapter 11 filing, the demands on Quigley's remaining assets, particularly the shared insurance, began to escalate, with the likelihood that the only source of paying legitimate claims would be rapidly depleted.

#### Prepetition Negotiations

Pfizer and Quigley sought to effectuate, through a prearranged Quigley chapter 11 case, a global resolution of those asbestos personal injury claims against Quigley and Pfizer that are based on alleged use of or exposure to Quigley's products. By using chapter 11, and more specifically, by establishing a trust under section 524(g) of the Bankruptcy Code to pay present and future asbestos personal injury claims, Quigley could propose a plan of reorganization to maximize the value of its remaining assets and treat present and future claimants fairly and equitably.

Shortly before the commencement of Quigley's chapter 11 case, Pfizer entered into settlement agreements (the "Pfizer Settlements") with law firms representing holders of a substantial majority of current asbestos personal injury claims against both Pfizer and Quigley. Specifically, these settling law

firms represent more than 80% of the holders of current claims asserted against Quigley. The Pfizer Settlements, however, only resolved the settling plaintiffs' claims against Pfizer -- they did not resolve or release any claims the settling plaintiffs hold against Quigley. Under the terms of the Pfizer Settlements, Pfizer agreed, subject to the satisfaction of certain conditions precedent, to pay the settling claimants -- from Pfizer's own assets -- the aggregate amount of approximately \$430 million on account of the settling plaintiffs' claims against Pfizer. In exchange, the settling claimants agreed to provide Pfizer and certain other identified parties (but not Quigley) with full releases from their asbestos and other personal injury claims. While the settling plaintiffs retained all of their claims against Quigley, as described more fully below, they did also agree to reduce their distributions to 10% of the distributions to be received by nonsettling claimants and future demand holders.

Prior to Quigley's bankruptcy filing, Pfizer and Quigley also engaged in extensive discussions with Albert Togut, who was selected by Quigley to serve as the representative of holders of future asbestos personal injury demands against Quigley. Over the course of approximately three months, Mr. Togut, Quigley and Pfizer spent considerable time negotiating the general terms of Quigley's and Pfizer's contributions under Quigley's chapter 11 plan and the terms of the trust distribution procedures that will govern the administration of the 524(g) trust to be established under the Plan. During these negotiations, Mr. Togut insisted that the assets of Quigley's estate be maximized for the benefit of future demand holders. Accordingly, he insisted that, if the assets in the 524(g) trust are insufficient to satisfy 100% of the claims of all claimants, the settling plaintiffs must agree to reduce their distributions to 10% of the distributions to be received by nonsettling claimants and future demand holders. Pfizer acceded and agreed to require this provision from the settling plaintiffs during the prepetition settlement negotiations.

#### Quigley's Chapter 11 Case

On September 3, 2004, Quigley filed with the Bankruptcy Court a petition for relief under chapter 11 of the Bankruptcy Code. By Standing Order of Referral of Cases to Bankruptcy Court Judges of the District Court of the Southern District of New York, dated July 10, 1984 (Ward, Acting C.J.), Quigley's chapter 11 case was automatically referred to the Bankruptcy Court and assigned to the Honorable

Prudence Carter Beatty. On January 24, 2006, Quigley's chapter 11 case was reassigned to the Honorable Chief Judge Stuart M. Bernstein.

On September 22, 2004, the United States Trustee appointed an official committee of unsecured creditors (the "Creditors' Committee"). The Bankruptcy Court approved, on September 27, 2004, the appointment of Mr. Togut as the representative for holders of future asbestos personal injury demands against Quigley (the "Futures' Representative").

#### Stay Proceedings

To preserve the shared insurance, on the Petition Date, Quigley commenced an adversary proceeding seeking a temporary restraining order and preliminary injunction against the commencement or continuation of all actions against Pfizer that allege personal injury or wrongful death based on alleged exposure to asbestos, silica, mixed dust, talc or vermiculite. On September 7, 2004, the Bankruptcy Court entered a temporary restraining order staying all pending and future personal injury claims against Pfizer based on alleged exposure to asbestos, silica, mixed dust, talc or vermiculite, and prohibiting any party from taking any action against property shared by Quigley and Pfizer, including the shared insurance. After a series of hearings, the Bankruptcy Court on December 17, 2004, entered a preliminary injunction order, which is to remain in effect during the pendency of Quigley's chapter 11 case.

On December 27, 2004, an Ad Hoc Committee of Tort Victims and Reaud, Morgan & Quinn, L.L.P., each of which had previously objected to the issuance of the preliminary injunction, moved for leave to appeal from the Bankruptcy Court's preliminary injunction order. The motions for leave to appeal were assigned to United States District Court Judge Victor Marrero. In a decision and order dated April 8, 2005, Judge Marrero held that the preliminary injunction order was not a final, appealable order and denied the motions for leave to appeal.

#### Quigley's Plan of Reorganization

On October 6, 2005, Quigley filed the Plan, and on October 17, 2006, the Disclosure Statement. The Bankruptcy Court entered an order on January 23, 2006, approving, among other things, the form and content of Quigley's Disclosure Statement and Quigley's proposed procedures for solicitation of votes to

accept or reject the Plan. That order set March 31, 2006, as the deadline to vote to accept or reject the Plan. Quigley believes that it has received the requisite votes necessary to present the Plan for confirmation. Among approximately 202,000 votes that were cast by claimants with asbestos personal injury claims, approximately 172,000 claimants accepted the Plan, representing approximately 85% of the asbestos claimants who cast a ballot. A hearing on the confirmation of the Plan is scheduled to commence in the Bankruptcy Court on May 25, 2006, at 11:00 a.m.

Under Quigley's Plan, all present asbestos personal injury claims and future asbestos personal injury demands against Quigley, Pfizer and certain other entities identified in the Plan that arise out of alleged exposure to asbestos products manufactured or sold by Quigley will be permanently channeled to the section 524(g) trust.

Once the asbestos personal injury claims and demands are channeled to the section 524(g) trust, these claims will be liquidated and paid pursuant to the trust distribution procedures, as established under Quigley's Plan and as implemented by the section 524(g) trust. The trust distribution procedures, among other things, (a) establish criteria for payment of asbestos personal injury claims; (b) describe the evidentiary proof that must be submitted to the section 524(g) trust in support of asbestos personal injury claims; (c) establish liquidated values for the disease categories that are compensated by the section 524(g) trust; and (d) establish the process by which the asbestos personal injury claims will be reviewed and approved. The terms of the trust distribution procedures have been agreed to by Quigley, Pfizer, the Futures' Representative, and the Creditors' Committee.

The Plan also provides that both Quigley and Pfizer, on behalf of itself and its affiliates, will make contributions to the section 524(g) trust and to reorganized Quigley. In particular, Quigley will contribute: (a) all of its rights under various insurance policies it shares with Pfizer that are or will be available to pay for asbestos personal injury claims; (b) certain amounts of cash contained in an insurance settlement trust fund established by Quigley and Pfizer, under which Quigley and Pfizer are the sole beneficiaries; and (c) certain cash in Quigley's possession.

Pfizer will be relinquishing for the benefit of the 524(g) trust its rights to certain insurance it shares with Quigley that provides for the payment of asbestos personal injury claims. Pfizer will also contribute, among other things: (a) a \$405 million note payable over 40-years; and (b) forgiveness of \$30 million of secured debt. Finally, Pfizer will contribute to Quigley an irrevocable, perpetual, royalty-free license in the United States to, among other things, make and sell four pharmaceutical products owned by Pfizer and certain of its affiliates.

### ARGUMENT

#### THE COURT SHOULD PARTIALLY WITHDRAW THE REFERENCE OF QUIGLEY'S CHAPTER 11 CASE TO ISSUE AN ORDER CONFIRMING QUIGLEY'S PLAN UNDER SECTION 524(g)(3)(A) OF THE BANKRUPTCY CODE

A. A District Court Must Issue or Affirm an Order Confirming a Plan that Contains a Section 524(g) Injunction

The Court should partially withdraw the reference of Quigley's chapter 11 case, because section 524(g)(3)(A) of the Bankruptcy Code requires that a district court "issue or affirm" an order confirming a plan containing a permanent channeling injunction under section 524(g) of the Bankruptcy Code. Section 524(g) states, in relevant part:

If the requirements of paragraph (2)(B) are met and the order confirming the plan of reorganization was issued or affirmed by the district court that has jurisdiction over the reorganization case, then after the time for appeal of the order that issues or affirms the plan –

(i) the injunction shall be valid and enforceable and may not be revoked or modified by any court except through appeal in accordance with paragraph 6.

11 U.S.C. § 524(g)(3)(A) (emphasis added).

This Court has previously partially withdrawn the reference of a chapter 11 case when the debtor's plan was seeking to implement a section 524(g) injunction. See In re Keene Corp., Case No. 93-46090 (Bankr. S.D.N.Y. 1993) (Order Withdrawing the Reference, dated June 12, 1996). Courts in other districts also have withdrawn the reference when the debtor was proposing a plan of reorganization containing a section 524(g) injunction. See, e.g. Rutland Fire Clay Co., Case No. 99-11390 (Bankr. D.

Vt. 1999) (Order Withdrawing the Reference, dated Nov. 17, 2000); In re JT Thorpe Co., (Bankr. S.D. Tex. 2002) (Order Orally Withdrawing the Reference, at 2003 WL 23354129, \*1 (Jan. 30, 2003)).

As in those cases, Quigley's Plan seeks to implement permanent channeling injunctions under Bankruptcy Code section 524(g), enjoining all present holders of asbestos personal injury claims and holders of future asbestos personal injury demands arising from exposure to Quigley's products from taking any action against Quigley, Pfizer, certain settling insurance companies and certain other entities identified in the Plan on account of such claims or demands. Because Bankruptcy Code section 524(g) requires that an order confirming such a plan be issued or affirmed by the district court, this Court should partially withdraw the reference to Quigley's case with respect to Plan confirmation as required by section 524(g)(3)(A) of the Bankruptcy Code. The reference should not, however, be withdrawn with respect to all other matters relating to the Plan or to Quigley's case in general.

B. The Court Should Preside Over Confirmation  
Concurrently with the Bankruptcy Court  
in the Interests of Efficiency and Judicial Economy

Quigley and Pfizer submit that this Court and the Bankruptcy Court should hold a joint confirmation hearing on Quigley's Plan because this procedure both promotes judicial economy and preserves the assets of Quigley's estate. Indeed, in Keene, this Court did precisely that, withdrawing the reference for the limited purpose of jointly considering with the Bankruptcy Court confirmation of the plan and all related matters. See In re Keene Corp., Case No. 93-46090 (Bankr. S.D.N.Y. 1993) (Order Withdrawing the Reference, dated June 12, 1996). This Court and the Bankruptcy Court jointly presided over Keene's confirmation hearing and jointly issued an order confirming Keene's plan, which contained a permanent channeling injunction. Other courts also have withdrawn the reference for the purpose of having both the district court and bankruptcy court preside over a confirmation hearing involving a plan of reorganization seeking a section 524(g) injunction.<sup>1</sup> See Rutland Fire Clay Co., Case No. 99-11390

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<sup>1</sup> In certain other asbestos related chapter 11 cases involving section 524(g), the district court did not withdraw the reference but nonetheless conducted a joint confirmation hearing with the bankruptcy court and entered a joint

(Bankr. D. Vt. 1999) (Order Withdrawing the Reference dated Nov. 17, 2000); In re JT Thorpe Co., (Bankr. S.D. Tex. 2002) (Order Orally Withdrawing, the Reference at 2003 WL 23354129, \*1).

A joint confirmation hearing is particularly appropriate because Bankruptcy Code section 524(g) requires a court to make numerous findings to confirm a debtor's reorganization plan. For example, with respect to Quigley's Plan, this Court must find, among other things, that Quigley's section 524(g) trust:

- assumes Quigley's wrongful death, personal injury and property damage liabilities for exposure to asbestos products;
- is funded by Quigley's securities and its obligation to make future payments;
- owns, or is entitled to own upon the occurrence of certain contingent events, a majority of the voting shares of Quigley; and
- uses its assets or income to satisfy claims and demands.

See 11 U.S.C. §§ 524(g)(2)(B)(i)(I) – (IV). The Court also must find that:

- Quigley is likely to be subject to substantial future demands, which are unknown as to their amount and timing, and which threaten the Plan's purpose to deal equitably with claims and future demands;
- the terms of the permanent channeling injunction(s) are set out in the Plan;
- 75% of the class or classes of asbestos personal injury claimants who actually cast votes elect to approve the plan;
- the section 524(g) trust will be able to pay present claims and future demands that involve similar claims in substantially the same manner; and
- a legal representative has been appointed to protect future claimants' rights in the proceedings and that applying the permanent channeling injunctions to the holders of future demands is "fair and equitable".

See 11 U.S.C. §§ 524(g)(2)(B)(i)(I-V); 524(g)(4)(B)(i)-(ii).

Quigley must present evidence in support of each of the above findings at the confirmation hearing. Thus, the confirmation hearing will involve extensive testimony, cross-examination, and physical evidence, as well as inquiry by the Court to ascertain whether the Plan satisfies the requirements

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confirmation order. See In re Eagle-Picher Industries, Inc., 203 B.R. 256, 259 (D. Ohio 1996); In re M.H. Detrick Co., Case No. 02-00301 (N.D. Ill. 1998) (Confirmation Order, dated August 21, 2002).

of section 524(g). Quigley and Pfizer submit that both judicial economy and Quigley's estate will be best served by having a single confirmation hearing with both this Court and the Bankruptcy Court presiding and participating. Quigley and Pfizer do not believe these interests are served by having the Bankruptcy Court conduct the confirmation hearing, only to repeat the process, in whole or in part, before this Court to affirm the Bankruptcy Court's confirmation order. Moreover, no party in interest will be prejudiced by a partial withdrawal of the reference as requested by the Motion. For these reasons, this Court should partially withdraw the reference and preside over the confirmation hearing concurrently with the Bankruptcy Court.

CONCLUSION

For all of the foregoing reasons, Quigley and Pfizer request that this Court: (i) enter an order partially withdrawing the reference of Quigley's chapter 11 case to approve Quigley's Plan under section 524(g)(3)(A) of the Bankruptcy Code, (ii) preside over Quigley's confirmation hearing concurrently with the Bankruptcy Court, and (iii) grant such other and further relief as is just.

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