UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

IN RE:	:	Case No. 20-30608-JCW (Jointly Administered)
ALDRICH PUMP LLC, ET AL.,	:	
Debtors,	:	Chapter 11
	:	Charlotte, North Carolina
	:	Thursday, July 7, 2022
	:	1:58 p.m.
	:	
OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS,	:	AP 21-03029
Plaintiff,	:	
v.	:	
ALDRICH PUMP LLC, MURRAY BOILER LLC, TRANE TECHNOLOGIES COMPANY LLC, AND TRANE U.S. INC.,	:	
Defendants.	:	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE J. CRAIG WHITLEY,
UNITED STATES BANKRUPTCY JUDGE

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Proceedings recorded by electronic sound recording; transcript produced by transcription service.

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P R O C E E D I N G S

(Call to Order of the Court)

THE COURT: Okay. Have a seat.

We're back in the Aldrich Pump and Murray Boiler cases. Here -- we don't have a printed agenda today, I don't think. We're just here to get rulings regarding the competing motions by the parties seeking to provide estimation case management orders for use in the case.

We also don't have an appearance list at the present time. So let me ask you to make appearances, starting with the debtors. And if the lead attorneys will announce for everyone that you can recall, that'll speed things along.

Mr. Erens.

MR. ERENS: Thank you, your Honor. Can you hear me okay?

THE COURT: Yes, sir.

MR. ERENS: Okay. Yes. Brad Erens, E-R-E-N-S, of Jones Day on behalf of the debtors. I'm not sure exactly everybody who's on, but I do see Mr. Hirst, who, as you may recall, was our lead attorney on the CMO issues.

THE COURT: Okay.

MR. ERENS: Mr. Cody's also on and Ms. Cahow --

THE COURT: Okay.

MR. ERENS: -- of Jones Day.

THE COURT: Anyone else appearing on behalf of the

debtors that needs to announce?

MR. EVERT: Your Honor, Michael Evert on behalf of the debtors.

THE COURT: Okay.

MR. MILLER: Afternoon, your Honor. Jack Miller. I believe we've got Rick Rayburn and Matt Tomsic as well, Rayburn Cooper & Durham, for the debtors.

THE COURT: Okay. We're getting some breakup on your end, Mr. Miller, but we'll do the best we can.

Who else for the debtors? Anyone else?

(No response)

THE COURT: How about for the ACC, then? Ms. Ramsey?

MS. RAMSEY: Good morning, your Honor. Yes. Natalie Ramsey from Robinson & Cole on behalf of the Asbestos Committee, along with my colleagues, Katherine Fix and Annecca Smith. Also on from Caplin & Drysdale are Todd Phillips, Jeff, Jeffrey Liesemer, and Kevin Davis. I see Mr. Neier on. I don't know if anyone else from Winston & Strawn is on. And I also don't see anyone showing up by name from Hamilton Stephens. Oh, there's Rob. Good.

THE COURT: Okay.

MS. RAMSEY: Rob Cox from Hamilton Stephens.

MR. COX: Good afternoon, your Honor.

MS. RAMSEY: Thank you.

MR. COX: Rob Cox from Hamilton Stephens, also on

behalf of the ACC.

THE COURT: Anyone else for the ACC needing to announce?

(No response)

THE COURT: How about the FCR, then?

MR. GUY: Good afternoon, your Honor. Jonathan Guy for the FCR and Mr. Grier's on the phone.

Thank you, your Honor.

THE COURT: Okay.

Any other parties needing to announce, affiliates, otherwise?

MR. MASCITTI: Greg Mascitti, McCarter & English, on behalf of Trane Technologies Company LLC and Trane U.S. Inc.

THE COURT: Okay.

Anyone else?

(No response)

THE COURT: Okay, very good.

All right. We will see the extent to which I can keep the two cases or the three cases straight as we were talking about this same subject matter this morning and in the same general context but with some differences of where you are and what is being proposed in the cases between DBMP and these two.

I think I can start talking, generally, but I would like to make an inquiry, if I could, because things were fairly moving at the time of our hearing last week and then after the

hearing I got a copy of the debtors' updated revised CMO with the, with the redline deletions and the blueline additions and I want to make sure that I, before I start running over everyone and making rulings on matters that you may have settled, that I understand what is still in dispute.

So if I could inquire -- maybe this is optimistic -- but based on that, that June, I guess it was June 30th draft that the debtor submitted after the hearing, are all the matters in, in blue agreed to at this point?

MR. HIRST: Your Honor, this is Morgan Hirst for the debtors. I'm trying to pull up the redline now so I can make sure I'm guiding you correctly on this. So one moment, if I can, sir.

(Pause)

THE COURT: 'Cause particularly, as compared to the morning hearing, it appeared that y'all had reached accord on, on some matters as was announced. There were like five things that were still in dispute.

MR. HIRST: And I, I can tell you, your Honor, all five of those things are still in dispute.

So this was -- if you recall, your Honor, the, what Mr. Miller submitted after the hearing on the 30th, the redline that I think you're looking at --

THE COURT: Right.

MR. HIRST: -- was taking the most recent debtors'

draft showing those changes which we had either agreed to or, perhaps, conceded on and, and there, there remains a number of, I guess I would call, disputes still centering on the five issues that we identified for your Honor at the hearing. I don't believe any of those five issues were resolved. Well, I --

THE COURT: Right.

MR. HIRST: -- it's not that I don't believe -- none of those five issues were resolved subsequent to our argument before your Honor.

THE COURT: Okay. Well, I'll do my best, then.

If you were listening in this morning in DBMP and for the benefit of anyone who wasn't, I'm going to have to necessarily give you the big-picture view of this and to the extent we need to do some sharp pencil drafting, send you back to work with one another and see if we can't get you folks to put it in a fashion. It would be perilous for me sitting where I am to start outlining every specific date and the events and the bottom line is I tried to focus, instead, on what you were arguing about still or what it appeared.

But I did go back and start comparing the forms of the orders and it looked like the debtors' last version had acceded to some of the things that the ACC was wanting and I wasn't sure whether everything in blue was agreed to or not. So let me give it the, my best shot and y'all can tell me where I'm

wrong or if I start trampling on something you've already resolved. We'll, we'll do our best.

I will tell you that having these matters in this case right after the DBMP is a bit like being in an echo chamber because they're similar but not identical and the, the resolutions are not identical. So it, it gets to be a little bit of I start defaulting, I might say something I meant to say this morning. But I'll do the best I can for you.

First thing, I don't think I need to give the, the jury speech I gave this morning, but the bottom line is that a lot of our problems, I think, are going to come out of this case because of the breadth of the discovery that the parties are contemplating and I would like to at the outset suggest very strongly that to the extent that we can pare this down some, I believe it would be to everyone's benefit. As long as we are contemplating making discovery on a wide group of lawyers between the two sides and are going to necessarily involve privilege issues, if we try to get all documents from all cases, that's going to just multiply the difficulty.

So I am going to strongly suggest that to the extent possible, that we consider sampling. I'm not ruling anything today. I would like to consider to the extent possible not calling lawyers to, as much as we can. I know some of that will be necessary, but I want to discourage it because, of course, the, the general rules don't favor that sort of thing

to begin with and it becomes extremely problematic when we start talking about what is privileged and what isn't privileged and at the end of the day, I am mindful of the fact that the claimants want this case dismissed. And if that were to happen, either because of something that is decided now or later by this or even a higher court, I have to be mindful of the fact that to the extent we have, opening up people to widespread discovery in the individual cases, you might end up back in, in state court trying the tort claims and I want to make sure that we only disturb privilege to the extent, and work product, to the extent we absolutely have to.

So that, that's the first thing, but let's get down to the, to the topics of discussion.

The first thing that we were talking about, I think, was how much time for written discovery. The debtor had started at 180 days, then offered 270. The ACC wanted 365. As eager as I am to get this case, this estimation hearing going, I think we're probably going to need the longer time period. So I would opt for the 365 days.

We had the question about what initial disclosures would be appropriate under the circumstances. Y'all've worked through a good bit of that and I'm appreciative for that, but the, the business about how much of the debtors' equipment information, product information, was going to be voluntarily given, that sort of thing. That was good.

Same thing for identifying witnesses and expert testimony topics and the fields and some of the settled claim information. So congratulations on all of that.

When we get beyond that -- and I'm also inclined to allow the initial disclosures of the custodians, 20 of them, and noncustodians, 10, and think that Rule 26 stretches that far -- but when we get beyond that, and as Mr. Roten mentioned last week, I think we start getting out of what Rule 26 is supposed to do and getting into the other discovery rules and there is still here a request for a good bit of information that is just plain old discovery and potentially burdensome or even impossible to provide as it's more than what was required in the Bestwall CMO and it, it gets into things that we've talked out, about before as to whether the debtor even has the ability to provide that information.

I'm not going to decide any of that in advance, but I think that's a proper subject for going into interrogatories instead of trying to do it as an initial disclosure. I think that was in the ACC's Paragraph 5(d), if I can find it, talking about what was being sought and it got into, basically, all business records, all sales records, where a particular product was manufactured, and the like and I think that, that gets us too far into discovery.

So on those areas, I think we need the protections of the discovery process. I'm happy to start as early as we can

with interrogatories and you can ask the same questions. So I think that's something that we need to do in that fashion.

The second question was what to do about the PIQs and whether to include them in the estimation CMO. I agree with the ACC on this one. I want to say, no. When this was originally sought, the debtor argued this was basic case information. The ACC countered that this was discovery and the pending proceeding rule applied and I agreed with the debtor then. Now we're talking about taking the PIQ enforcement and putting it into the CMO and thus, making it part of the discovery process for estimation. While I agree with the debtor that that is important information for its purposes for attempting to employ its legal liability theory in the estimation hearing, I still believe it is, essentially, case information, general information about the claimants.

So under the legal maxim of good for the goose good for the gander, it was out then. It's out now.

And I would also point out that the CMOs have defined parties and I don't think we really want to include all of the claimants and all of their attorneys and parties to this CMO. I -- that sounded like overkill.

But the bottom line is that I don't think we need to, to add the PIQ in here. The regulation for the PIQ should be by a separate order, the one that called for it, presumably. And the deadlines for PIQs, I think, are already in that order.

So the enforcement will be there.

Now that also gets me to what I said this morning, that I recognize that there's a relevance here between that information and our ability to complete discovery in the estimation hearing. I'm not divorcing the two matters, either. There's a relevance there and I certainly don't want to encourage any hijinks or, or misconduct or failure, willful failures to respond, some of which we saw in Bestwall and that led to contempt findings against certain parties. I don't want to encourage obstreperous behavior. I, I deal with that fairly harshly and if we have to slog through a bunch of compelled compliance issues in regard to the PIQs and trusts, then I may have to extend the estimation discovery period.

So the bottom line is I'll keep it out, but it's, it's something to be considered as we go along and we'll see where we are there.

There was a request for categorical privilege logs. If you heard the morning announcement in DBMP, the bottom line is my view of that is I think it is something that we can't gainsay on the frontend, either whether we use categorical logs or whether they're appropriate or sufficient or what the categories are supposed to be. I just think the Rules contemplate it goes the other way around, that, effectively, the discovery is made, the party considers what the response is, they decide whether, how to formulate the log, and then we

evaluate the sufficiency.

So in advance, as a legal matter I would say that I don't think I have any business dictating that but as a practical matter, I get it. I understand the problems that you had in Bestwall and I share Judge Beyer's concern that whatever goes in the log, whether it's, is a regular log or a categorical log, be sufficient and it's got to be sufficient so we can tell, particularly in a categorical case, whether other parties and the Court can evaluate whether the, the items being claimed as privileged are, in fact, privileged. Like Judge Beyer, if I get a log where I have thousands and thousands of entries that are absolutely identical, I'm not sure that's going to be very helpful and it's likely to be deemed inadequate, so.

But practically speaking, I see a need where probably, given the volume of documents we're talking about, if the parties start trying to discover every single piece of paper out of an opponent's file, particularly an attorney's file, we're going to end up with a mass amount of documents and we're going to have to have some way to deal with that. So it's very likely a categorical log will be appropriate, to some extent.

And I'm interested in getting our discovery done quickly and efficiently. Obviously, if we get a half million documents that are claimed on a privilege log, it's not going to be possible for anyone to, to evaluate those one at a time.

The in-camera review that the case law normally contemplates, there's no way anyone can review a half million documents.

So bottom line is that I would very much like to adopt Mr. Guy's plea from last week for reason and his suggestion of sampling in regard to all this discovery. I'm not ruling it, but I, I think it's necessary.

And I also think you folks ought to work together on the basic contours of a log in advance of that discovery starting. We've got openers here on the table now. We've got the debtors' proposed categories, plus the offer of individual metadata. The ACC's got its categories that are recommended from Section 4.2 and you can just go from there on, on doing it. To the extent Judge Beyer found the debtor's initial submissions to be inadequate in her case, I'm likely to do the same thing here.

So I would hope that we would start beyond what was, what was resolved there instead of what was initially proposed there. But that's my view of it, is that we have to, the debtor has, or I'm assuming the debtor's going to get most of this discovery. It could go the other way. Whoever gets the discovery requests has to see what the requests are and formulate a reply and then we start talking about adequacy. That's just the way it works and I, I would be happy if y'all could agree on some shortcuts there, but if I'm pressed on deciding it, I don't think I'm supposed to be giving advisory

opinions as to what is and isn't adequate and I'm not in much of a position to do so since I have no idea what it is you're asking and no idea what the volume would be to, to comply. So there you go.

There were arguments about, on the discovery plan. There were a few things there that were at issue. The debtors suggested that we use the joint discovery plan. The ACC's got a modified plan of its own, most of which dealing with the things that we've already talked about, basically initial disclosures and categorical logging. My suggestion, as I held this morning, is let's start with the, the discovery plan from Bestwall and modify it to accommodate the agreements that we've made and the rulings I'm making now.

There is this issue that the ACC had about changing the, that earlier discovery plan with regard to information from mobile devices. I don't see the need there, frankly. That was agreed to. There was supposed to be a certification if the mobile devices were used for work and the understanding was they didn't need to be searched for the ESI protocol.

So I think I want to leave that part the same as the earlier order and not make a change at this point in time.

I think I mentioned on the hearing last week at the end that, that the request to shorten the time period for discovery motions and the briefing with that that was asked by the ACC, I have to put the kibosh on that one. As I mentioned

this morning, we are being flooded with filings in these cases now and, as you know, our omnibus hearings in these two cases happen on a Thursday of a week where I already have chapter 7 and chapter 11 hearings. I need -- the time periods in our Local Rules are already attenuated enough for my purposes and cutting them down in the absence of an emergency would put a real hardship on us.

So I would have to say no there for our own self-defense here at the court.

As to players' lists, I think you agreed to that, I believe. Okay.

And the time for written discovery, I said earlier let's go with 365 days.

Okay. That's what I had on my list and, and to the extent that we get into details that need to be redrafted or negotiated from that, as, this morning I was suggesting that the parties at this point might best be served by trying to talk to one another about this, make the necessary amendments, and then come back at our next omnibus hearing if there are things that you can't resolve.

But are there any other issues we need to talk about now?

MR. HIRST: Your Honor, it's Morgan Hirst again for the debtors.

Just one question. And I did listen in this

morning --

THE COURT: Uh-huh (indicating an affirmative response).

MR. HIRST: -- to the DBMP hearing realizing that it was going to be a preview of today's hearing for us.

I believe you mentioned in that hearing -- and this related to the protocol and it wasn't an issue that was necessarily argued here, but it also wasn't agreed since we just, we had different views on the protocol -- about when privilege logs would be due. I think in the DBMP hearing I heard you say that you expected privilege logs to be turned over around substantial completion of written discovery as --

THE COURT: Uh-huh (indicating an affirmative response).

MR. HIRST: -- I understood.

Should we assume that that same order applies in this case as well?

THE COURT: Let me ask first if anyone is not clued in to what I said earlier or wants to say something about that?

(No response)

THE COURT: Okay.

Well, to the extent it is possible in something as broad as these cases and something as ethereal as my consistency levels, I want to be consistent. The -- I, I believe the same thing for the same reasons. There's no point,

if we're going to have multiple discovery rollouts, to be doing the log and then doing the same thing in the next rollout and the same thing in the third. I would use the same ruling there.

Any others?

MR. HIRST: That was my only question, your Honor.

And I don't see Mr. Wright on the line, but I'll work with Mr. Wright for the Committee and Mr. Phillips for the Committee and their team and we'll start working on, on putting this together and hopefully, not having anything for you in a few weeks other than a, an agreed order.

THE COURT: Anyone else? Other issues we need to discuss?

(No response)

THE COURT: Okay.

MR. ERENS: Your Honor?

THE COURT: Yes. Mr. Erens.

MR. ERENS: I do (distortion). We were listening in DBMP this morning. We understand you're going to be out for some period of time. So I hope it goes well on the, on the ankle.

Originally, we thought we would probably not have the July hearing.

THE COURT: Okay.

MR. ERENS: There's nothing up from the debtors' side.

There's nothing up from the Committee's side. We're certainly hopeful we can hammer out this CMO and just submit it on an agreed basis.

We have been informed -- I think all the parties on the line know -- that the BA is intending to file a mediation motion today, I assume today because this is the deadline for filing for the July hearing. So I assume the BA intends to put that motion up for the 28th. We have not seen it. We have been informed the BA intends to file a motion for mediation in this case.

THE COURT: Hmm. Okay. Well, I don't want to, without the BA being involved -- and I didn't hear the, the Administrator announcing -- I don't want to talk too much in her absence, only to say that that would be seven days after I have my ankle scoped. I was planning to be here, but if that's the only matter to be heard, I would strongly suggest that the parties talk about that.

There you are, Ms. Abel. Very good.

MS. ABEL: Good afternoon, your Honor. I was not planning on making an appearance today, but my efforts to keep the parties informed about my intentions has put me on the spot.

I am open to setting it on for hearing at a later date, but having, with this having been an omnibus hearing date, I didn't anticipate that there would be any objection to

that. But to the extent the Court might not be available, that would certainly be a problem.

THE COURT: Well, I can be available. Whether y'all have to watch me try to slide up to the bench on the steps is, is another question. But it is a curiosity to me that for ADA reasons we have ramps all over these courtrooms, but the one place that you have an old person in the courtroom is the bench and we have steps there.

So the bottom line is that if at all possible, I would love to cancel the, the hearing at the end of the month of July, so, and do that the next month. But if you can't wait, then we'll do it. I don't know whether that's going to be controversial or not, but it would be better for everyone's time not to have y'all all come flying in here, given the difficulties of air travel at the moment, to, to hear a single motion, whatever the motion is.

But I'll leave it to your --

MS. ABEL: Understood, your Honor.

THE COURT: -- discretion. Talk about it. If you need me, I'll be here, okay?

MR. ERENS: And your Honor?

MS. ABEL: We'll do that.

THE COURT: Yes.

MR. ERENS: We haven't seen the motion yet, obviously, and it may be that it's not contested. So if that's the case,

then there wouldn't be a need for a hearing and we would submit, you know, an agreed order. If it is contested, we just don't know. It sounds like your preference is to put that on for August, which is fine from the debtors' perspective.

THE COURT: Well, as I said, I'm at everyone's disposal. If you need me, I'll be here, but I'd be happy to take another day not to have to come clumping down here and climb up on the bench, so. Okay?

Any other --

MS. ABEL: Understood.

THE COURT: Any other matters?

(No response)

THE COURT: All right, very good.

Well, thank you. You know, as always, you deliver. You gave me a lot of things to sort through and look at and I guess I know a lot more about CMOs than I did when we started this exercise, so. Thank you for the, the accommodations that you were able to work out and narrowing it down as much as you did, so.

Okay. Court's in recess.

MR. GUY: Thank you, your Honor.

MR. HIRST: Thank you, your Honor.

(Proceedings concluded at 2:26 p.m.)

CERTIFICATE

I, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

/s/ *Janice Russell* July 11, 2022

Janice Russell, Transcriber Date