

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

IN RE:

ALDRICH PUMP LLC, et al.,

Debtor.

Chapter 11
Underlying Case No.: 20-30608
(JCW)
(United States Bankruptcy Court
for the Western District of North
Carolina)

AC&S ASBESTOS SETTLEMENT TRUST,
COMBUSTION ENGINEERING 524(G)
ASBESTOS PI TRUST, GI HOLDINGS INC.
ASBESTOS PERSONAL INJURY
SETTLEMENT TRUST, GST SETTLEMENT
FACILITY, KAISER ALUMINUM &
CHEMICAL CORPORATION ASBESTOS
PERSONAL INJURY TRUST, QUIGLEY
COMPANY, INC. ASBESTOS PI TRUST, T H
AGRICULTURE & NUTRITION, L.L.C.
ASBESTOS PERSONAL TRUST, and
YARWAY ASBESTOS PERSONAL INJURY
TRUST,

Case No.: 22-05116 (MAS-TJB)

Honorable Michael A. Shipp

Honorable Tonianne J.
Bongiovanni

Motion Day: November 7, 2022

Oral Argument Requested

Petitioners,

v.

ALDRICH PUMP LLC and MURRAY BOILER
LLC,

Respondents,

VERUS CLAIMS SERVICES, LLC,

Interested Party,

NON-PARTY CERTAIN MATCHING
CLAIMANTS,

Interested Party.



**ALDRICH PUMP LLC AND MURRAY BOILER LLC'S
BRIEF IN OPPOSITION TO NON-PARTY CERTAIN MATCHING
CLAIMANTS' MOTION TO PROCEED ANONYMOUSLY**

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PRELIMINARY STATEMENT

Aldrich Pump LLC (“Aldrich”) and Murray Boiler LLC (“Murray”) (collectively, the “Debtors”), debtors in a jointly administered Chapter 11 proceeding pending in the Bankruptcy Court for the Western District of North Carolina (the “Bankruptcy Court”), respectfully submit this opposition to Non-Party Certain Matching Claimants’ Motion to Proceed Anonymously [D.I. 14] (the “Motion”).¹ In the Motion, the thousands of unnamed individuals (collectively, the “Movants”) that joined this miscellaneous proceeding request the Court’s permission to litigate their Joinders and Motion to Quash [D.I. 13] without having to identify themselves either to the Court or to the Debtors. As detailed below, Movants’ refusal to identify themselves undermines the Debtors’ ability to respond to the Joinders and Motion to Quash and to assess compliance with the Subpoenas that are the subject of this proceeding. Further, Movants do not come close to showing that this is the sort of “exceptional case” where anonymity is warranted. The Motion should be denied.

FACTUAL BACKGROUND

In the interest of efficiency and for the convenience of the Court, the

¹ Capitalized terms not otherwise defined have the meanings given to them in Aldrich Pump LLC and Murray Boiler LLC’s Memorandum of Law in Support of their Motion to Transfer Subpoena-Related Motions to the Issuing Court, the United States Bankruptcy Court for the Western District of North Carolina [D.I. 20-1].

Debtors refer to and hereby incorporate by reference the Relevant Factual Background set forth in the Debtors’ Memorandum of Law in Support of their Motion to Transfer. *See* Aldrich Pump LLC and Murray Boiler LLC’s Memorandum of Law in Support of their Motion to Transfer Subpoena-Related Motions to the Issuing Court, the United States Bankruptcy Court for the Western District of North Carolina [D.I. 20-1] at 4–12.

Through the Subpoenas, the Debtors seek to discover which of the approximately 12,000 individuals who had resolved mesothelioma claims with the Debtors or their predecessors also sought and/or obtained recovery for the same injuries against the Trusts (the “Matching Claimants”).² As explained in the Debtors’ Motion to Transfer, this information is relevant to determining whether asbestos claimants properly disclosed, in response to discovery requests issued by the Debtors in lawsuits filed in the tort system, either exposure to asbestos from sources other than the Debtors or recovery from sources other than the Debtors. *See* Motion to Transfer [D.I. 20-1] at 5. And that is relevant to helping answer one of the key questions in Debtors’ Bankruptcy Cases—whether the Debtors’ settlement history is reflective of their actual legal liability for asbestos claims,

² These overlapping claimants are also referred to in the Bankruptcy Court Order as the “Matching Claimants.” *See* Bankruptcy Court Order [D.I. 20 Rider to Exs. A–I] ¶ 7.

something the Court in *Garlock* found was not the case. *Id.* (quoting *In re Garlock Sealing Techs., LLC*, 504 B.R. 71, 94 (Bankr. W.D.N.C. 2014) (noting that the debtor’s “settlement history data [did] not accurately reflect fair settlements because [asbestos] exposure evidence was withheld” from the debtor in the tort system)).

Not surprisingly, given that the Debtors or their predecessors had settled lawsuits and claims with a subset of the Matching Claimants, the Debtors know their identity. For the most part, however, they do not know which of that universe of claimants are “Matching Claimants,” those claimants who also sought recovery for the same personal injury claims against the Trusts or the Trusts’ underlying companies, nor do the Debtors know the further subset of those claimants who actually recovered from the Trusts.

The Debtors requested the Bankruptcy Court’s permission to serve the Subpoenas to obtain this information, along with other details concerning the claims made against the Trusts, such as the claimants’ alleged exposure to asbestos. At the conclusion of extensive litigation relating to that request, the Bankruptcy Court authorized the Subpoenas, finding that the non-sensitive data the Debtors sought is “relevant and necessary” for, among other things, estimation of the Debtors’ liability for current and future asbestos-related claims and

confirmation of a plan of reorganization. Bankruptcy Court Order [D.I. 20 Rider to Exs. A–I] ¶ 5.

Movants describe themselves as the “mesothelioma victims” whose information the Subpoenas target. D.I. 14-3 at 2. Rather than use their names, they use the collective pseudonym “Certain Matching Claimants,” and their Joinders and Motion to Quash provides lists of their “counsel of record as notified by Verus” pursuant to the Bankruptcy Court Order. D.I. 13-3 at 1 n.2, Exhibit A. The Debtors do not know whether Movants constitute all or just a part of the Matching Claimants.³

Contrary to Movants’ rhetoric, *see, e.g.*, D.I. 14-3 at 2, the Subpoenas do not “target a wealth of personal identifying information—names, Social Security numbers, *etc.*” Any such claim is false. The Subpoenas do not seek anything that could credibly be characterized as personal identifying information (“PII”). Indeed, the Debtors *already have* PII relating to all of the the Matching Claimants, which the Debtors received in connection with the litigation and/or settlement of the claimants’ underlying personal injury claims.

Further, although the Subpoenas do not request PII, or any other information that could be deemed remotely confidential, the Debtors still included rigorous

³ D.I. 13-3 at 2 n.4 (“10,474” individuals are participating in Movants’ initial Joinders and Motion to Quash.).

confidentiality and data security provisions in the Subpoenas. These protections were approved by the Bankruptcy Court and delineated in seven pages of the Bankruptcy Court Order and more than adequately protect any confidentiality interests of the Matching Claimants. *See* Bankruptcy Court Order [D.I. 20 Rider to Exs. A–I] ¶¶ 6, 8, 12–16.

Finally, contrary to the Matching Claimants’ arguments, the Bankruptcy Court Order does not prohibit Movants from identifying themselves on the public record of this Court—indeed, the Bankruptcy Court in another asbestos bankruptcy (*In re DBMP*) specifically rejected this exact same argument when advanced by another set of claimants. *See* Section I, p. 6–7 *infra*. And Movants do not come close to satisfying the stringent requirements under well-settled case law for proceeding anonymously.

This Court should deny the Motion, require Movants to identify themselves, and dismiss from this proceeding any Movant who refuses to do so.

ARGUMENT

Federal Rule of Civil Procedure “10(a) requires parties to a lawsuit to identify themselves in their respective pleadings.” *Doe v. Megless*, 654 F.3d 404, 408 (3rd Cir. 2011); Fed. R. Civ. P. 10(a) (“The title of the complaint must name all the parties.”). “A plaintiff’s use of a pseudonym ‘runs afoul of the public’s common law right of access to judicial proceedings.’” *Megless*, 654 F.3d at 408

(quoting *Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1067 (9th Cir. 2000)). “Identifying the parties to the proceeding is an important dimension of publicness. The people have a right to know who is using their courts.”

Megless, 654 F.3d at 408 (quoting *Doe v. Blue Cross & Blue Shield United of Wis.*, 112 F.3d 869, 872 (7th Cir. 1997)). Nonetheless, “in exceptional cases courts have allowed a party to proceed anonymously.” *Megless*, 654 F.3d at 408.

Movants do not and cannot satisfy the burden of demonstrating that this is the sort of “exceptional case” in which anonymity is appropriate.

I. THE BANKRUPTCY COURT ORDER DOES NOT PROHIBIT MOVANTS FROM IDENTIFYING THEMSELVES

Movants argue first that the Bankruptcy Court Order forbids “Counsel” from disclosing their names in this proceeding. D.I. 14-3 at 5–6. But it is Movants—not their counsel—who are obligated to identify themselves under Rule 10(a). Indeed, the Bankruptcy Court rejected that precise argument under strikingly similar circumstances.

The Bankruptcy Court Order cannot supersede the mandatory requirements of Rule 10(a). *See* Fed. R. Civ. P. 83(b) (“A judge may regulate practice in any manner consistent with federal law, rules adopted under 28 U.S.C. §§ 2072 and 2075, and the district court’s local rules.”); Fed. R. Bankr. P. 9029(b). But even assuming the Bankruptcy Court had the authority to override these requirements, it did not do so. To the contrary, in the *DBMP* matter that the Bankruptcy Court also

presides over, the Bankruptcy Court explicitly rejected an argument by another group of claimants that the Court's order there (which is essentially identical to the Bankruptcy Court Order here) prohibits the disclosure of Movants' names:

We were not envisioning that parties would be anonymous in other courts and I'll just say that on the record very clearly for the benefit of the Delaware court if the argument's being made. We were talking about what we could do with the data that we got, not suggesting how another court should run its docket or who should or should not be forced to identify themselves. For all the reasons the debtors argue ... the strong, strong preference that is contemplated both in the Rules and the case law is that parties are identified on the record and I don't have anything in this circumstance other than "we just don't want to have that information out there" that really would even start, even if there was factual evidence to support it, that really gets you there.

See Aug. 11, 2022 DBMP Trans. [D.I. 20 Ex. M] at 65:21–66:14 (emphasis added).

Movants ignore the Bankruptcy Court's own words that it never intended that "parties would be anonymous in other courts" and its "strong preference" that "parties are identified on the record." *Id.* at 66:1–2; 8–10. The Bankruptcy Court Order provides absolutely no support to Movants' claims that they should be permitted to proceed incognito. To the contrary, it demonstrates why they should not be permitted to do so.⁴

⁴ To the extent that this Court has any remaining doubts as to whether the Bankruptcy Court Order prohibits Movants from identifying themselves, that is yet

II. THIS IS NOT AN “EXCEPTIONAL CASE” MERITING ANONYMITY

Even putting aside the Bankruptcy Court’s unequivocal rejection of Movants’ claim that its order somehow allowed, let alone required, that they proceed anonymously, Movants cannot independently satisfy the high burden of showing that they should be permitted to do so. The prospective anonymous litigant “bears the weighty burden of both demonstrating a concrete need for such secrecy, and identifying the consequences that would likely befall it if forced to proceed in its own name.” *In re Sealed Case*, 971 F.3d 324, 326 (D.C. Cir. 2020). Embarrassment or economic harm do not suffice. Rather, a litigant “must show ‘both (1) a fear of severe harm, and (2) that the fear of severe harm is reasonable.’” *Megless*, 654 F.3d at 408 (quoting *Doe v. Kamehameha Sch./Bernice Pauahi Bishop Est.*, 596 F.3d 1036, 1043 (9th Cir. 2010)). If—but only if—a litigant makes such a showing, the district court must then determine whether the litigant’s reasonable fear overcomes the public’s interest in access to judicial proceedings. *Doe v. Oshrin*, 299 F.R.D. 100, 102 (D.N.J. 2014).

another reason to transfer these proceedings to the Bankruptcy Court under Rule 45(f). That court entered the Bankruptcy Court Order and retained “exclusive jurisdiction to interpret, modify, apply, and enforce” that order and, as such, is in the best position to resolve the issues raised by Movants. Bankruptcy Court Order [D.I. 20 Rider to Exs. A–I] ¶ 20; *see generally* Aldrich Pump LLC and Murray Boiler LLC’s Motion to Transfer Subpoena-Related Motions to the Issuing Court, The United States Bankruptcy Court for the Western District of North Carolina [D.I. 20].

A. Movants Fail to Articulate a “Reasonable Fear” of “Severe Harm”

Referencing the balancing test endorsed by the Third Circuit in *Megless*, Movants argue that they have a right to proceed anonymously. D.I. 14-3 at 6–17. In so arguing, Movants sidestep that a prerequisite to application of the *Megless* test is sufficient allegations of a “reasonable fear of severe harm.” 654 F.3d at 408 (“When a litigant sufficiently alleges that he or she has a reasonable fear of severe harm from litigating without a pseudonym, courts of appeals are in agreement that district courts should balance a plaintiff’s interest and fear against the public’s strong interest in an open litigation process.”); *In re Allergan Biocell Textured Breast Implant Prod. Liab. Litig.*, No. 19-MD-2921 (BRM) (JAD), 2020 WL 4745558, *2 (D.N.J. Aug. 13, 2020) (Articulation of “‘fear of severe harm’ [is] necessary to justify balancing under the *Megless* factors[.]”).

To be sure, in connection with two of the *Megless* considerations, Movants speculate about the risk to them of identity theft if the Debtors create a database containing the information produced in response to the Subpoenas. D.I. 14-3 at 11–15. But this argument completely ignores the fact that the Debtors *already have* Movants’ personally identifying information *in a database*, and the Subpoenas neither seek any further PII, nor any other confidential information. In other words, the speculative harm Movants identify is not a harm caused by the Subpoenas, and certainly doesn’t support their claim that they have a “reasonable

fear” of “severe harm” if they have to list their names in their Motion to Quash. *See In re Allergan Biocell*, 2020 WL 4745558, *2 (noting that demonstrating a reasonable fear of severe harm was an “uphill battle” when “Plaintiffs made their argument through generalizations and hypothetical situations, rather than focusing on any particular Plaintiff’s actual circumstances”).

Further, identity theft is not the sort of “severe harm” justifying concealment of a litigant’s identity. *Megless*, 654 F.3d at 408; *see also Doe v. Pub. Citizen*, 749 F.3d 246, 274 (4th Cir. 2014) (“[C]ourts consistently have rejected anonymity requests to prevent speculative and unsubstantiated claims of harm to a company’s reputational or economic interests[.]”); *Malibu Media, LLC v. John Does No. 1-30*, Civ. No. 12-3896-MAS, 2012 WL 6203697, *7 (D.N.J. Dec. 12, 2012) (“Defendants’ broad claim of potential reputational injury fails to articulate a reasonable fear of severe harm.”). Instead, cases in which courts have permitted anonymity have involved “abortion, birth control, transsexuality, mental illness, welfare rights of illegitimate children, AIDS, and homosexuality.” *Megless*, 654 F.3d at 408 (quoting *Doe v. Borough of Morrisville*, 130 F.R.D. 612, 614 (E.D. Pa. 1990)). “The limited situations in which a plaintiff has been permitted to proceed under a pseudonym involve ‘the presence of some social stigma or the threat of physical harm to the plaintiffs attaching to disclosure of their identities to the public record.’” *Am. Online, Inc. v. Anonymous Publicly Traded Co.*, 542 S.E.2d

377, 384 (Va. 2001) (quoting *Doe v. Rostker*, 89 F.R.D. 158, 161 (N.D. Cal. 1981)).

B. The *Megless* Factors Favor Disclosure of Movants’ Identities

The balancing test validated by *Megless* consists of “a non-exhaustive list of factors to be weighed both in favor of anonymity and also factors that favor the traditional rule of openness.” 654 F.3d at 409. Even assuming Movants had alleged the sort of reasonable fear of severe harm that would merit the *Megless* balancing test, applying that test—including the factors that favor openness that Movants ignore—shows that they should not be permitted to remain anonymous.

1. Movants Cannot Establish Any Factors Favoring Anonymity

As to the first factor (the extent to which the litigant has kept his or her identity confidential), Movants assert they have “purposefully avoided disclosing their claims for mesothelioma” beyond a small group. D.I. 14-3 at 8–9. Although one cannot be certain without knowing Movants’ names, the Debtors believe that Movants either filed on a public court docket, or otherwise publicly asserted, a claim for asbestos-related disease against the Debtors, their predecessors, or other asbestos litigation defendants. In asserting these claims, Movants publicly disclosed their names, injury, and other information regarding their claims for

recovery for asbestos-related disease.⁵ Thus, any assertion that a Movant has “purposefully avoided” the disclosure of their mesothelioma claim is not just unsupported, but actually rebutted, by the facts.

Moreover, Movants also fail to acknowledge that any privacy right over their medical conditions was waived to the extent they put them at issue in personal injury lawsuits. *See Kolstad v. Durham Transp. Express, LLC*, No. 20-CV-752-RP, 2020 WL 6749010, *3 (W.D. Tex. 2020) (“Plaintiff has waived [their] right to protect [their] medical records” when Plaintiff has “put [their] medical condition at issue ... [in a] personal injury suit seeking damages for past and future treatment” and other related damages.). In filing their asbestos-related lawsuits, Movants waived their confidentiality rights and their medical information became subject to “the public’s right to access judicial records” on the public docket. *Id.*

Movants also point out that they submitted PII to the Trusts with the expectation of confidentiality. *Id.* at 9–11. But the protection provided to that PII—which the Subpoenas do not seek and the Debtors already have—has nothing

⁵ Merely by way of example, attached as Exhibit A to the September 26, 2022 Declaration of Paul R. DeFilippo are excerpts from a subset of complaints by individuals represented by law firms to certain Matching Claimants (identified on Exhibit A to the Motion). Complete versions of the excerpted complaints are publicly available on the dockets specified therein.

to do with whether Movants should be permitted to shield from public disclosure the fact that they asserted claims against the Trusts for the same injuries for which they were seeking recovery against other parties, including the Debtors. *See James v. Jacobson*, 6 F.3d 233, 238 (4th Cir. 1993) (anonymity not warranted “merely to avoid the annoyance and criticism that may attend any litigation”); *In re Allergan Biocell*, 2020 WL 4745558, *2 (noting that if revelation of medical information were a basis for anonymity, “nearly every case involving a medical procedure, device, or insurance claim, among a host of other scenarios, would seemingly qualify, and the exception would become the rule”).⁶

Further, Movants cannot assert that their trust claims are not discoverable. “Federal and state courts have routinely held that claims submitted to asbestos bankruptcy trusts are discoverable.” *Willis v. Buffalo Pumps, Inc.*, No. 12-cv-744-BTM (DHB), 2014 WL 2458247 at *1 (C.D. Cal. June 2, 2014); *see also Volkswagen of Am. v. Superior Ct.*, 139 Cal. App. 4th 1481,1493-96 (Cal. Ct. App. 2006); *Nat’l Union Fire Ins. Co. v. Porter Hayden Co.*, Civ. No. CCB-03-3408, 2012 WL 628493 (D. Md. Feb. 24, 2012); *Ferguson v. Lorillard Tobacco Co.*, Civ. No. 09-91161, 2011 WL 5903453 (E.D. Pa. Nov. 22, 2011); *Shepherd v. Pneumo-*

⁶ In the bankruptcy context, proofs of claim are public records. 11 U.S.C. § 107(a) (papers filed in bankruptcy case are public records); Fed. R. Bankr. P. 5005(a)(1) (proofs of claim “shall be filed with the clerk”).

Abex, LLC, No. 09-91428, 2010 WL 3431633 (E.D. Pa. Aug. 30, 2010); *In re Asbestos Prods. Liab. Litig. (No. VI)*, Civ. No. MDL 875, 2009 WL 6869437 (E.D. Pa. Sept. 18, 2009). As such, information in Movants’ trust claims cannot be shielded by the assertion of an expectation of confidentiality.

Movants’ speculative concerns about potential identity theft form the basis for their contention that they have satisfied the second factor (substantiality of grounds for fear of identity disclosure). D.I. 14-3 at 11–13. Movants are wrong. Those concerns are not a basis for anonymity for the reasons already discussed in Part II.A *supra*.

The same alleged identity theft fears are the foundation for Movants’ argument that the third factor (magnitude of public interest in litigant remaining anonymous) bolsters their anonymity request. D.I. 14-3 at 14–15. This factor asks, however, whether requiring litigants to identify themselves will deter others who are similarly situated from pursuing “claims that the public would like to have litigated.” *Megless*, 654 F.3d at 410. That is not a risk present here—especially given that most of these Movants likely identified themselves in other public filings. In addition to the specious nature of Movants’ fears, there is no compelling public interest in encouraging those who file civil lawsuits or bankruptcy claims to remain anonymous. *See Doe v. G.L.*, Civ. No. 10-1111, 2013 WL 314789, *4 (W.D. Pa. Jan. 25, 2013) (finding no “overarching public interest in protecting

private litigants’ rights to sue each other” in “civil case seeking monetary relief in tort”). Rather, courts have found this factor implicated when (a) “the litigant belongs to a particularly vulnerable class,” like minors and sexual assault victims; (b) “the subject matter is highly personal,” *e.g.*, “abortion, religious beliefs, and other extraordinarily personal areas”; or (c) “undesirable consequences will flow from revealing the identity of a litigant,” *e.g.*, making public the names of “children and victims of crime.” *Doe v. Lund’s Fisheries, Inc.*, Civ. No. 20-11306 (NLH/JS), 2020 WL 6749972, *3 (D.N.J. Nov. 17, 2020).

As to the fourth factor (whether there is an atypically weak public interest in disclosure because the issues presented are purely legal), Movants say that their reasons for requesting anonymity outweigh any public interest in access to Movants’ names. D.I. 14-3 at 15. But this factor asks whether the facts are “relevant to the outcome of the claim.” *Megless*, 654 F.3d at 410; *see also Doe v. Coll. of N.J.*, Civ. No. 19-20674 (FLW) (ZNO), 2020 WL 360719, *4 (D.N.J. Jan. 22, 2020) (“Plaintiff’s claim is fact-sensitive . . . [c]onsequently, the Court finds the public’s interest is not atypically weak”), *aff’d* 2020 WL 3604094 (D.N.J. Jul. 2, 2020), *aff’d* 997 F.3d 489 (3rd Cir. 2021). By not addressing this question, Movants overlook that their failure to disclose their names has prejudiced the Debtors’ ability to respond to factual allegations in the Motions to Quash.

To be sure, Movants elsewhere assert that the Debtors will suffer no prejudice because, if the Motions to Quash are denied, the Debtors will then learn Movants’ identities. *Id.* at 16. That is wrong for several reasons.

Absent the identities of Movants, the Debtors have no way to determine the extent to which the Motions to Quash are being pursued in the names of deceased individuals who lack legal capacity. At first blush, the number of Movants (purportedly over 10,000) seem to far exceed the number of still living claimants of the Debtors. Being given only the names of various law firms that are Movants’ “counsel of record as notified by Verus,” D.I. 13-3 at 1 n.2, is not a substitute, as not all of the claimants will be Matching Claimants.

Nor do Movants overcome this inconsistency by disavowing that they are all “mesothelioma victims,” D.I. 14-3 at 2, and contending instead that some are the heirs or personal representatives of deceased Matching Claimants. These individuals do not have standing to seek to quash the Subpoenas on the ground that they seek the private information of deceased Matching Claimants. *See* Restatement (Second) of Torts § 652I (“[A]n action for invasion of privacy can be maintained only by a living individual whose privacy is invaded[.]”).

Finally, Movants’ reliance on *CineTel Films* and *Patrick Collins, Inc.* is misplaced. D.I. 14-3 at 16–17. Those cases held that anonymous *defendants* need not identify themselves in connection with arguing preliminary motions to sever

based on improper joinder, because the plaintiff did not need to know defendants' names to respond to the motions. *CineTel Films, Inc. v. Does 1-1,052*, 853 F. Supp. 2d 545 (D. Md. 2012); *Patrick Collins, Inc. v. Does 1-44*, No. 8:12-cv-00020, 2012 WL 1144854 (D. Md. 2012).⁷ While both of these cases come from district courts in another circuit, at least one district court in the Third Circuit, relying upon the approach outlined in *Megless*, held just the opposite. *Malibu Media*, 2012 WL 6203697, *6–7 (denying accused copyright infringers' request for anonymity because they had “fail[ed] to articulate a reasonable fear of severe harm”).

Movants purport to address the fifth (will litigant forgo a potentially valid claim to preserve anonymity) and sixth (is anonymity sought for a nefarious purpose) factors together. D.I. 14-3 at 16–17. But they do not contend that denial of this Motion will cause them to withdraw from this proceeding or otherwise address the fifth factor at all. That factor accordingly does not apply here.

⁷ Notably, in *CineTel Films*, after ruling that the plaintiff had improperly joined the anonymous defendants together in a single mass copyright infringement action, and as a result severing all but one such defendant, the court denied the remaining defendant's motion to quash a subpoena to his Internet Service Provider that sought that defendant's identity. 853 F. Supp. 2d at 554-57.

2. The Factors Favoring the Traditional Rule of Openness are Satisfied

While they quote them in the Motion, *id.* at 8, Movants do not address these three factors at all, which sharply undermines their conclusion that the *Megless* test favors anonymity.

The first factor (universal level of public interest in access to litigants' identities) places a "thumb on the scale" against pseudonymous litigation, and thus favors requiring Movants to disclose their names. *Megless*, 654 F.3d at 411; *see also College of New Jersey*, 2020 WL 360719, *4 ("The first factor is a given.").

The Debtors do not contend that the second factor (does the subject of the litigation heighten the public's interest) adds to the balance in favor of disclosure. On the other hand, the third factor (is opposition to anonymity illegitimately motivated) supports disclosure because Movants do not and cannot contend that the Debtors are acting in bad faith merely by opposing this Motion.

CONCLUSION

For the foregoing reasons, the Court should deny the Motion. The Court should order Movants to promptly identify themselves using their full names and should dismiss this proceeding with respect to any Movant who fails to do so. *Megless*, 654 F.3d at 411-12 (affirming district court's dismissal of complaint under Rule 41(b) in light of anonymous plaintiff's refusal to comply with order to identify himself); *College of New Jersey*, 2020 WL 360719, *5 (giving anonymous

plaintiff 14 days to file amended complaint containing her full name).

Dated: September 26, 2022

Respectfully submitted,

/s/ Paul R. DeFilippo

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(Applications *pro hac vice* pending)

*Attorneys for Aldrich Pump LLC and Murray
Boiler LLC*

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

IN RE:

ALDRICH PUMP LLC, et al.,

Debtor.

AC&S ASBESTOS SETTLEMENT TRUST,
COMBUSTION ENGINEERING 524(G)
ASBESTOS PI TRUST, GI HOLDINGS INC.
ASBESTOS PERSONAL INJURY
SETTLEMENT TRUST, GST SETTLEMENT
FACILITY, KAISER ALUMINUM &
CHEMICAL CORPORATION ASBESTOS
PERSONAL INJURY TRUST, QUIGLEY
COMPANY, INC. ASBESTOS PI TRUST, T H
AGRICULTURE & NUTRITION, L.L.C.
ASBESTOS PERSONAL TRUST, and
YARWAY ASBESTOS PERSONAL INJURY
TRUST,

Petitioners,

v.

ALDRICH PUMP LLC and MURRAY BOILER
LLC,

Respondents,

VERUS CLAIMS SERVICES, LLC,

Interested Party,

NON-PARTY CERTAIN MATCHING
CLAIMANTS,

Interested Party.

Chapter 11
Underlying Case No.: 20-30608
(JCW)
(United States Bankruptcy Court
for the Western District of North
Carolina)

Case No.: 22-05116 (MAS-TJB)

Honorable Michael A. Shipp

Honorable Tonianne J.
Bongiovanni

DECLARATION OF PAUL R. DeFILIPPO

I, Paul R. DeFilippo, hereby declare under penalty of perjury:

1. I am a partner of the law firm of Wollmuth Maher & Deutsch LLP; my office is located at 90 Washington Valley Road, Bedminster, New Jersey 07921. I am a member in good standing of the Bar of New Jersey. There are no pending disciplinary proceedings against me.

2. I submit this declaration in connection with *Aldrich Pump LLC and Murray Boiler LLC's Brief in Opposition to Non-Party Certain Matching Claimants' Motion to Proceed Anonymously*, filed contemporaneously herewith. I have personal knowledge of the matters set forth herein.

3. Attached hereto as **Exhibit A** are true and accurate copies of excerpts from a subset of complaints filed by individuals represented by law firms to certain Matching Claimants (identified on Exhibit A to Non-Party Certain Matching Claimants' Motion to Proceed Anonymously [D.I. 14]). Complete versions of the excerpted complaints are available on the publicly available dockets specified therein.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: September 26, 2022
Bedminster, New Jersey

/s/ Paul R. DeFilippo
Paul R. DeFilippo

EXHIBIT A

1 KEVIN M. LOEW, ESQ., CA Bar No. 238080
kloew@waterskraus.com
2 SHAWNA FORBES-KING, ESQ., CA Bar No. 279247
sking@waterskraus.com
3 WATERS, KRAUS & PAUL
4 222 N. Sepulveda Blvd., Suite 1900
El Segundo, CA 90245
5 310-414-8146 Telephone
310-414-8156 Facsimile
6

7 **Attorneys for Plaintiffs**

**CONFORMED COPY
ORIGINAL FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES**

OCT 28 2015

Shari R. Carter, Executive Officer/Clerk
By: Shaunya Bolden, Deputy

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF LOS ANGELES

BC 5 99 176

11 **SALVATORE ASTA and**
12 **SEBASTIANA PANTANO,**

13 Plaintiffs,

14 vs.

Case No.

THIS ACTION CONSTITUTES COMPLEX
ASBESTOS LITIGATION – SUBJECT TO THE
GENERAL ORDERS CONTAINED IN FILE NO.
C 700000 – DEPT. 59

15 **AIR & LIQUID SYSTEMS**
16 **CORPORATION** (*sued individually and as*
17 *successor by merger to BUFFALO PUMPS,*
18 *INC.);*
19 **A.W. CHESTERTON COMPANY;**
20 **CBS CORPORATION** *f/k/a VIACOM,*
21 *INC., successor by merger with CBS*
22 *CORPORATION f/k/a WESTINGHOUSE*
23 *ELECTRIC CORPORATION;*
24 **CONOCOPHILLIPS COMPANY** (*sued*
25 *individually and as successor-in-interest to*
26 *PHILLIPS PETROLEUM CO.);*
27 **FMC CORPORATION** (*sued individually*
28 *and as successor-in-interest to J.S. COFFIN*
PUMP COMPANY);
GENERAL ELECTRIC COMPANY;
INGERSOLL-RAND COMPANY;
PARKER-HANNIFIN CORPORATION
(*sued individually and as successor-in-*
interest to SACOMA-SIERRA, INC.);
PHILLIPS 66 COMPANY;
SEPCO CORPORATION;
TEXACO INC. (*sued individually and as*
successor-in-interest to MOWHAWK
PETROLEUM CORPORATION, INC. and

**COMPLAINT FOR PERSONAL INJURY –
ASBESTOS (NEGLIGENCE; STRICT
LIABILITY; FALSE REPRESENTATION;
INTENTIONAL TORT/INTENTIONAL
FAILURE TO WARN; LOSS OF
CONSORTIUM)**

1 GETTY OIL COMPANY);
2 UNION CARBIDE CORPORATION;
3 and DOES 1-400 INCLUSIVE,
4
5 Defendants.

6 GENERAL ALLEGATIONS

7 COME NOW Plaintiffs SALVATORE ASTÀ and SEBASTIANA PANTANO (hereinafter
8 "Plaintiffs") and complains and allege as follows:

9 1. The true names and capacities, whether individual, corporate, associate, governmental or
10 otherwise, of Defendants DOES 1 through 350, inclusive, are unknown to Plaintiffs at this time, who
11 therefore sues said Defendants by such fictitious names. When the true names and capacities of said
12 Defendants have been ascertained, Plaintiffs will amend this complaint accordingly. Plaintiffs are
13 informed and believe, and thereon allege, that each Defendant designated herein as a DOE is
14 responsible, negligently or in some other actionable manner, for the events and happenings hereinafter
15 referred to, and caused injuries and damages proximately thereby to the Plaintiffs, as hereinafter alleged.

16 2. At all times herein mentioned, each of the Defendants was the agent, servant, employee
17 and/or joint venturer of his co-Defendants, and each of them, and at all said times each Defendant was
18 acting in the full course and scope of said agency, service, employment and/or joint venture. Plaintiffs
19 are informed and believe, and thereon allege that at all times herein mentioned, Defendants **AIR &**
20 **LIQUID SYSTEMS CORPORATION** (*sued individually and as successor by merger to BUFFALO*
21 **PUMPS, INC.); A.W. CHESTERTON COMPANY; CBS CORPORATION f/k/a VIACOM, INC.,**
22 *successor by merger with CBS CORPORATION f/k/a WESTINGHOUSE ELECTRIC*
23 **CORPORATION; CONOCOPHILLIPS COMPANY** (*sued individually and as successor-in-interest*
24 *to PHILLIPS PETROLEUM CO.); FMC CORPORATION* (*sued individually and as successor-in-*
25 *interest to J.S. COFFIN PUMP COMPANY); GENERAL ELECTRIC COMPANY; INGERSOLL-*
26 **RAND COMPANY; PARKER-HANNIFIN CORPORATION** (*sued individually and as successor-*
27 *in-interest to SACOMA-SIERRA, INC.); PHILLIPS 66 COMPANY; SEPCO CORPORATION;*
28 **TEXACO INC.** (*sued individually and as successor-in-interest to MOWHAWK PETROLEUM*
CORPORATION, INC. and GETTY OIL COMPANY); UNION CARBIDE CORPORATION; and
DOES 1-350 INCLUSIVE were individuals, corporations, partnerships and/or unincorporated

1 "B", which is attached hereto and incorporated by reference herein.

2 11. Plaintiffs are informed and believe, and thereon allege, that progressive lung disease,
3 cancer and other serious diseases are caused by inhalation of asbestos fibers without perceptible trauma
4 and that said disease results from exposure to asbestos and asbestos-containing products over a period of
5 time.

6 12. Plaintiff SALVATORE ASTA suffers from malignant mesothelioma, caused by an
7 exposure to asbestos and asbestos-containing products and equipment. Plaintiff SALVATORE ASTA
8 was not aware at the time of exposure that asbestos or asbestos-containing products presented any risk of
9 injury and/or disease.

10 13. As a direct and proximate result of the aforesaid conduct of Defendants, their "alternate
11 entities", and each of them, Plaintiff SALVATORE ASTA has suffered, and continues to suffer,
12 permanent injuries and/or future increased risk of injuries to his person, body and health, including, but
13 not limited to, throat cancer, other lung damage, and cancer, and the mental and emotional distress
14 attendant thereto, from the effect of exposure to asbestos fibers, all to his general damage in a sum in
15 excess of the jurisdictional limit of a limited civil case.

16 14. As a direct and proximate result of the aforesaid conduct of the Defendants, their
17 "alternate entities", and each of them, Plaintiff SALVATORE ASTA has incurred, is presently
18 incurring, and will incur in the future, liability for physicians, surgeons, nurses, hospital care, medicine,
19 hospices, X-rays and other medical treatment, the true and exact amount thereof being unknown to
20 Plaintiffs at this time, and Plaintiffs pray leave to amend this complaint accordingly when the true and
21 exact cost thereof is ascertained.

22 15. As a further direct and proximate result of the said conduct of the Defendants, their
23 "alternate entities", Plaintiffs have incurred, and will incur, loss of income, wages, profits and
24 commissions, a diminishment of earning potential, and other pecuniary losses, the full nature and extent
25 of which are not yet known to Plaintiffs; and leave is requested to amend this complaint to conform to
26 proof at the time of trial.

27 16. Defendants, their "alternate entities", and each of them, and their officers, directors, and
28 managing agents participated in, authorized, expressly and impliedly ratified, and had full knowledge of,

1 manage, operate, navigate and control such vessels so as to require SALVATORE ASTA to handle, use
2 and be exposed to asbestos and asbestos-containing products and equipment, all of which the VESSEL
3 DEFENDANTS, and each of them, knew, or should have known, to be extremely hazardous to
4 SALVATORE ASTA's health. Plaintiffs further allege that, at all times herein mentioned, when
5 SALVATORE ASTA was not actually handling, using or repairing said asbestos products and
6 equipment, he was nevertheless exposed to the fibers contained therein and the asbestos dust generated
7 by the operation, use and repair of said products and equipment by other workers in the same
8 environment.

9 51. As a proximate result of the VESSEL DEFENDANTS' aforementioned negligence and
10 the unseaworthiness of such vessels, SALVATORE ASTA underwent a medical examination on or
11 about March 11, 2015, and was advised that said medical examination revealed that he had suffered
12 damage to his lungs and developed malignant pleural mesothelioma, a fatal cancer of the lining of the
13 lungs caused by prior exposure to asbestos. Prior to said date, SALVATORE ASTA did not know nor
14 did he have reason to know that his lungs had been damaged or that he had contracted mesothelioma or
15 any other asbestos-related disease. Further, prior to said time SALVATORE ASTA was not aware that
16 exposure to asbestos or other asbestos containing products presented any risk of injury and/or disease to
17 him, and he had not been advised or informed by anyone that he could contract, or indeed did contract,
18 any disease, sickness, or injury as a result of working in the vicinity of the products and equipment
19 referred to herein.

20 52. During all of the times herein mentioned, the VESSEL DEFENDANTS, and each of
21 them, so negligently, carelessly and unlawfully owned, operated, supervised, maintained, manned,
22 crewed and warranted the subject vessels so as to create unsafe working conditions resulting in
23 SALVATORE ASTA's asbestos-related condition, including but not limited to:

24 (a) Failing to provide SALVATORE ASTA with a safe place in which to work in that each
25 of the vessels was insulated with and contained asbestos materials in a condition which exposed
26 SALVATORE ASTA to harmful respirable asbestos fibers, even though workers, like SALVATORE
27 ASTA, would be exposed to asbestos dust while working aboard the ship under circumstances which
28 were certain to result in injury and did cause plaintiff to become ill, suffer and sustain serious injury;

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4. For Plaintiff's damages for loss of consortium and/or society according to proof.

Plaintiffs SALVATORE ASTA and SEBASTIANA PANTANO:

5. For Plaintiffs' cost of suit herein;


6. For exemplary or punitive damages according to proof;

7. For damages for fraud according to proof; and

8. For such other and further relief as the Court may deem just and proper, including costs and prejudgment interest as provided in C.C.P. section 998, C.C.P. section 1032, and related provisions of law.

DATED: October 27, 2015

WATERS, KRAUS & PAUL

By: 

KEVIN M. LOEW, ESQ.
Attorneys for Plaintiffs

IN THE SUPERIOR COURT OF DOUGHERTY COUNTY
STATE OF GEORGIA

FILED
2016 FEB 25 AM 11:20
EVYANNE S. MILL
DOUGHERTY COUNTY
CLERK OF COURTS

BOBBY LEE FARMER and MARY FARMER

Plaintiffs,

v.

A. O. SMITH CORPORATION,
AIR & LIQUID SYSTEMS CORPORATION
as successor by merger to BUFFALO PUMPS
INC.,
ALSCO, INC., individually and as successor-
in-interest to NATIONAL SERVICE
INDUSTRIES, INC., formerly known as
NORTH BROS., a/k/a NORTH BROS, INC.,
CRANE CO.,
FAIRBANKS-MORSE PUMP
CORPORATION,
FISHER CONTROLS INTERNATIONAL,
LLC.,
FLOWSERVE U.S. INC., d/k/a THE
EDWARD VOGT VALVE COMPANY,
FMC CORPORATION o/b/o its CHICAGO
PUMP DIVISION,
FMC CORPORATION o/b/o its PEERLESS
PUMPS DIVISION,
GARDNER DENVER, INC.,
GOODRICH CORP.,
GOODYEAR TIRE AND RUBBER CO.,
THE GORMAN-RUPP COMPANY,
GOULDS PUMPS INC.,
HONEYWELL INC.,
INGERSOLL-RAND COMPANY, JOHNSON
CONTROLS INC., individually and as
successor-in-interest to YORK
INTERNATIONAL CORP.,
PARKER-HANNIFIN CORPORATION,
NATIONAL SERVICE INDUSTRIES, INC.,
formerly known as NORTH BROS., a/k/a
NORTH BROS., a/k/a NORTH BROTHERS,

Civil Action No: 16CV254-3

INC.,
SPIRAX SARCO, INC.,
SPX COOLING TECHNOLOGIES, INC.,
individually and as successor-in-interest to
THE MARLEY COMPANY,
STOCKHAM VALVES & FITTINGS INC.,
TRANE U.S. INC. (f/k/a AMERICAN
STANDARD),
YORK INTERNATIONAL CORP., and
JOHN DOES 1-10 inclusive

Defendants.

COMPLAINT FOR DAMAGES

COMES NOW Plaintiffs Bobby Lee Farmer and Mary Farmer, adult residents and citizens of the State of Georgia, and state their Complaint for Damages as follows:

INTRODUCTION

1. This action arises from certain injuries incurred by Plaintiff Bobby Lee Farmer as a direct and proximate result of his exposure to asbestos containing products that were designed, produced, manufactured, distributed, sold, utilized, installed, disturbed and/or maintained by named Defendants and/or their predecessors in interest as named in this action. As the direct and proximate result of dust associated with Defendants' asbestos containing products, Plaintiff contracted and was otherwise diagnosed as suffering from malignant pleural mesothelioma. Malignant pleural mesothelioma is a rapidly debilitating and fatal form of cancer affecting the lining of an individual's lungs, the only known cause of which in North America is asbestos exposure. Plaintiff was diagnosed with mesothelioma in or around December 2015. (See Attachments "A" and "B").

established, said Defendant(s) will be served with a copy of summons and complaint as provided by law. Defendants JOHN DOE No. 1 through 10 are subject to the jurisdiction and venue of this Court.

79. Each Defendant corporation or its predecessor-in-interest was, at all times material hereto, engaged in the design, manufacture, distribution and sale of asbestos containing products, or alternatively, the mining and processing of asbestos as a component part of asbestos containing products at issue in this action.

80. Venue of this action is also properly set in Dougherty County, State of Georgia under the provisions of O.C.G.A. § 51-14-1 et seq., as Plaintiff Bobby Lee Farmer was exposed to asbestos in Dougherty County, State of Georgia.

81. Pursuant to the provisions of O.C.G.A. § 51-14-1 et seq., Plaintiff Bobby Lee Farmer has included certain information provided for under said statute as set forth on Attachment "B" to his Complaint. Plaintiffs expressly reserve the right to challenge the entirety of the provisions of O.C.G.A. § 51-14-1 et seq., to the extent applicable to this action, and by including any information in this Complaint otherwise provided for or suggested by O.C.G.A. § 51-14-1 et seq., does not waive any such challenge in regard to the constitutionality or application of such statutory provisions to this action.

FIRST CAUSE OF ACTION

(NEGLIGENCE)

82. Plaintiffs repeat, reiterate, and re-allege each and every allegation contained in this Complaint with the same force and effect as if fully set forth herein.

83. Plaintiff Bobby Lee Farmer was exposed to asbestos related materials and other asbestos containing products mined, manufactured, processed, imported, converted,

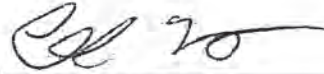
compounded, sold, distributed, maintained, installed, disturbed and/or manipulated by the Defendants, or their products, in a way to create asbestos containing dust that was breathed by Plaintiff Bobby Lee Farmer. Plaintiff Bobby Lee Farmer inhaled and absorbed asbestos fibers emanating from various asbestos containing products as a direct and proximate result of the acts and omissions of each Defendant. As a direct and proximate result of each Defendant's acts of negligence, Plaintiff Bobby Lee Farmer developed, was otherwise diagnosed as suffering from, and continues to suffer as a direct result of malignant pleural mesothelioma, which is a terminal form of cancer caused by asbestos exposure.

84. At all times relevant hereto, each Defendant knew, or should have known, that its products would be used without inspection for defects and that any such inspection would not have advised Plaintiff Bobby Lee Farmer of the fact that the asbestos contained in, or used in conjunction with, such products could cause the terminal condition which Plaintiff Bobby Lee Farmer developed. Such facts made each of the Defendant's products inherently and unreasonably dangerous in that Plaintiff Bobby Lee Farmer was not appraised of, and did not contemplate, the danger of contracting a deadly asbestos related disease as a result of his use, proximity, exposure to, and inhalation of, the asbestos fibers contained in, or emanating from, each of the Defendant's products.

85. Each Defendant was in the business of designing, manufacturing, selling, distributing, and/or maintaining products that contained asbestos, or alternatively through their customary and intended use resulted in the disbursement of asbestos containing fibers into the air that Plaintiff Bobby Lee Farmer breathed at all times relevant to this action. Each Defendant knew that Plaintiff Bobby Lee Farmer, and others similarly situated, would come in contact with asbestos, contained in, or emanating from, their products and would

- h. That the costs of this action be cast upon Defendants; and
- i. That the Court grant Plaintiffs such further relief which the Court deems just and appropriate.

Respectfully submitted this 26th day of February, 2016.



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Fax: (713) 659-2204

Attorneys for Plaintiffs

IN THE CIRCUIT COURT FOR BALTIMORE CITY

IN RE: BALTIMORE CITY *
ASBESTOS LITIGATION *

* * * * *

EDWARD F. MILLER and *
ANNA B. MILLER *
719 Maiden Choice Lane, Brookside 412 *
Catonsville, Maryland 21228 *

CT-1 Trade Asbestos Cases

Plaintiffs,

vs.

CASE NO.

3M COMPANY (a/k/a Minnesota Mining *
and Manufacturing Company) *
3M Center *
St. Paul, Minnesota 55101 *
SERVE: The Corporation Trust Inc. *
351 West Camden Street, 6th Floor *
Baltimore, Maryland 21201 *

and

A.O. SMITH CORPORATION *
11270 West Park Pl. One Park Pl. *
Milwaukee, WI 53224 *
SERVE: The Prentice Hall Corporation System *
7 St. Paul Street, Suite 1660 *
Baltimore, MD 21202 *

and

A.W. CHESTERTON COMPANY *
SERVE: Registered Agent *
c/o A.W. Chesterton Company *
500 Unicorn Park Drive, 5th Floor *
Woburn, MA 01801 *
ALSO SERVE: CT Corporation System *
388 State Street *
Suite 420 *
Salem, OR 97301 *

and

AC&R INSULATION CO., INC. *
10310 Southard Drive *
Beltsville, Maryland 20750 *
SERVE: Geoffrey S. Gavett, Esquire *
Gavett and Datt, P.C. *
15850 Crabbs Way *
Suite 180 *
Rockville, Maryland 20855 *

and *

AERCO, INTERNATIONAL, INC. *
SERVE: President/Resident Agent *
100 Oritani Drive *
Blauvelt, NY 10913-1022 *

and *

AIR & LIQUID SYSTEMS CORP. *
as successor-by-merger to *
BUFFALO PUMPS, INC. *
SERVE: CT Corporation System *
116 Pine St., Suite 320 *
Harrisburg, PA 17101 *

and *

BURNHAM CORPORATION *
1241 Harrisburg Avenue *
Lancaster, PA 17604 *
SERVE: Albert Morrison, III, President *
P. O. Box 3205 *
1241 Harrisburg Avenue *
Lancaster, PA 17604-3205 *

and *

CARVER PUMP COMPANY *
SERVE: Roy J. Carver, III *
Carver Pump Company *
2415 Park Avenue *
Muscatine, IA 52761 *

and *

**CBS CORPORATION OF DELAWARE, a/k/a
CBS CORPORATION, f/k/a VIACOM, INC.,
f/k/a/WESTINGHOUSE ELECTRIC
CORPORATION
51 West 52nd Street
New York, NY 10019
Serve: CBC LAWYERS, INC.
7 Saint Paul Street
Suite 1660
Baltimore, MD 21202**

and

**CERTAINTEED CORPORATION
750 E. Swedesford Rd.,
Valley Forge, PA 19482
SERVE: Corporation Trust, Inc.
351 West Camden Street, 6th Floor
Baltimore, MD 21201**

and

**CLEAVER-BROOKS COMPANY
SERVE: CT Corporation System
7800 North 113th Street
Milwaukee, WI 53224**

and

**COLUMBIA BOILER COMPANY
OF POTTSTOWN
SERVE: Chief Executive Office/President
390 Old Reading Pike
West Pottsgrove Twp.
Stowe, Pennsylvania 19464**

and

**CONWED CORPORATION
332 Minnesota Street
St. Paul, MN 55101
SERVE: The Corporation Trust Incorporated
351 West Camden Street
Baltimore, MD 21201**

and

**COOPER INDUSTRIES LLC (Individually and *
as Successor in Interest to Crouse Hinds Co.) *
2700 Two Houston Center *
Houston, Texas 77002 *
SERVE: Corporation Trust Co. *
1209 Orange Street *
Wilmington, Delaware 19801 ***

and *

**CRANE CO. AS SUCCESSOR IN INTEREST *
TO PACIFIC STEEL BOILER CO. *
SERVE: Eric C. Fast, President *
100 First Stamford Place *
Stamford, Connecticut 06902 ***

and *

**CROWN, CORK & SEAL COMPANY *
(USA), INC. *
9300 Ashton Road *
Philadelphia, Pennsylvania 19136 *
SERVE: Resident Agent *
The Corporation Trust, Incorporated *
351 West Camden Street, 6th Floor *
Baltimore, Maryland 21201 ***

and *

**DAP PRODUCTS, INC., a/k/a DAP, INC. *
2400 Boston Street *
Baltimore, Maryland 21224 *
SERVE: Prentice Hall Corporation System *
7 St. Paul Street, Suite 1660 *
Baltimore, MD 21202 ***

and *

**DURABLE MANUFACTURING COMPANY *
SERVE: William F. Mueller, Esquire *
Clemente, Mueller & Tobia, P.A. *
218 Ridgedale Avenue *
P. O. Box 1296 *
Morristown, NJ 07962-1296 ***

and *

EATON CORPORATION, Parent *
Company of Cutler-Hammer Pty. Ltd. *
100 Erievue Plaza *
Cleveland, Ohio 44114 *
SERVE: The Corporation Trust, Inc. *
351 West Camden Street *
Baltimore, Maryland 21201 *

and *

E.L. STEBBING & CO., INC. *
1600 Clough Street *
Baltimore, Maryland 21213 *
SERVE: Louis Grenzer, Esquire *
Bodie, Dolina, Smith & Hobbs *
21 West Susquehanna Ave. *
Towson, MD 21204-5209 *

and *

EMERSON ELECTRIC CO., Individually and *
as Successor-in-Interest to U.S. Electrical *
Manufacturing Company *
SERVE: W.W. Withers *
8000 W. Florissant Avenue *
St. Louis, Missouri 63136 *

and *

ERICSSON INC., Individually and as *
Successor-in-Interest to Anaconda Company *
SERVE: Capitol Services, Inc. *
40 Colvin Street, Suite 200 *
Albany, New York 12206 *

and *

FLSMIDTH DORR-OLIVER, INC., *
as Successor to *
Keeler/Dorr-Oliver Boiler Company *
SERVE: Mark Brancato, Esquire *
2040 Avenue C *
Bethlehem, PA 18017-2188 *

and *

GENERAL ELECTRIC COMPANY *
3044 West Grand Boulevard *
Detroit, MI 48202 *
SERVE: Corporation Trust, Inc. *
351 West Camden Street, 6th Floor *
Baltimore, MD 21201 *

and *

GENERAL REFRACTORIES, CO. *
SERVE: President *
225 City Avenue, Suite 114 *
Bala Cynwyd, Pennsylvania 19004 *

and *

GEORGE V. HAMILTON, INC. *
2 River Avenue *
McKees Rocks, Pennsylvania 15136 *
SERVE: President *
2 River Avenue *
McKees Rocks, Pennsylvania 15136 *

and *

GEORGIA-PACIFIC CORPORATION *
133 Peachtree Street, NE *
Atlanta, GA 30303 *
SERVE: Corporation Trust, Inc. *
351 West Camden Street, 6th Floor *
Baltimore, MD 21201 *

and *

H.B. SMITH COMPANY, INC., *
a/k/a Smith Cast Iron Boilers *
47 Westfield Industrial Park Road *
Westfield, Massachusetts 01085 *
SERVE: Doretta M. Boomsma *
47 Westfield Industrial Park Road *
Westfield, Massachusetts 01085 *

and *

HAMPSHIRE INDUSTRIES, INC. *
f/k/a John H. Hampshire Company *
320 West 24th Street *
Baltimore, Maryland 21211 *
SERVE: Resident Agent *
Charles E. Frye, Jr. *
Secretary/Treasurer *
320 West 24th Street *
Baltimore, Maryland 21211 *

and *

HONEYWELL INTERNATIONAL, INC. *
T/A ALLIED- SIGNAL, INC. *
Columbia Turnpike & Park Avenue *
Morristown, New Jersey 07960 *
SERVE: CSC Lawyers Incorporating Service *
7 St. Paul Street, Suite 1660 *
Baltimore, Maryland 21202 *

and *

IMO INDUSTRIES, INC. (Individually and on *
behalf of and as successor to De Laval; *
De Laval Steam Turbine Co., *
IMO De Laval and Warren Pump Co.) *
1009 Lenox Drive *
Building 4 West *
Lawrenceville, NJ 08648 *
SERVE: CSC-Lawyers Incorporating Service *
7 St. Paul Street, Suite 1660 *
Baltimore, Maryland 21202 *

and *

INDUSTRIAL HOLDING, a/k/a THE *
CARBORUNDUM COMPANY *
SERVE: Lorraine Parrish *
6016 Bellona Avenue *
Baltimore, MD 21212 *

and *

INGERSOLL-RAND COMPANY *
200 Chestnut Ridge Rd. *
Woodcliff Lake, NJ 07675 *
SERVE: The Corporation Trust *
351 West Camden Street, 6th Floor *
Baltimore, MD 21201 *

and *

INTERNATIONAL PAPER *
COMPANY, INC. *
10 Light Street *
Baltimore, Maryland 21202 *
SERVE: The Corporation Trust *
351 West Camden Street, 6th Floor *
Baltimore, MD 21201 *

and *

ITT INDUSTRIES, INC. *
SERVE: CT Corporation Systems *
111 Eighth Ave. *
New York, NY 10011 *

and *

JOHN S. WILSON COMPANY *
12950 Livestock Road *
West Friendship, Maryland 21794 *
SERVE: Charles H. O'Donnell, Jr. *
741 Frederick Road *
Catonsville, Maryland 21228 *

and *

KAISER GYPSUM COMPANY, INC. *
SERVE: CSC-Lawyers Incorporating Service *
2730 Gateway Oaks Drive, Suite 100 *
Sacramento, CA 95833 *

and *

KELLY-MOORE PAINT COMPANY, INC. *
SERVE: President/Resident Agent *
987 Commercial St. *
San Carlos, CA 94070 *

and *

LYCON INVESTMENT COMPANY
5711 Falls Road
Baltimore, Maryland 21209
SERVE: Patricia Margaret Powers
5711 Falls Road
Baltimore, Maryland 21209

and

THE MARLEY COMPANY, Individually and
as Successor to Weil-McClain, Inc.
SERVE: Robert Grussing, President
500 Blaine Street
Michigan City, Indiana 46360-2388

and

THE MARLEY-WYLAIN COMPANY
SERVE: Robert Grussing, President
500 Blaine Street
Michigan City, Indiana 46360-2388

and

MCIC, INCORPORATED
f/k/a McCormick Asbestos Co.
210 North Charles Street
1317 Fidelity Building
Baltimore, Maryland 21201,
SERVE: Louis Grenzer, Esquire
Bodie, Dolina, Smith & Hobbs
21 West Susquehanna Ave.
Towson, MD 21204-5209

and

METROPOLITAN LIFE INSURANCE CO.
SERVE: President
1 Madison Avenue
New York, New York 10010

and

METPRO CORPORATION
SERVE: President
6040 Guion Road
Indianapolis, IN 46254

and

NOLAND COMPANY
700 Corporate Drive
Newport News, VA 23602
SERVE: Resident Agent
CSC-Lawyers Incorporating Service Company
7 St. Paul Street, Suite 1660
Baltimore, Maryland 21202

and

OAKFABCO, INC., as successor-in-
interest by merger to
KEWANEE BOILER CORPORATION
SERVE: President
210 W. 22nd Street, Suite 105
Oak Brook, IL 60523

and

OWENS-ILLINOIS, INC.
P.O. Box 1035
Toledo, Ohio 43604
SERVE: President
One Michael Owens Way
Perrysburg, OH 43551-2999

and

RIGGS DISTLER & COMPANY INC.
2007 Elmwood Avenue
Sharon Hill, Pennsylvania 19079
SERVE: President/Resident Agent
4 Esterbrook Lane
Cherry Hill, New Jersey 08003

and

RILEY POWER, INC., f/k/a Babcock Borsig,
Inc., f/k/a Riley Stoker Corporation
9 Neponset St
Worcester, MA 01606
SERVE: The Corporation Trust Incorporated
351 W. Camden Street
Baltimore, MD 21201

and *

SAINT-GOBAIN CERAMICS & *
PLASTICS, INC., d/b/a Corhart Refractories *
One New Bond Street *
Worcester, Massachusetts 01615 *
SERVE: CT Corporation System *
4169 Westport Road *
Louisville, Kentucky 40207 *

and *

SCHNEIDER ELECTRIC USA, INC. *
(Individually and as Successor in Interest to *
Square D Company) *
1415 S. Roselle Road *
Palatine, Illinois 60067 *
SERVE: CSC-Lawyers Incorporating *
Service Company *
7 St. Paul Street, Suite 1660 *
Baltimore, MD 21202 *

and *

SEPCO CORPORATION *
SERVE: Registered Agent *
413 Commerce Park Road *
Cranberry Township, Pennsylvania 16066 *

and *

SHOOK & FLETCHER INSULATION CO. *
4625 Valleydale Road *
Birmingham, Alabama 35242 *
SERVE: *
J. David Jackson, Registered Agent *
4625 Valleydale Road *
Birmingham, Alabama 35242 *

and *

SUPERIOR BOILER WORKS, INC. *
P.O. Box 1527 *
Hutchinson, KS 67504-1527 *
SERVE: Resident Agent, Steven Gaylor *
P.O. Box 1527 *
Hutchinson, Kansas 67504 *

and *

SUPERIOR COMBUSTION, INC. *
801 Broad Street *
Emmaus, Pennsylvania 18049 *
SERVE: Edward O. Flick, President *
5620 Centronia Road *
Allentown, Pennsylvania 18106-9101 *

and *

TACO, Inc. *
SERVE: Registered Agent *
1160 Cranston Street *
Cranston, Rhode Island 02920 *

and *

THOS. SOMERVILLE CO. *
16155 Trade Zone Avenue *
Upper Marlboro, Maryland 20774-8733 *
SERVE: Corporation Trust, Inc. *
351 West Camden Street, 6th Floor *
Baltimore, Maryland 21201 *

and *

TRANE U.S. INC. (as successor to *
AMERICAN STANDARD INC.) *
40 W. 40th St. *
New York, NY 10018 *
SERVE: Corporation Trust Inc. *
351 West Camden Street, 6th Floor *
Baltimore, MD 21201 *

and *

TYCO FLOW CONTROL COMPANY LLC *
9 Ronzel Road *
Princeton, New Jersey 08540 *
SERVE: The Corporation Trust Company *
Corporation Trust Center *
1209 Orange Street *
Wilmington, Delaware 19801 *

and *

TYCO INTERNATIONAL
304 Constitution Drive *
Menlo Park, California 94025
SERVE: CT Corporation System *
9 Capitol Street
Concord, New Hampshire 03301 *

and *

UNION BOILER COMPANY *
SERVE: Corporation Trust Company
Corporation Trust Center *
1209 Orange Street
Wilmington, Delaware 19801 *
SERVE ALSO: David K. Baxter
Rte 25 and I-64 *
Nitro, West Virginia 25143 *

and *

UNION CARBIDE CORPORATION *
30 East 42nd Street *
New York, NY 10005
SERVE: Corporation Trust, Inc. *
351 West Camden Street, 6th Floor
Baltimore, MD 21201 *

and *

UNIROYAL, INCORPORATED *
1230 Avenue of the Americas *
New York, New York, *
SERVE: Uniroyal Holding, Inc.
70 Great Hill Road *
Naugatuck, CT 06770 *

and *

UNIVERSAL REFRACTORIES COMPANY *
Post Office Box 97 *
Wampum, Pennsylvania 16151
SERVE: President *
Universal Refractories Company
Post Office Box 97 *
Wampum, Pennsylvania 16151 *

and *

VESUVIUS USA CORPORATION,
f/k/a Premier Refractories International *
1404 Newton Drive
Champaign, Illinois 61842 *
SERVE: The Corporation Trust, Inc.
351 West Camden Street, 6th Floor *
Baltimore, Maryland 21201

and *

VIKING PUMP INC. *
SERVE: President *
406 State Street *
Cedar Falls, Iowa 50613-0008

and *

THE WALBROOK MILL & *
LUMBER COMPANY, INC. *
2636 West North Avenue *
Baltimore, Maryland *
SERVE: Carl Gold *
Law Offices of Carl Gold *
402 West Pennsylvania Ave. *
Towson, MD 21204

and *

WALLACE & GALE ASBESTOS *
SETTLEMENT TRUST, *
Successor to the Wallace & Gale Company *
SERVE: Theodore F. Roberts, Esquire *
Venable, LLP *
210 West Pennsylvania Avenue, Suite 500 *
Towson, Maryland 21204

and *

THE WALTER E. CAMPBELL *
COMPANY, INC. *
13135 Isle of Mann *
Highland, MD 20777 *
SERVE: *
Michael C. Gibbons *
361 Berkshire Drive *
Riva, MD 21140

and *

WARREN PUMPS, LLC *
82 Bridges Avenue *
Warren, MA 01083 *
SERVE: Corporation Services Co. *
2711 Centreville Rd. *
Suite 400 *
Wilmington, DE 19808 *

and *

WEIL-McLAIN, INC. *
SERVE: Robert Grussing, President *
500 Blaine Street *
Michigan City, IN 46360-2388 *

and *

YORK INTERNATIONAL CORPORATION *
631 South Richland Avenue *
York, Pennsylvania 17405 *
SERVE: Corporation Trust Inc. *
351 West Camden Street *
6th Floor *
Baltimore, MD 21201 *

and *

ZURN INDUSTRIES, INC. (a/k/a and *
Successor-By-Merger to ERIE CITY *
IRON WORKS) *
SERVE: Corporation Trust Inc. *
351 West Camden Street, 6th Floor *
Baltimore, MD 21201 *

Defendants. *

* * * * *

COMPLAINT AND PRAYER FOR JURY TRIAL

Plaintiffs, Edward F. Miller and Anna B. Miller, sue the above-named Defendants and in support thereof allege as follows:

1. At all times relevant hereto, each of the above-named Defendants, except Metropolitan Life Insurance Company, were miners, manufacturers, processors, importers,

Defendants knew or should have known that their asbestos products were hazardous to the life, health and safety of persons who were exposed to the asbestos products.

6. Despite their knowledge, the Defendants, prompted by pecuniary motives, individually and collectively failed and refused to warn the users of their products and those who worked in close proximity thereto of the life and health-threatening dangers of exposure to asbestos fibers and dust, thereby also making their products defective and unreasonably dangerous. Moreover, the Defendants, in wanton and reckless disregard for human life and health, deliberately, intentionally and purposely withheld and concealed such information from those who used and worked around their products. The Defendants also failed and refused to take other reasonable actions which would have lessened the dangerous and potentially lethal characteristics of their asbestos products.

7. The Defendants' asbestos products were also defective and unreasonably dangerous in that they failed to perform as safely as an ordinary consumer would expect.

8. As a direct and proximate result of Edward F. Miller's exposure to the Defendants' asbestos products, Edward F. Miller has developed mesothelioma. As a result of his illness, Edward F. Miller has suffered and will continue to suffer great physical pain, emotional anxiety and mental distress and he has incurred and will continue to incur substantial expenses for medical and hospital care.

9. Plaintiff further incorporates by reference all relevant allegations in the Strict Liability Count of the CT-1 Trade Asbestos Cases Master Complaint, as amended.

WHEREFORE, Plaintiff, Edward F. Miller, requests judgment against each and every one of the Defendants sued in this Count in the amount of Fifty Million Dollars (\$50,000,000.00) compensatory damages and Fifty Million Dollars (\$50,000,000.00) punitive damages.

COUNT II – BREACH OF WARRANTY

10. Plaintiff, Edward F. Miller, sues each of the Defendants other than Metropolitan Life Insurance Company and states as follows:

11. Plaintiff, Edward F. Miller, adopts and incorporates by reference all relevant allegations contained in the preceding paragraphs of this Complaint as if fully set forth herein.

12. Each of the Defendants impliedly warranted that its asbestos products were of good and merchantable quality and fit and suitable for the particular use for which the products were intended. Each of the Defendants breached its implied warranty in that the Defendants' products contained harmful, deleterious, carcinogenic, and inherently dangerous asbestos dust and fibers.

13. Edward F. Miller was exposed to the asbestos dust and fibers from the Defendants' asbestos products as a result of working with and around those asbestos products. As a direct and proximate result of the exposure to those products, Edward F. Miller developed mesothelioma and suffered the injuries described above.

14. Plaintiff further incorporates by reference all relevant allegations in the Breach of Warranty Count of the CT-1 Trade Asbestos Cases Master Complaint, as amended.

WHEREFORE, Plaintiff, Edward F. Miller, requests judgment against each and every one of the Defendants sued in this Count in the amount of Fifty Million Dollars (\$50,000,000.00) compensatory damages and Fifty Million Dollars (\$50,000,000.00) punitive damages.

COUNT III – NEGLIGENCE

15. Plaintiff, Edward F. Miller, sues each of the Defendants other than Metropolitan Life Insurance Company and states as follows:

16. Plaintiff, Edward F. Miller, adopts and incorporates by reference all relevant allegations contained in the preceding paragraphs of this Complaint as if fully set forth herein.

asbestos-containing products; in deciding not to publicize, disclose, make public or otherwise warn about the dangers and health hazards of asbestos-containing products; in efforts to prevent the United States government and its employees, agencies, departments and organizations from taking steps to do research and publish on the dangers of asbestos and to restrict, ban, reduce, eliminate or regulate the use of asbestos-containing products.

25. The Defendants, each and all of them having aided, assisted, encouraged and abetted the direct perpetrators, as set forth in the immediately preceding paragraph, are liable under Maryland law as if they themselves were the principal or direct perpetrators of the harm and injuries complained of.

26. Plaintiff further incorporates by reference all relevant allegations in the Aiding and Abetting and/or Conspiracy Counts of the CT-1 Trade Asbestos Cases Master Complaint, as amended.

WHEREFORE, Plaintiff, Edward F. Miller, requests judgment against each and every one of the Defendants sued in this Count in the amount of Fifty Million Dollars (\$50,000,000.00) compensatory damages and Fifty Million Dollars (\$50,000,000.00) punitive damages.

COUNT V – LOSS OF CONSORTIUM

27. Plaintiffs, Edward F. Miller and Anna B. Miller, sue each of the Defendants and state as follows:

28. Plaintiffs, Edward F. Miller and Anna B. Miller, adopt and incorporate by reference all relevant allegations contained in the preceding paragraph of this Complaint as if fully set forth herein.

29. The Plaintiffs were married at the time that Edward F. Miller was diagnosed with mesothelioma and remain married to this day. As a result of the injuries suffered by Edward F.

Miller, the Plaintiffs have suffered a loss of consortium. The loss of consortium is the proximate result of the aforementioned conduct of the Defendants.

30. Plaintiffs further incorporate by reference all relevant allegations in the Loss of Consortium Count of the CT-1 Trade Asbestos Cases Master Complaint, as amended.

WHEREFORE, Plaintiffs, Edward F. Miller and Anna B. Miller, request judgment against each and every one of the Defendants sued in this Count in the amount of Fifty Million Dollars (\$50,000,000.00) compensatory damages and Fifty Million Dollars (\$50,000,000.00) punitive damages.

/s/ Matthew E. Kiely
Matthew E. Kiely
Matthew E. Kiely, LLC
201 North Charles Street
Suite 1200
Baltimore, Maryland 21201
(410) 625-9330 [O]
(410) 625-9309 [F]
kiely@meklawllc.com

/s/ Daniel A. Brown
Daniel A. Brown
Eileen M. O'Brien
BROWN & GOULD, LLP
7316 Wisconsin Ave., Suite 200
Bethesda, Maryland 20814
(301) 718-4548
dbrown@brownandgould.com
eobrien@brownandgould.com

Attorneys for Plaintiff

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

CIVIL DIVISION

CASE NO. _____

MELLIS R. MEYERS, JR. and JUDITH O. MEYERS, h/w

Plaintiffs,

Dawn Besserman: 1000428

vs.

AMERICAN HONDA MOTOR CO. INC.;
BENNETT AUTO SUPPLY, INC.;
BORGWARNER MORSE TEC LLC;
BRUNSWICK CORPORATION;
CATERPILLAR, INC.;
CRANE CO.;
CUMMINS, INC.;
FMC CORPORATION;
FORD MOTOR COMPANY;
GARDNER DENVER, INC.;
GENUINE PARTS COMPANY;
HONEYWELL INTERNATIONAL, INC.;
IMO INDUSTRIES, INC.;
INGERSOLL-RAND COMPANY;
KAISER GYPSUM COMPANY, INC.;
PNEUMO ABEX, LLC;
PREMIX-MARBLETTE MANUFACTURING CO.;
SUPRO CORPORATION;
UNION CARBIDE CORPORATION;
WARREN PUMPS, LLC; and
ZF ACTIVE AND SAFETY ELECTRONICS US LLC

Defendants.

_____ /

COMPLAINT AND DEMAND FOR JURY TRIAL

1. This is an action seeking damages in excess of Fifteen Thousand Dollars (\$15,000.00), exclusive of interest and costs.

2. Plaintiffs MELLIS R. MEYERS, JR. and JUDITH O. MEYERS are citizens of the State of North Carolina and citizens of the United States of America. MELLIS R. MEYERS, JR. was diagnosed as having asbestos-related disease, specifically malignant mesothelioma, on April 22, 2019.

3. Defendants are as follows:

- a. Defendant AMERICAN HONDA MOTOR CO. INC. is a California corporation with its principal place of business in California.
- b. Defendant BENNETT AUTO SUPPLY, INC. is a Florida corporation with its principal place of business in Florida.
- c. Defendant BORG-WARNER CORPORATION, as successor-by-merger to Borg-Warner Corporation is a Delaware corporation with its principal place of business in Michigan.
- d. Defendant BRUNSWICK CORPORATION, Individually and as successor-in-interest to Mercury Marine is a Delaware corporation with its principal place of business in Illinois.
- e. Defendant CATERPILLAR, INC. is a Delaware corporation with its principal place of business in Illinois.
- f. Defendant CRANE CO. is a Delaware corporation with its principal place of business in Connecticut.
- g. Defendant CUMMINS, INC. is an Indiana corporation with its principal place of business in Indiana.
- h. Defendant FMC CORPORATION, Individually and as successor-in-interest to Peerless Pump Company is a Delaware corporation with its principal place of business in Pennsylvania.
- i. Defendant FMC CORPORATION, Individually and as successor-in-interest to Northern Pump Company is a Delaware corporation with its principal place of business in Pennsylvania.
- j. Defendant FORD MOTOR COMPANY is a Delaware corporation with its principal place of business in Michigan.
- k. Defendant GARDNER DENVER, INC. is a Delaware corporation with its principal place of business in Wisconsin.

25. Plaintiff MELLIS R. MEYERS, JR.'s exposure to and inhalation of asbestos from Defendants' Asbestos Products caused him to contract an asbestos-related disease, specifically malignant mesothelioma.

26. As a direct and proximate result of the conduct described, Plaintiffs incurred damages in the form of the cost of treatment for his disease and injuries. As a direct and proximate result of Defendants' conduct, Plaintiff's enjoyment of life has been impaired.

COUNT I – NEGLIGENCE
(ALL DEFENDANTS)

27. Plaintiffs incorporate by reference into Count 1 all other relevant allegations in this Complaint.

28. At the time of Plaintiff MELLIS R. MEYERS, JR.'s exposure to Defendants' Asbestos Products, Defendants knew, or in the exercise of ordinary care should have known, that the use of their Asbestos Products was hazardous to the health of workers, consumers, bystanders, and family members. Plaintiff MELLIS R. MEYERS, JR. relied upon the skill and knowledge of the Defendants, who had a duty to advise users of their products and those who were reasonably expected to use, work with, service, repair and/or replace any of their Asbestos Products, of the proper methods of handling and working around asbestos-containing materials.

29. At the time of Plaintiff MELLIS R. MEYERS, JR.'s exposure to Defendants' Asbestos Products, Defendants knew, or in the exercise of ordinary care should have known that the potential hazards of their Asbestos Products were not obvious or otherwise known to ordinary users such as Plaintiff MELLIS R. MEYERS, JR., or those working with and around him. Defendants had a duty to warn Plaintiff MELLIS R. MEYERS, JR., and those working with and around him, of any information regarding the potential dangers of asbestos and the proper methods of handling and working around asbestos and asbestos-containing materials.

the Products or affirmatively determining that they had been reliably tested and did not release asbestos.

51. Defendants knew or should have known that asbestos dust and other poisons used in the workplace can and do contaminate the worker's clothes, hair and person and that the contamination by such poisons can and does endanger workers who are exposed to the poisons when handling or coming into contact with the worker's contaminated clothing, hair, and person.

52. Defendants further failed to use reasonable care in designing or selling Asbestos Products to which Plaintiff MELLIS R. MEYERS, JR. was exposed, and/or in specifying the use of such Products, because Defendants knew or should have known that handling materials that contain asbestos requires the most stringent of precautions. Nevertheless, Defendants designed, manufactured and/or sold their Asbestos Products for and to Plaintiff, his employers, and others without ascertaining whether they were sufficiently knowledgeable, skilled and equipped to safely handle the Asbestos Products.

53. Plaintiff's injuries are a direct and proximate result of Defendants' Asbestos Products' defects, and Plaintiffs have suffered the damages described in this Complaint.

WHEREFORE, Plaintiffs demand compensatory damages and trial by jury of all issues so triable in this cause.

COUNT IV
LOSS OF CONSORTIUM

54. Plaintiffs incorporate by reference into Count IV all other relevant allegations in this Complaint.

55. Plaintiff JUDITH O. MEYERS is the lawful spouse of Plaintiff MELLIS R. MEYERS, JR. The MEYERS were lawfully married on or about November 1980. At the time

that MELLIS R. MEYERS, JR. was diagnosed with mesothelioma, JUDITH O. MEYERS was cohabitating with MELLIS R. MEYERS, JR. and enjoying his companionship and care.

56. As a direct and proximate result of the conduct described in the allegations contained in Counts I, II and III of this Complaint, Plaintiff JUDITH O. MEYERS has suffered the loss of consortium and damage to the marital and social relationship, including, but not limited to: the loss of MELLIS R. MEYERS, JR.'s services, comfort, affection, and the effects of MELLIS R. MEYERS, JR.'s disease upon Plaintiff JUDITH O. MEYERS and their relationship and daily activities due to his injuries and disabilities. They have further incurred expenses for medical care and treatment rendered to MELLIS R. MEYERS, JR., and they will continue to incur such expenses.

WHEREFORE, Plaintiffs demand compensatory damages and trial by jury on all issues so triable in this cause.

COUNT V
DAMAGES

57. As a direct and proximate result of the Defendants' negligence and defective products as described above, Plaintiff MELLIS R. MEYERS, JR. developed terminal malignant mesothelioma and/or other asbestos-related diseases, which has caused Plaintiff to suffer great and lasting physical pain and mental anguish.

58. Plaintiff's exposure to asbestos as a result of Defendants' negligence and/or defective Asbestos Products caused and contributed to Plaintiff's injuries. Plaintiff's injuries arose out of, were connected to, and were incidental to, the manufacture, sale and distribution by Defendants of their Asbestos Products.

59. As a direct and proximate result of Defendants' negligent conduct and defective products described above, Plaintiff MELLIS R. MEYERS, JR. has been required to undergo

medical care and treatment for his injuries and he has been obliged to spend various sums of money to treat his disease and injuries. Plaintiff MELLIS R. MEYERS, JR. will continue to undergo additional medical care and treatment for his injuries in the future, and he will continue in the future to incur additional expenses associated with that medical care and treatment.

60. As a direct and proximate result of Defendants' negligent conduct and defective products described above, Plaintiff's enjoyment of life and earnings capacity has been impaired and his life expectancy shortened.

DEMAND FOR JURY TRIAL

Plaintiffs demand trial by jury on all issues.

Respectfully submitted,

**MAUNE RAICHLÉ HARTLEY
FRENCH & MUDD, LLC**

/s/ Dawn Besserman

Dawn Besserman

Florida Bar No.: 1000428

1015 Locust Street, Suite 1200

St. Louis, MO 63101

Telephone: (314) 241-2003

Fax: (314) 241-4838

dbesserman@mrhfmlaw.com

Attorneys for Plaintiffs

Dated: June 12, 2019

1 ALAN R. BRAYTON, ESQ., S.B. #73685
DAVID R. DONADIO, ESQ., S.B. #154436
2 JAMES P. NEVIN, ESQ., S.B. #220816
NANCY T. WILLIAMS, ESQ., S.B. #201095
3 BRAYTON ♦ PURCELL LLP
Attorneys at Law
4 222 Rush Landing Road
P.O. Box 6169
5 Novato, California 94948-6169
(415) 898-1555
6
7 Attorneys for Plaintiffs

ENDORSED FILED
Clerk of the Superior Court

JAN 05 2015

By K. COWGILL
DEPUTY CLERK

8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF SOLANO

ASSIGNED TO
JUDGE PAUL L. BEEMAN

FOR ALL PURPOSES

11 **PARI GHAZANFARPOUR**, as Successor-
in-Interest to and as Wrongful Death Heir
12 of **MAHMOUD GHAZANFARPOUR**,
Deceased; and FETNEH FOULADPOUR,
13 LOBAT AFSHAR, ARJANG
GHAZANFARPOUR, NEDA
14 GHAZANFARPOUR, PAYMON
GHAZANFARPOUR, as Wrongful Death
15 Heirs of MAHMOUD
GHAZANFARPOUR, Deceased,

ASBESTOS

No. **FCSD44694**

COMPLAINT FOR SURVIVAL,
WRONGFUL DEATH - ASBESTOS

16 Plaintiffs,

17 vs.

18 CERTAINTEED CORPORATION;
A.H. VOSS COMPANY;
19 KUBOTA CORPORATION;
FOSTER WHEELER LLC (FKA FOSTER
20 WHEELER CORPORATION);
GENERAL ELECTRIC COMPANY;
21 INGERSOLL-RAND COMPANY;
J-M MANUFACTURING COMPANY, INC.;
22 METROPOLITAN LIFE INSURANCE
COMPANY;
23 PARKER-HANNIFIN CORPORATION;
CBS CORPORATION (FKA VIACOM INC.,
24 FKA WESTINGHOUSE ELECTRIC
CORPORATION);
25 AMERON INTERNATIONAL
CORPORATION;
26 THYSSEN SPECIALTY STEELS, INC.;
FLUOR CORPORATION;
27 PARSONS GOVERNMENT SERVICES,
INC. (FKA PARSONS INFRASTRUCTURE
28 & TECHNOLOGY GROUP INC.);

Index of Causes of Action:

1. Negligence I - Survival
2. Products Liability - Survival
3. Negligence I - Wrongful Death
4. Products Liability - Wrongful Death
5. Negligence II - Survival
6. Negligence II - Wrongful Death
7. Aiding and Abetting Battery [Against Metropolitan Life Insurance Company, and Does 750-790, Inclusive]
8. Concert of Action
9. Fraud and Deceit/Concealment
10. Fraud and Deceit/Intentional Misrepresentation

BRAYTON ♦ PURCELL LLP
ATTORNEYS AT LAW
222 RUSH LANDING ROAD
P.O. BOX 6169
NOVATO, CALIFORNIA 94948-6169
(415) 898-1555

1 SEQUOIA VENTURES INC.;
2 GALLAGHER PROPERTIES, INC.;
3 PAN-AMERICAN OIL COMPANY;
4 CANNON OIL COMPANY;
5 and DOES 1 through 800, inclusive, as
6 required by California law on joint and several
7 liability pursuant to California Civil Code
8 § 1431.2 enacted by the People of the State of
9 California,

Defendants.

FIRST CAUSE OF ACTION
(Negligence I - Survival)

10 PLAINTIFF, PARI GHAZANFARPOUR, AS SUCCESSOR-IN-INTEREST TO
11 DECEDENT MAHMOUD GHAZANFARPOUR, COMPLAINS OF DEFENDANTS
12 HEREINBELOW NAMED IN PARAGRAPH 4, DOES 1-300, THEIR "ALTERNATE
13 ENTITIES," AND EACH OF THEM, AND FOR A CAUSE OF ACTION FOR NEGLIGENCE
14 I (SURVIVAL) I, PURSUANT TO CIVIL CODE § 1714, BAJI 3.00, 3.10, 3.11, 3.12, 3.76,
15 3.77, 3.78, 9.19, 9.20, 9.21, AND CACI 400, 401, 431, 435, 1220, 1221, 1222, 1223, AND
16 ALLEGES:

17 1. MAHMOUD GHAZANFARPOUR died on January 6, 2014. Plaintiff brings this
18 action pursuant to Section 377.30 of the Code of Civil Procedure.

19 2. The true names and capacities, whether individual, corporate, associate,
20 governmental or otherwise, of defendants DOES 1-800, inclusive, are unknown to plaintiff at this
21 time, who therefore sues said defendants by such fictitious names. When the true names and
22 capacities of said defendants have been ascertained, plaintiff will amend this complaint
23 accordingly. Plaintiff is informed and believes, and thereon alleges, that each defendant
24 designated herein as a DOE is responsible, negligently or in some other actionable manner, for
25 the events and happenings hereinafter referred to, and caused injuries and damages proximately
26 thereby to the decedent, as hereinafter alleged.

27 3. At all times herein mentioned, each of the defendants was the agent, servant,
28 employee and/or joint venturer of his co-defendants, and each of them, and at all said times, each

1 known, and intended that the afore-mentioned asbestos and asbestos-containing products would
2 be used, manipulated, or handled as specified in Exhibit A, which is attached hereto and
3 incorporated by reference herein, resulting in the release of airborne asbestos fibers, and that
4 through such foreseeable use and/or handling "exposed persons," including decedent would be in
5 proximity to and exposed to said asbestos fibers.

6 15. Decedent herein, has used, handled or been otherwise exposed to asbestos and
7 asbestos-containing products referred to herein in a manner that was reasonably foreseeable and
8 from the intended use of the product. Decedent's exposure to asbestos and asbestos-containing
9 products occurred at various locations as set forth in Exhibit A, which is attached hereto and
10 incorporated by reference herein.

11 16. As a direct and proximate result of the conduct or omissions of the defendants,
12 their "alternate entities," and each of them, as aforesaid, decedent's exposure to asbestos and
13 asbestos-containing products caused severe and permanent injury and the ultimate death of
14 decedent, to wit: Decedent was diagnosed with mesothelioma on or about October 2013.

15 17. Plaintiff is informed and believes, and thereon alleges, that progressive lung
16 disease, cancer and other serious diseases and physical injury are caused by inhalation of asbestos
17 fibers without contemporaneous perceptible trauma and that said disease results from exposure to
18 asbestos and asbestos-containing products over a period of time.

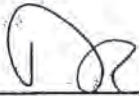
19 18. Decedent suffered, and subsequently died on January 6, 2014, from mesothelioma,
20 a condition related to exposure to asbestos and asbestos-containing products. Decedent was not
21 aware at the time of exposure that asbestos or asbestos-containing products presented any risk of
22 injury and/or disease.

23 19. As a direct and proximate result of the aforesaid conduct of defendants, their
24 "alternate entities," and each of them, decedent suffered permanent injuries to his person, body,
25 and health, including, but not limited to, mesothelioma, and other lung damage, and ultimately
26 death, from the effect of exposure to asbestos fibers, all to his general damage in a sum in excess
27 of the jurisdictional limits of a limited civil case. This action is an Unlimited Civil Case as
28 defined in Code of Civil Procedure sec. 88.

- 1 1. For general damages according to proof;
- 2 2. For medical and related expenses according to proof;
- 3 3. For loss of earnings according to proof;
- 4 4. For funeral expenses according to proof;
- 5 5. For loss of support according to proof;
- 6 6. For the loss of care, comfort and society;
- 7 7. For exemplary or punitive damages according to proof against defendants
- 8 CERTAINTEED CORPORATION; FOSTER WHEELER LLC (FKA FOSTER WHEELER
- 9 CORPORATION); and J-M MANUFACTURING COMPANY, INC., only;
- 10 8. For plaintiffs' costs of suit herein;
- 11 9. For damages for fraud according to proof; and
- 12 10. For such other and further relief as the Court may deem just and proper, including
- 13 costs and prejudgment interest as provided in C.C.P. § 998, C.C.P. § 1032, and related provisions
- 14 of law.

15 Dated: 12/31/14

BRAYTON ♦ PURCELL LLP

17 By: 
18 David R. Donadio
19 Attorneys for Plaintiffs

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STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
COUNTY OF YORK) C/A No. 2015CP46,3456

**WAYNE ERVIN HOWE, AN
INDIVIDUAL AND JEANETTE
HOWE, HIS SPOUSE,**

PLAINTIFFS,

V.

**AIR & LIQUID SYSTEMS CORP.,
INDIVIDUALLY AND AS
SUCCESSOR-IN-INTEREST TO
BUFFALO PUMPS, INC.;**

**ALBANY INTERNATIONAL
CORP.;**

ASTEN-JOHNSON, INC.;

AURORA PUMP COMPANY;

A.W. CHESTERTON COMPANY;

**BORG WARNER MORSE TEC,
INC., AS SUCCESSOR TO
BORG-WARNER
CORPORATION;**

**CBS CORPORATION, A
DELAWARE CORPORATION
F/K/A VIACOM, INC.,
SUCCESSOR BY MERGER TO
CBS CORPORATION, A
PENNSYLVANIA
CORPORATION, F/K/A
WESTINGHOUSE ELECTRIC
CORPORATION;**

**ASBESTOS LAWSUIT
JURY DEMAND ON ALL ISSUES**

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CLERK OF COURT
YORK COUNTY, SC

)
CGR PRODUCTS, INC. F/K/A)
CAROLINA GASKET AND)
RUBBER COMPANY;)
CNA HOLDINGS, INC., F/K/A)
HOECHST CELANESE)
CORPORATION;)
CELANESE CORPORATION)
F/K/A HOECHST CELANESE)
CORPORATION (SUED)
INDIVIDUALLY AND AS)
SUCCESSOR IN-INTEREST-TO)
FIBER INDUSTRIES, INC.);)
CLEAVER BROOKS, INC.;)
COVIL CORPORATION;)
CRANE CO.;)
CROWN CORK & SEAL)
COMPANY, INC.;)
DANIEL INTERNATIONAL)
CORPORATION;)
FLUOR ENTERPRISES, INC.,)
F/K/A FLUOR DANIEL, INC.,)
F/K/A DANIEL)
CONSTRUCTION COMPANY,)
INC.;)
FLUOR DANIEL SERVICES)
CORPORATION;)
FOSTER WHEELER ENERGY)
CORPORATION;)

GENERAL ELECTRIC
COMPANY;)
)
)
THE GORMAN-RUPP COMPANY;)
)
)
GOULDS PUMPS,
INCORPORATED;)
)
)
INGERSOLL-RAND COMPANY;)
)
)
METROPOLITAN LIFE
INSURANCE COMPANY, A
WHOLLY-OWNED
SUBSIDIARY OF METLIFE
INC.;)
)
)
PEERLESS PUMP COMPANY;)
)
)
PRESNELL INSULATION, INC.;)
)
)
RILEY POWER, INC.,
INDIVIDUALLY AND AS
SUCCESSOR-IN-INTEREST TO
BABCOCK BORSIG POWER,
INC., AND RILEY STOKER
CORPORATION,
INDIVIDUALLY AND AS
SUCCESSOR-IN-INTEREST TO
D.B. RILEY;)
)
)
SEPCO CORPORATION;)
)
)
STERLING FLUID SYSTEMS
(USA) LLC;)
)
)
TRANE U.S., INC., F/K/A
AMERICAN STANDARD, INC.,
F/K/A AMERICAN RADIATOR
& STANDARD
MANUFACTURING
COMPANY;)
)
)

UNIROYAL, INC., F/K/A UNITED)
STATES RUBBER COMPANY,)
INC.;)
)
UNITED CONVEYOR)
CORPORATION;)
)
VELAN VALVE CORP.;)
)
VIKING PUMP, INC.;)
)
WARREN PUMPS LLC; AND)
)
ZURN INDUSTRIES,)
)
DEFENDANTS.)

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DAVID HAMILTON
CLERK OF COURT
SOUTH CAROLINA

COMPLAINT

NOW COME the Plaintiffs, WAYNE ERVIN HOWE and JEANETTE HOWE, citizens and residents of the State of South Carolina, through their counsel and sues the Defendants and alleges as follows. This is an action seeking relief due to Defendants' negligent, willful, wanton, and reckless conduct proximately causing the injury to the Plaintiff, Wayne Ervin Howe. Mr. Howe was diagnosed with the asbestos-related cancer, mesothelioma. As alleged below, during the pertinent times, Mr. Howe worked on a frequent, regular and proximate basis with and near others working with asbestos-containing products, materials and equipment for which the named Defendants are liable and responsible. The Plaintiff was exposed to respirable asbestos fibers which ultimately caused his disease of mesothelioma. Plaintiffs further allege:

Fiber Industries, including in Rock Hill, South Carolina; and the Bowater facility in Rock Hill, South Carolina.

49. Plaintiff, for a long period of time, frequently, regularly and proximately worked with and was exposed to the asbestos and asbestos-related materials mined, manufactured, processed, imported, converted, compounded, or sold by the asbestos product manufacturing and selling Defendants, or with regard to which Defendants otherwise had responsibility, with some or most of the exposure being within the State of South Carolina.

50. Plaintiff, Wayne Ervin Howe, was exposed to asbestos dust and fibers from products, services, and goods manufactured, distributed, or sold by the asbestos product manufacturing and selling Defendants for use at Plaintiff's jobsites which he came in contact with on the premises of multiple companies.

51. As a result of the improper conduct of the Defendants, Plaintiff Wayne Ervin Howe developed the asbestos cancer known as Mesothelioma.

52. The asbestos product manufacturing and selling Defendants owned, operated, or supplied asbestos containing materials or services to worksites in South Carolina, at which Plaintiff Wayne Ervin Howe, worked, or entered for purposes of work, and in which Plaintiff was exposed to asbestos dust from asbestos containing materials.

53. Defendants knew, or should have known, at all times relevant hereto that exposure to asbestos dust and fibers were a known risk factor in the development of potentially fatal lung disease including malignant mesothelioma.

54. Plaintiff Wayne Ervin Howe was diagnosed in May 2015 with malignant mesothelioma, a fatal disease caused solely by exposure to asbestos fibers and dust. This exposure occurred as a result of his exposure to asbestos dust and fibers that he came in contact with on various jobsites in South Carolina.

55. At all times mentioned herein, Defendants acted through their duly authorized agents, servants, and employees who were at all times relevant herein acting within the scope and course of their employment. At the time of its manufacture the manufacturers acted unreasonably in designing or formulating the relevant products, and this conduct was a proximate cause of the harm for which damages are sought.

56. Mesothelioma is a progressive, insidious disease and Plaintiff's asbestos dust and fiber exposure including in South Carolina to the Defendants' products or on the Defendants' premises and for which Defendants are otherwise liable contributed to the Plaintiff's contraction of his disease.

57. Plaintiff's diagnosed disease of mesothelioma was caused by breathing asbestos dust and fibers from asbestos-containing products or asbestos containing materials at Defendants' premises or with regard to which the Defendants manufactured or sold.

58. Plaintiffs have obtained and attached as Exhibit A hereto, a report by a physician who is appropriately board-certified, in compliance with S.C. Code §§ 44-135-50(A)(1), 44-135-70 and 44-135-80.

59. As a result of the development of mesothelioma caused by breathing asbestos dust and fibers from Defendants' asbestos-containing products, and exposures due to Defendants' negligent acts and omissions, listed herein and that will be further identified in this suit, Plaintiff has suffered and sustained very serious life-threatening injuries, specifically mesothelioma, requiring extensive and painful medical treatment.

60. Plaintiff has suffered great pain and mental anguish as a direct result of the aforesaid injuries.

61. The illness and disability of Plaintiff was the direct and proximate result of the negligence, recklessness and willfulness of the Defendants, in that each produced, sold and otherwise put into the stream of interstate commerce, or otherwise were responsible for asbestos and asbestos-related materials which the Defendants knew or should have known were deleterious, poisonous and highly harmful.

62. Plaintiff's injuries and illnesses are permanent in nature and he will be forced to suffer same for the remainder of his life. Plaintiff's enjoyment of life has been greatly impaired and, further, that his expected life span has been greatly shortened.

63. Plaintiff alleges that as a result of the aforesaid illnesses, he has been forced to incur large amounts of medical expenses by way of doctor and drug bills and verily believes that he will be forced to incur additional expenses in an effort to treat his illnesses as aforesaid, all to Plaintiff's damage, compensatory and punitive in amounts to be determined by the trier of fact.

PETITION FOR EXPEDITED DEPOSITION

150. Pursuant to S.C. R. Civ. P. 30(a)(1), Plaintiff hereby petitions the Court requesting that his deposition be conducted on an expedited basis.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs prays to ask that this Court:

- A. Award the Plaintiffs actual and compensatory damages, in an amount to be determined at trial, for the wrongful, negligent, reckless and willful acts of the Defendants;
- B. Award the Plaintiffs pre-judgment and post-judgment interest to the extent allowable by law;
- C. Award the Plaintiffs punitive damages to the extent allowable by law;
- D. Award the Plaintiffs' attorney fees and costs to the extent allowable by law; and
- E. For such other and further relief as may be just and proper.

A JURY IS RESPECTFULLY DEMANDED TO TRY THESE ISSUES.

Respectfully submitted, this the 6th day of November 2015.

WALLACE AND GRAHAM, P.A.

By: 

Mona Lisa Wallace, Esq.
SC Bar No. 15844
525 North Main Street
Salisbury, NC 28144
(704) 633-5244
E-mail: mwallace@wallacegraham.com

Attorneys for the Plaintiffs

EDWARD WILLIAMSON, JR.,

Plaintiff,

vs.

IN THE CIRCUIT COURT OF THE
13TH JUDICIAL CIRCUIT IN AND
FOR HILLSBOROUGH COUNTY,
FLORIDA

CAUSE NO. 14-CA-005960

ALFA LAVAL, INC. (sued individually and as successor-in-interest to THE DELAVAL SEPARATOR COMPANY); ASBESTOS LITIGATION

ARMSTRONG INTERNATIONAL, INC.;

BORG-WARNER MORSE TEC INC.
(sued individually and as successor-in-interest to BORG-WARNER CORPORATION);

CBS CORPORATION (a Delaware Corporation)
f/k/a VIACOM, INC. (sued as successor-by-merger to CBS CORPORATION (a Pennsylvania Corporation)
f/k/a WESTINGHOUSE ELECTRIC CORPORATION)
and as successor-in-interest to BF STURTEVANT);

CLEAVER-BROOKS, INC. f/k/a AQUA-CHEM, INC.
d/b/a CLEAVER-BROOKS DIVISION;

CUMMINS, INC.;

DANA COMPANIES LLC (sued individually and as successor-in-interest to VICTOR GASKET MANUFACTURING COMPANY);

FLOWERVE US, INC. (sued as successor to EDWARD VALVE, INC.);

FMC CORPORATION (sued individually and as successor-in-interest to NORTHERN PUMP COMPANY f/k/a NORTHERN FIRE APPARATUS COMPANY);

GENERAL ELECTRIC COMPANY;

GENUINE PARTS COMPANY a/k/a NAPA;

HOLLEY PERFORMANCE PRODUCTS;

HONEYWELL INTERNATIONAL, INC. f/k/a ALLIED-SIGNAL, INC. (sued as successor-in-interest to BENDIX CORPORATION);

HOPEMAN BROTHERS INC.;

IMO INDUSTRIES, INC. (sued individually and as successor-in-interest to DELAVAL TURBINE, INC.);

INGERSOLL RAND COMPANY (sued individually and as (successor-in-interest to TERRY STEAM TURBINE COMPANY);

JOHN CRANE, INC.;

McNALLY INDUSTRIES, LLC (sued individually and as successor-in-interest to NORTHERN FIRE

APPARATUS COMPANY);
MEADWESTVACO CORPORATION f/k/a WESTVACO;
THE NASH ENGINEERING COMPANY;
PFIZER INC.;
PNEUMO ABEX LLC (sued as successor-in-interest
to ABEX CORPORATION);
STEEL GRIP, INC. f/k/a INDUSTRIAL GLOVES CO.
f/k/a STEEL GRIP SAFETY APPAREL CO.;
SUPERIOR-LIDGERWOOD-MUNDY CORPORATION
(sued individually and as successor-in-interest
to M.T. DAVIDSON COMPANY);
TACO, INC.;
TRANE US, INC. f/k/a AMERICAN STANDARD COMPANIES;
UNION CARBIDE CORPORATION;
VELAN VALVE CORPORATION;
WARREN PUMPS, LLC (sued individually and
as successor-in-interest to QUIMBY PUMP COMPANY);
WEIR VALVES & CONTROLS USA, INC.
f/k/a ATWOOD & MORRILL;
THE WILLIAM POWELL COMPANY;

Defendants.

ORIGINAL COMPLAINT

COMES NOW, the Plaintiff, EDWARD WILLIAMSON, JR., through his undersigned attorneys and sue the Defendants, and allege as follows:

1. EDWARD WILLIAMSON, JR. is the Plaintiff herein. Plaintiff's legal residence is 1140 7th Avenue NE, Largo, FL 33770.
2. EDWARD WILLIAMSON, JR. was diagnosed with MESOTHELIOMA satisfying the criteria of the Florida Asbestos and Silica Compensation Fairness Act on or about May 9, 2014.
3. This is an action for damages in excess of Fifteen Thousand Dollars (\$15,000.00).

4. At least one of the Defendants against whom this action is brought conducts business in the county where the above-styled circuit court sits and thus venue of this action properly lies in this Court pursuant to Florida Law.

5. The Plaintiff would further show that Defendants have, at all times material to this cause of action, through their agents, officers and representatives, operated, conducted, engaged in and carried on a business venture in this state or maintained an office or agency in this state; committed a tortuous act within the state by designing, manufacturing, distributing or selling to the public an inherently dangerous product, to-wit: asbestos, asbestos-containing products, or products which specified the use of or incorporated asbestos in the design, or concealing the dangers of asbestos from the Plaintiff and others similarly situated, without properly testing said products to determine the harmful effects of the persons exposed to asbestos from said products, and by failing to take any reasonable precautions or to exercise reasonable care to adequately or sufficiently warn Plaintiff and others similarly situated, of the risks, dangers and harms, to-wit: contracting diseases and suffering injuries such as asbestos pleural disease, asbestosis, lung cancer, mesothelioma or other forms of cancers, to which the Plaintiff EDWARD WILLIAMSON, JR. was exposed by working with, coming in contact with, use of, handling and exposure to the asbestos dust and fibers from said products resulting from the ordinary and foreseeable use of said products, and said tortuous conduct is continuing and presently existing; caused the Plaintiff EDWARD WILLIAMSON, JR. to contract mesothelioma, which arose out of the acts and omissions which occurred inside and outside of the State of Florida during the relevant period of time, at which time Defendants were engaged in solicitation or service activities within the State of Florida, resulting in the

Plaintiff EDWARD WILLIAMSON, JR. acquiring the disease mesothelioma, and during which time Defendants' products were designed, manufactured, distributed or sold by Defendants, or during which time Defendants concealed the dangers of asbestos from the Plaintiff EDWARD WILLIAMSON, JR. and others similarly situated, within and outside the State of Florida, and were used in the ordinary course of commerce or trade as set forth herein and said use resulted in Plaintiff EDWARD WILLIAMSON, JR. acquiring the disease mesothelioma. Therefore, jurisdiction properly lies in this court, as to Plaintiff's action, pursuant to Florida law.

THE DEFENDANTS

7. Defendant ALFA LAVAL, INC. (sued individually and as successor-in-interest to THE DELAVAL SEPARATOR COMPANY) is a corporation authorized to do or doing business within the jurisdiction of this Court, duly organized, created and existing under and by virtue of the laws of New Jersey with its principal place of business located in the State of Virginia. At all times material to this cause of action, said Defendant engaged in the design, manufacture, distribution or sale of asbestos, asbestos-containing products, or products which specified the use of or incorporated asbestos in the design which asbestos Plaintiff EDWARD WILLIAMSON, JR. used or was exposed to in his trade, occupation or daily life, during which time asbestos dust and fibers from said Defendant's products were liberated into the air and inhaled by Plaintiff EDWARD WILLIAMSON, JR. which caused him to develop asbestos-related mesothelioma. Service of process on such Defendant is predicated on FLA. STAT. ANN. § 48.081(3) and FLA. STAT. ANN. § 48.091 and/or Fla. R. Civ. P. 1.070.

THE PRODUCTS

38. This cause of action is predicated on theories of negligence, strict liability, and concealment as more specifically set out below. The products complained of were asbestos, asbestos-containing products, or products which specified the use of or incorporated asbestos in the design, designed, manufactured, distributed or sold by each of the Defendants, their predecessors-in-interest or alter egos and used by or in the immediate vicinity of the Plaintiff EDWARD WILLIAMSON in his trade, occupation or daily life.

39. Plaintiff EDWARD WILLIAMSON, JR. alleges that he was exposed to asbestos materials during the period from 1956 through the 1980's in his trade, occupation or daily life. Although the Plaintiff can identify the designer, manufacturer, distributor or seller of several products containing asbestos to which he was exposed, he is unable to identify each and every exposure that he sustained in Florida, Alabama, and while in the U.S. Navy and U.S. Coast Guard. Moreover, the Plaintiff would show that certain asbestos materials to which Plaintiff EDWARD WILLIAMSON, JR. was exposed during his work life were virtually unidentifiable as to brand name after they were removed from their original containers. In that each exposure to such asbestos materials caused or contributed to Plaintiff EDWARD WILLIAMSON, JR.'s mesothelioma and that it is not possible to apportion such damages, Plaintiff seeks recovery in accordance with Florida law against each Defendant herein.

COUNT I: NEGLIGENCE

40. All of the allegations contained in Paragraphs 1 through 39 are re-alleged herein.

physical impairment, disfigurement, mental anguish, inconvenience, loss of capacity for the enjoyment of life from the date of injury to the present.

72. Plaintiff EDWARD WILLIAMSON, JR. in the past required medical care, nursing care or hospitalization to treat his conditions and suffered a loss of earnings, ability to earn money or his earning capacity was impaired as a direct and proximate result of his asbestos-related mesothelioma. Plaintiff EDWARD WILLIAMSON, JR. may further suffer such damages in the future.

73. Plaintiff EDWARD WILLIAMSON, JR.'s aforementioned asbestos-caused mesothelioma and damages of the Plaintiff EDWARD WILLIAMSON, JR. were proximately caused by the product defects described herein in Defendants' products, the products of their predecessors-in-interest or alter egos.

III: CONCEALMENT

74. All of the allegations contained in paragraphs 1 through 39 are re-alleged herein.

75. The products complained of were asbestos, asbestos-containing products or products which specified the use of or incorporated asbestos in the design which were designed, manufactured, distributed or sold by each of the Defendants, their predecessors-in-interest or alter egos. Plaintiff EDWARD WILLIAMSON, JR. was exposed to asbestos dust and fibers from said products in his trade, occupation or daily life.

76. Plaintiff EDWARD WILLIAMSON, JR. alleges that his exposure to said products caused him to inhale asbestos dust and fibers which caused Plaintiff EDWARD WILLIAMSON, JR. to develop mesothelioma. Each exposure to asbestos dust and fibers from such products of each Defendant was harmful and caused or contributed substantially to

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury of all issues so triable as a matter of right.

Dated this 9th day of June, 2014.

Respectfully submitted,

O'SHEA & REYES, LLC
5599 South University Drive, Suite 202
Davie, FL 33328

BY: _____


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COUNSEL FOR PLAINTIFF

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

IN RE:

ALDRICH PUMP LLC, et al.,

Debtor.

Chapter 11
Underlying Case No.: 20-30608
(JCW)
(United States Bankruptcy Court
for the Western District of North
Carolina)

AC&S ASBESTOS SETTLEMENT TRUST,
COMBUSTION ENGINEERING 524(G)
ASBESTOS PI TRUST, GI HOLDINGS INC.
ASBESTOS PERSONAL INJURY
SETTLEMENT TRUST, GST SETTLEMENT
FACILITY, KAISER ALUMINUM &
CHEMICAL CORPORATION ASBESTOS
PERSONAL INJURY TRUST, QUIGLEY
COMPANY, INC. ASBESTOS PI TRUST, T H
AGRICULTURE & NUTRITION, L.L.C.
ASBESTOS PERSONAL TRUST, and
YARWAY ASBESTOS PERSONAL INJURY
TRUST,

Case No.: 22-05116 (MAS-TJB)

Honorable Michael A. Shipp

Honorable Tonianne J.
Bongiovanni

Petitioners,

v.

ALDRICH PUMP LLC and MURRAY BOILER
LLC,

Respondents,

VERUS CLAIMS SERVICES, LLC,

Interested Party,

NON-PARTY CERTAIN MATCHING
CLAIMANTS,

Interested Party.

CERTIFICATE OF SERVICE

I, **PAUL R. DeFILIPPO**, of full age, certify as follows:

1. I am an attorney-at-law of the State of New Jersey and partner with the law firm of Wollmuth Maher & Deutsch LLP, counsel to Aldrich Pump LLC and Murray Boiler LLC (“Respondents”).

2. On September 26, 2022, I caused a true and correct copy of *Aldrich Pump LLC and Murray Boiler LLC’s Brief in Opposition to Non-Party Certain Matching Claimants’ Motion to Proceed Anonymously* to be electronically filed via the Court’s CM/ECF system.

I certify that the foregoing statements made by me are true and correct. I am aware that if any of the foregoing statements are willfully false, I may be subject to punishment.

Dated: September 26, 2022

Respectfully submitted,

/s/ Paul R. DeFilippo

Paul R. DeFilippo

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*Co-Counsel for Aldrich Pump LLC and
Murray Boiler LLC*

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

IN RE:

ALDRICH PUMP LLC, et al.,

Debtor.

AC&S ASBESTOS SETTLEMENT TRUST,
COMBUSTION ENGINEERING 524(G)
ASBESTOS PI TRUST, GI HOLDINGS INC.
ASBESTOS PERSONAL INJURY
SETTLEMENT TRUST, GST SETTLEMENT
FACILITY, KAISER ALUMINUM &
CHEMICAL CORPORATION ASBESTOS
PERSONAL INJURY TRUST, QUIGLEY
COMPANY, INC. ASBESTOS PI TRUST, T H
AGRICULTURE & NUTRITION, L.L.C.
ASBESTOS PERSONAL TRUST, and
YARWAY ASBESTOS PERSONAL INJURY
TRUST,

Petitioners,

v.

ALDRICH PUMP LLC and MURRAY BOILER
LLC,

Respondents,

VERUS CLAIMS SERVICES, LLC,

Interested Party,

NON-PARTY CERTAIN MATCHING
CLAIMANTS,

Interested Party.

Chapter 11

Underlying Case No.: 20-30608

(JCW)

(United States Bankruptcy Court
for the Western District of North
Carolina)

Case No.: 22-05116 (MAS-TJB)

Honorable Michael A. Shipp

Honorable Tonianne J.
Bongiovanni

Motion Day: November 7, 2022

Oral Argument Requested

**ALDRICH PUMP LLC AND MURRAY BOILER LLC'S
MEMORANDUM OF LAW IN OPPOSITION TO:
(I) THIRD-PARTY TRUSTS' MOTION TO QUASH SUBPOENAS
AND IN SUPPORT OF STAY;
(II) VERUS CLAIM SERVICES, LLC'S
MOTION TO QUASH SUBPOENA AND TO STAY; AND
(III) NON-PARTY CERTAIN MATCHING CLAIMANTS'
JOINDERS AND MOTION TO QUASH**

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PRELIMINARY STATEMENT

Aldrich Pump LLC and Murray Boiler LLC are debtors in jointly administered Chapter 11 proceedings pending in the Bankruptcy Court for the Western District of North Carolina. Pursuant to an order of the Bankruptcy Court,¹ the Debtors served Subpoenas² upon Verus and eight third-party asbestos settlement trusts for whom Verus processes claims (collectively, the “Trusts”).³ The Trusts were created under the confirmed Chapter 11 plans of a number of companies named as defendants in the asbestos litigation (the “Underlying Companies”) to implement the channeling injunction contemplated by Section 524(g) of the Bankruptcy Code. In essence, the Trusts make payments to plaintiffs, who claim they were injured by an Underlying Company’s asbestos-containing products, in an amount determined by the Trust’s distribution procedures. These Trusts are managed by trustees, who often must secure support for major decisions from a “trust advisory committee” (TAC), whose members are plaintiffs’ attorneys representing asbestos claimants. In order for a claimant to

¹ Capitalized terms not otherwise defined have the meanings given to them in Aldrich Pump LLC and Murray Boiler LLC’s Memorandum of Law in Support of their Motion to Transfer Subpoena-Related Motions to the Issuing Court, the United States Bankruptcy Court for the Western District of North Carolina (“Motion to Transfer”) [D.I. 20-1].

² See Subpoenas [D.I. 20 Exs. A–I].

³ See Motion to Transfer [D.I. 20-1] at n. 2.

recover from one of the Trusts, it must demonstrate exposure to the Underlying Company's asbestos-containing products.

The Debtors were defendants in numerous tort cases in which plaintiffs asserted claims for the same asbestos-related injury for which they sought recovery from the Trusts. The Debtors are currently involved in a proceeding before the Bankruptcy Court that seeks to estimate the Debtors' aggregate liability for asbestos claims against them, and the Debtors believe, and the Bankruptcy Court in the Western District of North Carolina agreed, that exposure to the Underlying Companies' asbestos-containing products and recovery from the Trusts for the same injury alleged to have been caused by the Debtors would be relevant to a valuation of claims against the Debtors. The Subpoenas seek information in aid of that estimation proceeding pursuant to Section 502(c) of the Bankruptcy Code, information which the Bankruptcy Court ruled is "relevant and necessary" to those cases.

Verus, the Trusts, and certain claimants who, prior to the Debtors' Chapter 11 cases, asserted and resolved claims against the Debtors and who also asserted trust claims against the Trusts (the "Matching Claimants," and together with Verus and the Trusts, the "Movants") have now moved to quash the Subpoenas

(collectively, the “Motions to Quash”). [D.I. 1, 5, 13].⁴ In doing so, Movants raise every conceivable objection to the Subpoenas, regardless of merit, regardless of evidence, and regardless of the fact that multiple bankruptcy courts, reviewing nearly identical subpoenas, have found the requested discovery to be highly relevant to the Debtors’ cases, have authorized the Subpoenas’ issuance, and overruled identical objections. All appearances are that the Motions represent efforts by the Trusts to avoid another court finding that “[asbestos] exposure evidence was withheld” in the tort system. *In re Garlock Sealing Techs., LLC*, 504 B.R. 71, 94 (Bankr. W.D.N.C. 2014). This Court should not reward these efforts, and should agree with the other Courts that are allowing these and similarly situated debtors to obtain discovery on this potentially grossly inappropriate conduct.

Should this Court choose not to transfer these matters pursuant to FRCP 45(f),⁵ the Debtors respectfully urge that this Court should follow the lead of those courts and deny Movants’ Motions to Quash. First, as the Bankruptcy Court held

⁴ Verus and the Trusts initially moved to stay these proceedings pending the Third Circuit’s decision in *In re Bestwall*, No. 21-2263. Shortly after the Third Circuit issued the *Bestwall* opinion, Verus and the Trusts withdrew the portion of their Motions which sought a stay pending that decision. *See* Letter from Lynda A. Bennett [D.I. 9]; Letter from Andrew E. Anselmi [D.I. 10].

⁵ The Debtors have alternatively requested that this Court transfer resolution of all matters related to these Subpoenas to the Bankruptcy Court under Rule 45(f). *See* Motion to Transfer [D.I. 20-1].

when authorizing the Debtors’ subpoenas to Verus and the Trusts, the information sought by the Subpoenas is “relevant and necessary” to the Debtors’ bankruptcy cases. The information sought by the Subpoenas will help answer the question whether individuals who sued and settled cases against the Debtors in the tort system also recovered from the Trusts, which will allow the Debtors to determine whether that was disclosed to the Debtors in the tort system, and allow the Bankruptcy Court to determine whether the Debtors’ settlement history is an appropriate measure of their actual liability. Second, Movants have not put forth any evidence that might establish any burden in complying with the Subpoenas, let alone an undue burden required to quash the subpoenas. Third, the Subpoenas are narrowly tailored: the Subpoenas do not seek production of any documents, and only seek production of limited data fields contained within Verus’ and the Trusts’ databases that are relevant to the Debtors’ estimation proceeding with respect to a subset of those claimants who asserted claims against both the Debtors and the Trusts. For the same reasons, sampling is neither necessary nor helpful: the costs associated with sampling outweigh any marginal benefit to Movants. Finally, Movants’ confidentiality concerns are meritless. Despite the repeated protestations of Movants and similar parties in multiple courts, the Subpoenas do not seek any confidential information; they do not seek personal identifying information of any claimant, nor the amount of, or details concerning, any settlement between a Trust

and a claimant. And in any event, the information sought by the Subpoenas is subject to extensive restrictions and protections as prescribed by the Bankruptcy Court Order.

For all those reasons, described in further detail below, and those outlined in the Declaration of Charles H. Mullin, Ph.D. (the “Mullin Decl.”) filed contemporaneously herewith, the Motions to Quash should be denied.

RELEVANT FACTUAL BACKGROUND

In the interest of efficiency and for the convenience of the Court, the Debtors refer to and hereby incorporate by reference the Relevant Factual Background set forth in the Debtors’ Motion to Transfer. *See* Motion to Transfer [D.I. 20-1] 4–12. In addition, the Debtors provide this additional background.

A. Background to the Subpoenas.

As noted in the Debtors’ Motion to Transfer, a core issue in the Debtors’ bankruptcy cases is how to estimate or value the Debtors’ liability for asbestos claims, which will be determined in an estimation proceeding pursuant to Section 502(c) of the Bankruptcy Code. The Official Committee of Asbestos Personal Injury Claimants (“ACC”) in the Debtors’ bankruptcies, which serves as the representative for asbestos-personal injury claimants with claims pending against the Debtors, has argued that the history of settlements paid by the Debtors prior to bankruptcy is the best evidence of current claim values. The Debtors disagree,

partly because the Debtors have reason to believe that relevant evidence of alternate exposure to asbestos has been withheld by claimants with whom the Debtors settled, overinflating the value of their claims.

Several years ago, another bankruptcy court presiding over another estimation proceeding in an asbestos bankruptcy case found that the debtor’s “settlement history data [did] not accurately reflect fair settlements because [asbestos] exposure evidence was withheld” in the tort system and therefore, reliance on that settlement history in the tort system was not an appropriate way to estimate the debtor’s true asbestos liability. *Garlock*, 504 B.R. at 94. The *Garlock* court found widespread failures on the part of asbestos claimants in the tort system to disclose, in response to discovery requests, either other exposures to asbestos (other than *Garlock*) or recovery from such other sources for the same asbestos-related personal injury claims. *Id.* The Debtors were involved in many of the same tort cases where the *Garlock* court found that the settlement history was tainted by the concealment by plaintiffs of material facts of alternate exposure.⁶ In fact, the actions described by the *Garlock* opinion have been described as “illustrat[ing] the prevalence of fraud in asbestos litigation[.]” *Kotalik v. A.W. Chesterton Co.*, 471 F. Supp. 3d 934, 938 (D.N.D. 2020).

⁶ See Informational Brief of Aldrich Pump LLC and Murray Boiler LLC, *In re Aldrich Pump LLC*, No. 20-30608 (JCW) (Bankr. W.D.N.C. 2020) [D.I. 5] at 20–29.

To offer proof of an accurate estimate of the Debtors’ liability for asbestos claims, the Debtors require, as was critical in *Garlock*, information beyond what is available to them—specifically, information showing whether those who asserted and resolved claims against the Debtors also asserted and/or resolved claims against other defendants in the tort system. This will help the Debtors, and ultimately the Bankruptcy Court, determine whether plaintiffs in the tort system provided full disclosure to the Debtors of exposure to asbestos from other products (i.e., those produced by the Trusts’ Underlying Companies) and recovered on the same claims being asserted against the Debtors. These exposures and/or recoveries, for the same injuries being asserted against the Debtors, are clearly relevant to the Debtors’ share of the liability for the injury being claimed, whether that share is apportioned or joint and several.

As noted in the Trusts Motion, each of the Trusts “employs Verus ... as a third-party claims administrator to process and administer” personal injury claims filed with each Trust. Trusts Motion [D.I. 1-1] at 6. “As part of the claims process, claimants who assert exposure to the asbestos containing products of the pertinent Underlying Company for which the Trust is responsible submit medical and other personal records to the Trusts for review and analysis.” *Id.* at 7. Verus reviews these submissions, “provides the settlement value, and makes payments to

claimants at the direction of the Trusts.” *Id.* Accordingly, Verus and the Trusts have information relevant to the Debtors’ estimation proceeding.

B. The Bankruptcy Court Grants the Debtors’ Bankruptcy Court Motion.

On April 7, 2022, the Debtors filed a motion in the Bankruptcy Court seeking an order authorizing them to issue subpoenas on a number of entities, including Verus and the Trusts. The ACC, along with one of the targets of the requested subpoenas, filed written objections to the Debtors’ motion.⁷

On May 26, 2022, the Bankruptcy Court held oral argument on the Debtors’ motion. At the conclusion of the hearing, the Bankruptcy Court granted the Debtors’ motion, overruling the objections of the ACC and the objecting subpoena target. In doing so, the Bankruptcy Court noted that it was relying in significant part upon its prior ruling, issued months earlier, on nearly identical subpoenas requested by the debtor in another asbestos bankruptcy case, *In re DBMP* (“DBMP”), that the Bankruptcy Court also presides over. *See* May 26, 2022

⁷ *See* The Official Committee of Asbestos Personal Injury Claimants’ Objection to the Motion of the Debtors for an Order Authorizing the Debtors to Issue Subpoenas on Asbestos Trusts and Paddock Enterprises, LLC, *In re Aldrich Pump LLC*, No. 20-30608 (JCW) (Bankr. W.D.N.C. May 6, 2022) [D.I. 1162]; *see also* Paddock Enterprises, LLC’s (I) Objection to Motion of the Debtors for an Order Authorizing the Debtors to Issue Subpoenas on Asbestos Trusts and Paddock Enterprises, LLC and (II) Motion for Limited Adjournment of Hearing on Motion of the Debtors for an Order Authorizing the Debtors to Issue Subpoenas on Asbestos Trusts and Paddock Enterprises, LLC, *In re Aldrich Pump LLC*, No. 20-30608 (Bankr. W.D.N.C. May 6, 2022) [D.I. 1161].

Trans. [D.I. 20 Ex. K] at 57:6–8 (the Bankruptcy Court: “I generally agree with the debtor here and I believe that, particularly, the response brief for the reasons stated in that and as announced in the *DBMP* matter.”).

Hearing on the subpoenas requested by the *DBMP* debtor took place before the Bankruptcy Court in December 2021. In that hearing, not only did the asbestos claimants committee in the *DBMP* case object to the issuance of the subpoenas, but one of the claims processing facilities, the Delaware Claims Processing Facility (“DCPF,” a competitor of Verus) appeared and objected. In overruling the objections and authorizing the subpoenas in *DBMP*, the Bankruptcy Court specifically acknowledged a ruling made by the Delaware District Court concerning subpoenas issued in a third asbestos bankruptcy, *In re Bestwall* (“*Bestwall*”), noting that “I think we’ve got to bear in mind what Judge Connolly has done.”⁸ The Bankruptcy Court ultimately found that *DBMP*’s subpoenas were significantly different than those considered by the District Court in *Bestwall*.⁹ Instead, the Bankruptcy Court found that *DBMP*’s proposed subpoenas complied

⁸ See Transcript of Proceedings Held Dec. 16, 2021, *In re DBMP LLC*, No. 20-30080 (Bankr. W.D.N.C. Dec. 21, 2021) [D.I. 1260] (the “Dec. 16, 2021 *DBMP* Trans.”) at 133:16–17, attached as Exhibit A to the September 26, 2022 Declaration of Paul DeFilippo (“Debtors’ Counsel’s Sept. 26, 2022 Decl.”).

⁹ The Third Circuit subsequently reversed the Delaware District Court’s decision to quash the *Bestwall* subpoenas, and ordered those subpoenas to be enforced as written. *In re Bestwall LLC*, No. 21-2263, 2022 WL 3642106, at *7, -- F. 4th -- (3d Cir. Aug. 24, 2022).

with the *Bestwall* District Court’s ruling, given the contemplated pre-disclosure anonymization and “the fact that there’s no ... personal identifying information now satisfies the privacy concerns.” Debtor’s Counsel’s Sept. 26, 2022 Decl. Ex. A, Dec. 16, 2021 DBMP Trans. at 134:9–16. For the same reason, the Bankruptcy Court declined a request to limit the data sought by the DBMP subpoenas to a random ten percent sample of claimants, finding that the goals of sampling (to protect Claimants’ confidentiality) were met by DBMP’s requested relief. Importantly, the court recognized that DBMP “needs to be able to match [Trust data with a specific claimant] or otherwise, this is unusable to it for its purposes.” *Id.* at 134:17–20.

In *Aldrich*, the Bankruptcy Court formalized its ruling granting the Debtors’ motion to issue the Subpoenas, including those to Verus and the Trusts, in a written order on July 1, 2022. *See* Bankruptcy Court Order [D.I. 20 Rider to Exs. A–I]. In addition to authorizing service of the Subpoenas, the Bankruptcy Court specifically held that the information the Debtors seek is relevant and necessary to their bankruptcy case:

The subpoenas seek evidence that is relevant and necessary to specific purposes in connection with the estimation of the Debtors’ liability for current and future asbestos-related claims and the negotiation, formulation, and confirmation of a plan of reorganization in these cases, specifically: the determination of whether pre-petition settlements of mesothelioma claims provide a reliable basis for estimating the Debtors’ asbestos

liability; the estimation of the Debtors' asbestos liability; and the development and evaluation of trust distribution procedures for any plan of reorganization confirmed in these cases.

Id. ¶ 5.

The Bankruptcy Court overruled the objections to the Subpoenas raised by the ACC and one of the subpoena targets, including those based upon relevance, proportionality and burden. The Bankruptcy Court also imposed rigorous confidentiality and data security provisions which it determined would adequately protect the privacy interests of the Matching Claimants. Those protective measures are contained on seven pages of the Bankruptcy Court Order, and are expressly incorporated into the Subpoenas. *See id.* ¶¶ 6, 9, 12–16.

C. The Debtors Serve the Subpoenas.

On July 5, 2022, the Debtors served the Subpoenas on Verus and the Trusts. The Bankruptcy Court Order is the rider to each of the Subpoenas. *See id.*¹⁰ The Subpoenas do not request that Verus or the Trusts search for or produce any documents. The Subpoenas do not request that Verus or the Trusts produce any PII concerning any claimant. The Subpoenas do not request the details or amounts of any recoveries any claimant obtained from the Trusts. Instead, the Subpoenas are narrowly tailored to seek production of a small number of data fields from

¹⁰ On July 15, 2022, at the request of counsel, the Debtors re-served the Subpoenas on counsel for the Trusts via email.

Verus' and the Trusts' databases that would allow the Debtors to identify whether and the extent to which claimants who obtained recoveries on asbestos claims from the Debtors also alleged exposures to asbestos from the Trusts' Underlying Companies and sought and obtained recoveries from the Trusts. *See id.* ¶ 10. This is the very type of information the *Garlock* court relied on in that case in determining that “settlement history data [did] not accurately reflect fair settlements because [asbestos] exposure evidence was withheld” in the tort system and therefore, reliance on the that settlement history in the tort system was not an appropriate way to estimate the debtor’s true asbestos liability. *Garlock*, 504 B.R. at 94.

Specifically, for each Matching Claimant, the Debtors request that Verus and the Trusts produce:

1. Claimant pseudonym;
2. Claimant’s law firm (with contact information);
3. Date claim filed against Trust;
4. Date claim approved by Trust, if approved;
5. Date claim paid by Trust, if paid;
6. If not approved or paid, status of claim; and
7. Exposure-related fields, including: (i) date(s) exposure(s) began; (ii) date(s) exposure(s) ended; (iii) manner of exposure; (iv) occupation and industry when exposed; and (v) products to which exposed.

See id. The production of the data will be subject to anonymization, notice to affected claimants, substantial confidentiality requirements, and strict access and use restrictions, all as set forth in the Bankruptcy Court Order. *See generally id.*

D. Movants File the Present Motions.

On August 19, 2022, the Trusts filed their Motion to Quash and In Support of Stay,¹¹ and Verus filed its Motion to Quash Subpoena and to Stay¹² that same day. The Matching Claimants filed their Joinders and Motion to Quash on September 2, 2022.¹³ The Motions to Quash argue many of the same issues previously ruled on by the Bankruptcy Court.

On September 9, 2022, the Debtors filed the Motion to Transfer.

ARGUMENT

I. THIS COURT SHOULD DENY THE MOTIONS TO QUASH.

The Court should deny the Motions to Quash in full.

A party moving to quash “has the heavy burden of demonstrating the unreasonableness or oppressiveness” of a subpoena. *Burgess v. Galloway*, Civ. No. 20-06744 (FLW) (DEA), 2021 WL 2661290, at *3 (D.N.J. Jan. 28, 2021).

¹¹ *See* Memorandum of Law in Support of Third-Party Asbestos Trusts’ Motion to Quash Subpoenas and In Support of Stay [D.I. 1-1] (the “Trusts Motion”).

¹² *See* Verus Claim Services, LLC’s Memorandum of Law in Support of its Motion to Quash Subpoena and to Stay [D.I. 5-1] (the “Verus Motion”).

¹³ *See* Non-Party Matching Claimants’ Memorandum of Law in Support of (I) Motion to Quash or Modify Subpoenas and (II) Joinders [D.I. 13-3] (the “Matching Claimants Motion”).

Importantly, “[o]nce the subpoenaing party has shown that the documents are relevant, the objecting party must demonstrate why discovery should nevertheless be denied,” *In re Novo Nordisk Sec. Litig.*, 530 F. Supp. 3d 495, 501 (D.N.J. 2021), considering the party’s need for the documents, the breadth and time period of the subpoena, the particularity with which the documents are described, and the burden imposed. *Burgess*, 2021 WL 2661290, at *3. Additionally, “although it is appropriate to consider” that Movants are not parties to the Debtors’ bankruptcy cases, that factor does not “rigidly tilt[] in favor of shielding them from discovery.” *Software Rts. Archive, LLC v. Google Inc.*, Misc. No. 09-017-JIF, 2009 WL 1438249, at *2 (D. Del. May 21, 2009). If it did, there would be no Rule 45 subpoenas at all.

Movants cannot carry their burden here, because the Subpoenas: (1) fully comply with Rule 45 in that they are necessary, relevant, and proportional to the needs of the Debtors’ bankruptcy cases; and (2) do not implicate any confidentiality concerns.

A. The Subpoenas Comply with Rule 45.

The Subpoenas comply with Rule 45 because they seek information that is relevant and necessary to the Debtors’ bankruptcy cases, and do so in a permissible manner.

1. The Subpoenas Seek Relevant Information.

The Subpoenas here clearly seek relevant information, and Movants' arguments to the contrary are meritless. For discovery purposes, "[r]elevance is to be liberally construed." *In re Novo Nordisk Sec. Litig.*, 530 F. Supp. 3d at 503. Relevancy "is defined as 'any matter that bears on, or that reasonably could lead to other matters that could bear on, any issue that is or may be in the case.'" *Aetrex Worldwide, Inc. v. Burten Distrib., Inc.*, Civ. No. 13-1140 (SRC), 2014 WL 7073466, at *5 (D.N.J. Dec. 15, 2014). For that reason, the Federal Rules "strongly favor[] disclosure." *Id.*

Here, three different bankruptcy judges across four different cases have found that the same type of information sought by the Subpoenas was relevant to estimating a debtor's liabilities for asbestos personal injury claims. *See Garlock*, 504 B.R. 71; *In re Bestwall LLC*, No. 21-MC-141 (CFC), 2021 WL 2209884 (D. Del. June 1, 2021); *DBMP Order* [D.I. 20 Ex. L]; Bankruptcy Court Order [D.I. 20 Rider to Exs. A–I].¹⁴ Each of these courts was steeped in the factual background and details of the cases before them. The Bankruptcy Court, in authorizing the Subpoenas to Verus and the Trusts, specifically found that the information sought

¹⁴ In addition, last week, a fourth judge weighed in, as the Delaware Bankruptcy Court denied Paddock Enterprises' Motion to Quash a subpoena identical to those at issue here that the Debtors served on Paddock at the same time the Debtors served the Subpoenas here. *See In re Paddock Enterprises, LLC*, No. 20-10028 (LSS) (Bankr. D. Del. Sept. 22, 2022) [D.I. 1632].

by the Subpoenas was “relevant and necessary” to the Debtors’ cases. *See* Bankruptcy Court Order [D.I. 20 Rider to Exs. A–I] ¶ 5. In doing so, the Bankruptcy Court relied significantly on the reasoning from *Garlock* to allow the Debtors the ability to investigate whether they received full and accurate information from claimants in the tort system before resolving claims.

Movants, all non-parties to the Debtors’ bankruptcy cases, claim in their Motions to know far better than these judges what is relevant to those cases. They are wrong. In their Motions to Quash, Movants demonstrate that they flatly misunderstand the reasons the Subpoenas were served and the relevance of the requested information to the Debtors’ bankruptcy cases. According to the Trusts, the requested information has “no bearing on the Debtors’ potential liability,” because the information filed with the Trusts is “based on alleged exposure to the asbestos containing products of the pertinent Underlying Companies, *not* based on exposure to any products of the Debtors.” Trusts Motion [D.I. 1-1] at 19, 21 (emphasis in original). Verus makes the same erroneous argument. *See* Verus Motion [D.I. 5-1] at 12.

The Subpoenas do not seek information that Verus and the Trusts possess about exposure to the Debtors’ own products; rather, the Subpoenas seek information that shows whether the Matching Claimants, who already asserted asbestos personal injury claims against the Debtors, also asserted and/or ultimately

recovered on the same claims for asbestos-related personal injury against the Trusts. At its heart, the requested information will assist in determining whether the Debtors' settlements of asbestos claims in the tort system prior to bankruptcy provide a reliable basis for estimating their actual asbestos liability. *See* Bankruptcy Court Order [D.I. 20 Rider to Exs. A–I] ¶ 5. The information will help show whether or not those same claimants who asserted and resolved claims against the Debtors also asserted and/or recovered on claims against the Trusts, and will allow the Debtors to determine whether those claimants' assertions and recoveries against the Trusts or their Underlying Companies were appropriately disclosed to the Debtors while in the tort system. Contrary to Verus' argument that the Debtors "have never articulated what they think might be relevant within the requested materials," Verus Motion [D.I. 5-1] at 8, the Debtors have repeatedly demonstrated this information's importance: the Debtors were involved in many of the same tort cases where *Garlock* found that settlement history was tainted because exposure evidence and alternative recoveries were not appropriately disclosed in discovery requests. This showing was the very reason the Bankruptcy Court found the information sought by the Subpoenas is "relevant and necessary" to the Debtors' bankruptcy cases. *See* May 26, 2022 Trans. [D.I. 20 Ex. K] at 50.

2. The Subpoenas Do Not Create an Undue Burden.

Movants' conclusory undue burden arguments should also be rejected. For example, Verus argues that the Subpoena should be quashed because "compliance would cause unreasonable cost and disruption to Verus' operations." Verus Motion [D.I. 5-1] at 15. These conclusory allegations of burden do not pass muster.

A nonparty objecting to a subpoena on burden grounds must "clarify and explain its objections and ... provide [the factual] support therefor." *Baier v. Princeton Office Park, L.P.*, No. 3:08-cv-5296 PGS DEA, 2018 WL 5253288, at *4 (D.N.J. Oct. 22, 2018) (internal quotation marks omitted). A "mere statement ... that a discovery request is 'overly broad, burdensome, oppressive and irrelevant' is not adequate." *Id.* Rather, to establish undue burden, Movants instead must come forward with evidentiary proof, usually in the form of an "affidavit or [other] evidence which reveals the nature of the burden." *Deibler v. SanMedica Int'l, LLC*, Civ. No. 19-20155 (NLH/MJS), 2021 WL 6136090, at *7 (D.N.J. Dec. 29, 2021). That burden requires that Movants show "with specificity ... a clearly defined and serious injury." *Burgess*, 2021 WL 2661290, at *5.

Movants assert a number of unsupported or otherwise meritless arguments in their efforts to establish an undue burden. Verus alleges that "the burden of just collecting and producing the requested information is extraordinary," as Verus

does not maintain “original documentation as submitted by a claimant.” Verus Motion [D.I. 5-1] at 15. But the Subpoenas do not seek production of any documents of any type, let alone “original documentation as submitted by a claimant.” Instead, the Subpoena seeks to have Verus extract certain data fields from within the database it admits it possesses (which should be an entirely automated process) and place that data in an excel or database file for production. *See* Bankruptcy Court Order [D.I. 20 Rider to Exs. A–I] ¶ 10.

Apparently recognizing this, Verus and the Matching Claimants pivot to argue that the Subpoenas create an undue burden because they “purport[] to compel the creation of documents that do not currently exist” by requesting the data from Movants’ databases. Verus Motion [D.I. 5-1] at 15–16; Matching Claimants Motion [D.I. 13-3] at 20. Movants are, once again, wrong. Courts have repeatedly held that “a requested search ‘requiring a party to query an existing database to produce reports for opposing parties’ does not equate to requiring the creation of a new document.” *McGlone v. Centrus Energy Corp.*, No. 2:19-cv-2196, 2020 WL 4462305, at *3 (S.D. Ohio Aug. 4, 2020) (collecting cases); *Apple Inc. v. Samsung Elecs. Co.*, No. 12-cv-0630-LHK (PSG), 2013 WL 4426512, at *3 (N.D. Cal. Aug. 14, 2013) (“Courts regularly require parties to produce reports from dynamic databases, holding that ‘the technical burden ... of creating a new dataset for the instant litigation does not excuse production.’”). And in the

principal case cited by the Matching Claimants to support their argument (*McGlone*), the Court expressly stated that the party’s “motion to quash will not be granted on this ground.” *McGlone*, 2020 WL 4462305, at *3.

Additionally, Verus alleges that compliance with the Subpoena will be “labor-intensive and expensive” such that it “would negatively impact the performance of [Verus’] duties required under its contracts with the various Trusts.” *Id.* Nowhere, however, does Verus actually explain (or even attempt to quantify) this supposed burden, let alone provide evidence to support it—neither in its Motion nor in the accompanying declaration of its President, Mark T. Eveland. Verus does not provide an estimate or estimated range of the hours it would take to respond to the Subpoena. Instead, Verus and the Trusts repeatedly rely on the same conclusory statements. *See, e.g.*, Eveland Decl. ¶¶ 23–25; Trusts Motion [D.I. 1-1] at 4 (“[C]ompiling the requested data and creating the mandated documents has a material, negative impact on the Trusts’ ability to fulfill their mission[.]”); Verus Motion [D.I. 5-1] at 16 (“[T]he burden of just collecting and producing the requested information is extraordinary.”). Those conclusory statements fail as a matter of law. *See, e.g.*, *Burgess*, 2021 WL 2661290, at *5 (citing *Transcor, Inc. v. Furney Charters, Inc.*, 212 F.R.D. 588, 592–93 (D. Kans. 2003) (general assertions of competitive disadvantage insufficient to show undue burden for the purpose of a motion to quash)); *Corradi v. N.J. State Parole Bd.*,

Civ. No. 16-5076, 2019 WL 1795545, at *2 (D.N.J. Apr. 24, 2019) (failing to demonstrate undue burden because party did not “detail the monetary or labor costs” of complying with the subpoena); *Baier*, 2018 WL 5253288, at *4 (finding that statements that discovery would be “exceedingly burdensome,” “incredibly burdensome,” or “incredibly difficult” to produce were inadequate).

Finally, the Trusts claim that the burden of responding to the Subpoenas is undue because any production is done “at the Trusts’ expense.” Trusts Motion [D.I. 1-1] at 14. This is simply false, and had the Trusts bothered to read the Bankruptcy Court Order (attached as the rider to the Subpoenas served on each of them), they would have known that. Instead, the Bankruptcy Court ordered that “the Debtors shall reimburse the Producing Parties for their reasonable and documented expenses in complying with this Order and the subpoenas. The Producing Parties shall have no liability in connection with their compliance with the subpoenas described in this Order.” *See* Bankruptcy Court Order [D.I. 20 Rider to Exs. A–I] ¶ 19. Courts routinely overrule objections based on undue burden by similarly shifting costs to the party seeking production. *See Seven Z. Enters., Inc. v. Giant Eagle, Inc.*, No. 2:17-CV-740, 2020 WL 7240365, at *4 (W.D. Pa. Mar. 6, 2020) (“[A]ny potential undue burden can be mitigated by cost shifting permitted under Rule 45(d)(2)(B)(ii), which requires nonparties to be protected from significant expense resulting from compliance with a subpoena.”);

Cash Today of Tex., Inc. v. Greenberg, No. 02-MC-77-GMS, 2002 WL 31414138, at *4 (D. Del. Oct. 23, 2002) (finding no undue burden where a party offered to copy “over 20,000 individual loan files” at its own expense, making the burden “substantially reduced such that the burden is not ‘undue’”). The Bankruptcy Court Order already employs the cost-shifting mechanism in Rule 45(d), and the Debtors will be the party paying the reasonable expenses for Verus and the Trusts to comply with the Subpoenas.

3. The Subpoenas Only Seek Necessary Information and Comply with Relevant Authority, Making Sampling Unnecessary and Inappropriate.

The Trusts and the Matching Claimants next argue that the Subpoenas are improper because they “fail to include a 10 percent sampling requirement or meaningful anonymization.” Trusts Motion [D.I. 1-1] at 22; Matching Claimants Motion [D.I. 13-3] at 16. The Trusts and Matching Claimants based their sampling demand on the since-reversed order of the Delaware District Court, which quashed more expansive subpoenas issued in the *Beswall* bankruptcy. *Id.* Verus advances a version of the same argument, claiming that sampling is appropriate because: (1) the Debtors’ expert previously used a 10 percent sample in *Bestwall*; (2) a sample “significantly reduces the risk of inadvertent or erroneous disclosure of confidential information by limiting the volume of data disclosed,” Verus Motion [D.I. 5-1] at 10; and (3) the Debtors “are not genuinely interested in claims

estimation,” *id.* at 11. But as the Bankruptcy Court has repeatedly held (in both *Aldrich* and *DBMP*), sampling is unnecessary and inappropriate here, as the Subpoenas incorporate extensive protections to address any concerns raised by the *Bestwall* District Court related to Matching Claimants’ confidentiality.

In the *Bestwall* District Court’s ruling quashing the subpoenas that was subsequently reversed by the Third Circuit, the District Court emphasized the need for “additional safeguards” to protect claimants’ privacy because of the “sweeping personal data” that *Bestwall* sought. *See Bestwall*, 2021 WL 2209884, at *6–7. The District Court in *Bestwall* outlined safeguards it believed were appropriate to ensure that claimants’ sensitive information was kept confidential, which included a sampling requirement and anonymization procedures. *Id.*

Although the Third Circuit has ordered that the subpoenas be enforced, as originally drafted, without any sampling requirement or anonymization procedures, *see In re Bestwall LLC*, 2022 WL 3642106, at *7, the Subpoenas here were nevertheless designed to address the *Bestwall* District Court’s concerns. Specifically, the Subpoenas were tailored to match subpoenas approved by the Bankruptcy Court in *DBMP*, which post-dated the District Court’s decision in *Bestwall*, considered it, and, over objections that sampling remained necessary, found that the subpoenas complied with the District Court’s ruling in *Bestwall*. *See generally* *DBMP* Order [D.I. 20 Ex. L].

Importantly, unlike *Bestwall*, the Subpoenas here do not request *any* PII regarding the Matching Claimants. The Debtors already possess that information (the claimants themselves provided it in connection with claims asserted against the Debtors) and have maintained that information securely for years. The Subpoenas only seek non-confidential information concerning whether the Matching Claimants submitted claims against the Trusts, whether they recovered on those claims, and how they were exposed to asbestos-containing products. None of the information sought implicates any confidential information.

Additionally, the Debtors have a mechanism to anonymize all data before it is even produced. Pursuant to the Bankruptcy Court Order, the Matching Key contains the last name, social security number and a unique numerical identifier for each Claimant. *See* Bankruptcy Court Order [D.I. 20 Rider to Exs. A–I] ¶ 6. Verus and the Trusts are to use the Matching Key provided by the Debtors’ expert to determine which claimants asserted claims against the Trusts and either Debtor. *Id.* ¶ 7. Those are the “Matching Claimants” and for each Matching Claimant, the Subpoenas direct Verus and the Trusts to produce only the requested trust data and the unique numerical identifier—no PII. *Id.* ¶ 10. The Matching Key must remain “separate” from other data “in a password-protected folder,” “accessible only to [authorized] individuals.” *Id.* ¶ 9. As the Bankruptcy Court ruled in the *DBMP* case on identical subpoenas, because of the protections provided with respect to

claimant data and the fact that no PII will be produced in response to the Subpoenas, sampling is unnecessary. *See* Aug. 11, 2022 DBMP Trans. [D.I. 20 Ex. M] at 67:7–10 (“I think sampling is something that I strongly favor, but I believe for the reasons that I’ve previously stated in a prior order that we have protections here and that there’s not a real risk of harm.”).

The Trusts argue that the Debtors could nonetheless “easily limit the Trust Subpoenas to a 10 percent sample with appropriate anonymization measures” to limit injury that could be caused by any potential data breach—the exact concerns raised by the District Court in *Bestwall*. Trusts Motion [D.I. 1-1] at 24; *see also* Verus Motion [D.I. 5-1] at 10. The Bankruptcy Court, both in *Aldrich* and in *DBMP*, heard this exact argument, and found that the matching key process and confidentiality provisions provided in the Bankruptcy Court Order adequately addressed the concerns, making sampling unnecessary.¹⁵ Just recently, the *DBMP*

¹⁵ Verus and the Trusts argue that because the *Bestwall* debtor ultimately reissued subpoenas with a 10 percent sampling requirement, and because the Debtors here employ the same expert (Bates White), “a 10 percent sample size is sufficient.” Trusts Motion [D.I. 1-1] at 23; *see also* Verus Motion [D.I. 5-1] at 11. As Movants note, Bates White recognized that sampling can be a useful strategy, especially when “the analysis of the entire dataset is not an option[.]” Mullin Decl. ¶ 12. Importantly, the *Bestwall* subpoenas were reformatted and reissued as a result of the *Bestwall* District Court’s order—and Bates White opined that sampling would be appropriate at a point in time when “a population-level analysis was not feasible.” *Id.* ¶ 27. But more, the Third Circuit has now ordered that the original *Bestwall* subpoenas, which do not include any sampling requirement, be enforced as written. *See In re Bestwall LLC*, 2022 WL 3642106, at *7.

court heard yet a third set of objections by claimants seeking to quash or at least require sampling for virtually identical subpoenas. But the *DBMP* court again found that the protections provided in the Subpoenas eliminated the risk of harm—making sampling unnecessary. *See* Aug. 11, 2022 DBMP Trans. [D.I. 20 Ex. M] at 67:5–10.

Sampling is not only unnecessary, but it is also inappropriate here, as it would increase costs, incur delays, and may decrease the precision of any ensuing analysis, outweighing any marginal benefit. As an initial matter, a sample provides minimal cost savings for Verus (and in any case, the Debtors have agreed to pay Verus’ costs, so cost is not relevant). Verus has admitted that the requested information resides in electronic format; retrieving the factual and discrete data fields “should involve a relatively straightforward, automated search and extraction of data.” Mullin Decl. ¶ 22. And while the Subpoenas request data related to 12,000 potential matching claimants, the Debtors have limited the Subpoenas to claims “that are most important” for their current bankruptcy estimation. *Id.* ¶ 16. The Debtors have excluded from their requests hundreds of thousands of claims, including mesothelioma claims resolved before 2005 or that were unresolved as of the Debtors’ petition date, lung cancer claims, and non-malignant claims. *Id.* And ultimately, the costs in complying with the Subpoena are only minimally impacted by the number of claimants at issue—the burden of electronically extracting data

from a database and using an automated program is not significantly impacted by the number of claimants whose data is extracted. Unlike a request for 12,000 documents, whose burden could be lessened by reducing the number of documents, a sample here that reduces the number of claimants whose data is extracted does “little to nothing to reduce the burden on Verus and the Trusts.” *Id.* at 22. Further, such “burden” is minimal, as the time to respond to the subpoena is limited because the information is already in electronic form. *Id.*

Verus’ claims of burden are also belied by the experience of other similar productions in asbestos bankruptcy cases. In *Garlock*, for example, similar categories of data requested from certain trusts were produced less than a month after the Court’s order overruling certain objections was entered.¹⁶ Similarly, during discovery relating to plan confirmation and estimation of non-mesothelioma claims, the *Garlock* court ordered a trust to produce asbestos exposure and medical data fields, as well as copies of certain medical and exposure records submitted to that trust, pertaining to over 90,000 *Garlock* claimants, 35 days after the order on that discovery was entered.¹⁷ And particularly relevant here, it took less than thirty

¹⁶ See Letter from Stephen M. Juris to Garland S. Cassada dated Sept. 5, 2012, attached as Exhibit B to the Debtor’s Counsel’s Sept. 26, 2022 Decl.

¹⁷ See Order Granting in Part and Denying in Part Debtors’ Motion for Leave to Serve Subpoena on Manville Trust, *In re Garlock Sealing Techs. LLC*, Case No. 10-31607 (Bankr. W.D.N.C. July 24, 2015) [D.I. 4721], attached as Exhibit C to the Debtor’s Counsel’s Sept. 26, 2022 Decl.

days for the Verus-managed T H Agriculture & Nutrition, L.L.C. Asbestos Personal Injury Trust—one of the Trusts on which the Debtors served a Subpoena, *see* Subpoena [D.I. 20 Ex. H]—to produce similar data in the *Bondex* bankruptcy case. Mullin Decl. ¶ 22.

The benefit of a sample is accordingly little, and the marginal cost savings to Verus (paid for by the Debtors in any case) in extracting data for a smaller number of claimants is substantially outweighed by the negatives associated with sampling. First, the process of “designing a random, representative, and efficient sample” would increase costs and may lead to significant delays. *Id.* ¶ 17. This results from the fact that there are numerous approaches to sampling that could be applied in any given context and any sampling methodology would need to be negotiated with other parties to the estimation proceeding and almost certainly litigated. *Id.*¹⁸

¹⁸ Past practice shows these delays are real, and not merely theoretical. In *Bestwall*, the trusts and the claimant representatives could not agree on what sample would be appropriate, resulting in a year and a half of further litigation and expense. *See, e.g.*, Third Party Trusts’ Response in Opposition to Bestwall LLC’s Motion to Amend ¶¶ 17, 34–35, *In re Bestwall LLC*, No. 21-mc-141-CFC (D. Del. July 12, 2021) [D.I. 42] (noting that the Trusts and Trust claimants do not agree to Bestwall’s proposed 10% random sample); The Official Committee of Asbestos Claimants’ and the Future Claimants’ Representative’s Objection to the Motion of the Debtor to (A) Approve Resolved Claim Sample and (B) Authorize Related Disclosure Pursuant to Rule 502(d) of the Federal Rules of Evidence ¶¶ 5, 26, 30, 37, *In re Bestwall LLC*, No. 17-31795 (Bankr. W.D.N.C. Nov. 11, 2021) [D.I. 2214] (stating that the Claimant Representatives “do not believe that a sample . . . is necessary or appropriate to obtain an estimate of the Debtor’s asbestos liability” and that any sample requires “the exchange of expert reports and expert discovery,” which should take place at trial). *See also* Mullin Decl. ¶ 17.

Second, sampling necessarily decreases the precision of any ultimate analysis. The use of a sample, by definition, introduces sampling error into the analysis. The presence of sampling error will, again by definition, decrease the precision of any estimates deriving from the sample.” *Id.* ¶ 19. And, as Claimant Representatives have asserted in *Bestwall*, if information withholding by claimants is indeed rare, “the required sample size to obtain an acceptable degree of precision could be quite large, further minimizing any alleged cost savings associated with a sampling approach.” *Id.* ¶ 20. These extensive negative consequences outweigh any negligible savings associated with extracting data already in electronic format.

4. The Subpoenas Are Otherwise Permissible.

Movants’ remaining Rule 45 arguments are without merit. The Trusts argue that the Subpoenas are “procedurally and jurisdictionally improper,” because the “North Carolina bankruptcy court did not establish jurisdiction over the Trusts such that it could bind them by way of the Order.” Trusts Motion [D.I. 1-1] at 17. Verus makes a similar claim (without citing any case law stating that such an order is inappropriate), alleging that the Subpoena imposes an undue burden beyond the jurisdiction of the Bankruptcy Court by “impos[ing] obligations far beyond what Rule 45 could require of Verus.” Verus Motion [D.I. 5-1] at 13.

This argument is meritless. The Debtors are not suggesting that the Bankruptcy Court established jurisdiction over Verus or the Trusts to bind them to

its Order. Instead, the Bankruptcy Court issued its Order authorizing the Debtors to issue their Subpoenas, laying out what information the Debtors were permitted to request in those Subpoenas, and identifying the restrictions that were placed on the Debtors in doing so. Bankruptcy Court Order [D.I. 20 Rider to Exs. A–I].

Unlike most subpoena riders, which are typically drafted by attorneys without any judicial oversight or involvement, the riders to the Subpoenas here are the Bankruptcy Court Order, where the court carefully proscribed what information the Debtors could request and provided significant limitations on the Debtors’ use of that information.

The Subpoenas are no different than any other subpoena issued with or without a court’s blessing: they command Movants to produce certain information, and if Movants fail to comply with the Subpoenas, they would then be subject to the same potential sanctions under Rule 45—by a court with jurisdiction over Movants—as any other subpoena recipient who refuses to respond. *See In re Symington*, 209 B.R. 678, 684 (D. Md. 1997) (“While the Rule 2004 examination is normally authorized by the bankruptcy court without advance notice, this does not deprive the prospective deponent of the right to object after the motion is granted or to file a motion for a protective order.”).

B. The Subpoenas Do Not Seek Confidential Information.

Finally, Movants argue that the Subpoenas ought to be quashed because they seek a “wealth of confidential, sensitive” information, Matching Claimants Motion [D.I. 13-3] at 2, and “privileged or other protected matter,” including claimants’ “sensitive and confidential medical information,” without providing meaningful protection to safeguard Claimants’ confidentiality interests. Verus Motion [D.I. 5-1] at 17; *see also* Trusts Motion [D.I. 1-1] at 26–27. Movants are wrong on both counts.

1. The Subpoenas Do Not Seek Disclosure of Confidential Information.

Movants have not shown that the information sought is protected under Rule 45, and their confidentiality arguments should be overruled for two reasons. First, Movants misrepresent the information the Subpoenas seek—none of which is confidential. Second, Movants have offered no authority nor explanation showing that the information the Subpoenas actually do seek is protected.

Verus and the Trusts open with the claim that the Subpoenas seek confidential information in the form of submissions that contain “highly sensitive medical and personal information,” including claimants’ “SSNs, last names, addresses, and confidential narrative responses about their health and asbestos exposures,” Trusts Motion [D.I. 1-1] at 26, and “death certificates, divorce records, military records, and even tax returns,” Verus Motion [D.I. 5-1] at 18.

These assertions are false. The Subpoenas do not request *any* of this information. *See* Bankruptcy Court Order [D.I. 20 Rider to Exs. A–I] ¶ 10. Indeed, the Debtors already have the names, social security numbers and addresses of the Matching Claimants by virtue of the fact that all of them, by the very definition of “Matching Claimant,” are individuals who asserted and resolved asbestos personal injury claims against the Debtors.

Once stripped of these false claims about information the Subpoenas *do not even seek*, Movants’ confidentiality arguments are exposed for what they are: meritless. The information the Subpoenas actually request is limited to discrete facts related to claims submitted, including a claimant’s law firm and the date the claim was filed and approved by the Trusts, and facts related to a claimant’s asbestos exposure, including the date the exposure began and ended and the product to which a claimant was exposed. *See* Bankruptcy Court Order [D.I. 20 Rider to Exs. A–I] ¶ 10. The Trusts do not even attempt to explain how any of this information is confidential, and Verus fails to cite a single case that shows that it is. *See* Verus Motion [D.I. 5-1] at 17–19, 23–25.

The Matching Claimants argue that the “potential invasion of privacy [is] in itself grounds to quash under Rule 45(d)(3)(A)(iii),” Matching Claimants Motion [D.I. 13-3] at 19—but that argument is wrong as a matter of law. There is no argument that the Subpoenas seek privileged information, *see Jones v. ACE Cheer*

Co., No. 22-mc-9-SHL-tmp, 2022 WL 969720, at *4 (W.D. Tenn. Mar. 30, 2022) (“A privacy interest is not a ‘privilege’ under Rule 45[.]”), nor do the Subpoenas seek a “protected matter” under any reading of Rule 45(d)(3)(A)(iii). Indeed, courts, including the Third Circuit in the recent *Bestwall* decision, regularly allow, where relevant, third-party discovery of more sensitive information than the information implicated by the Subpoenas here. *See, e.g., In re Bestwall LLC*, 2022 WL 3642106, at *8 (ordering subpoenaed parties to comply with subpoenas in full, which included requests for matching claimants’ PII); *Rodriguez v. City of New Brunswick*, Civ. No 12-4722 (FLW), 2017 WL 5598217, at *5–6 (D.N.J. Nov. 21, 2017) (protected health information); *Allied World Assurance Co. v. Lincoln Gen. Ins. Co.*, 280 F.R.D. 197, 204 (M.D. Pa. 2012) (personnel files); *S. New England Tel. Co. v. Glob. NAPs, Inc.*, Misc. No. 2007-21, 2007 WL 3171949, at *3 (D.V.I. Oct. 26, 2007) (bank accounts).

Next, Verus claims that the Court should quash the Subpoena because it seeks “protected, trade secret, and confidential commercial material” that the Debtors’ expert, Bates White, could potentially “‘reverse engineer’ ... to recreate Verus’ proprietary algorithms.” Verus Motion [D.I. 5-1] at 23–24.

Verus’ claim again fails. In resisting the discovery of an alleged trade secret, Verus must show that the information sought is indeed a trade secret and that disclosure “will work a clearly defined and serious injury to” it. *In re*

Mushroom Direct Purchaser Antitrust Litig., No. 06-0620, 2012 WL 298480, at *5 (E.D. Pa. Jan. 31, 2013). See also *Syngenta Crop Prot., LLC v. Willowood, LLC*, Civ. No. 16-mc-171-RGA, 2016 WL 4925099, at *2 (D. Del. Sept. 14, 2016). As above, Verus has not cited a single case showing that the requested material—which, again, is data related to claimants—qualifies as trade secret material. See *R.J. Reynolds v. Philip Morris Inc.*, 29 F. App’x 880, 882 (3d Cir. 2002) (a party seeking to quash pursuant to Fed. R. Civ. P. 45(c)(3)(B)(i) has the burden of proving that its documents are confidential or trade secrets and must provide more than a skeletal description).

Verus is also wrong as a matter of fact. Contrary to Verus’ proposition that the Subpoena “expose[s] Verus’ proprietary trade secrets to third parties, including competitors such as Bates White,” Eveland Decl. ¶ 7, the Debtors’ expert does not compete with Verus. Bates White “does not provide third-party claims administration services, nor does it process trust claims.” Mullin Decl. ¶ 30. And as noted throughout, the information that the Debtors seek is strictly limited, factual information about the Matching Claimants. The Debtors do not seek information that contains the valuation of any trust claims; rather, the Subpoenas ask whether a claimant made a claim against one of the Trusts and received any payment. Without any information related to the valuation of any trust claims,

Bates White “could not ‘reverse engineer’ any algorithms proprietary to Verus.”

Id.

Even if this material did qualify as trade secret material, the Debtors have carried their corresponding burden, as the Bankruptcy Court has held, of showing that the information is “relevant and necessary” to the Debtors’ estimation proceeding. *See* Bankruptcy Court Order [D.I. 20 Rider to Exs. A–I] ¶ 5. Either way, because “trade secrets are not absolutely privileged from discovery in litigation,” the Bankruptcy Court Order’s extensive confidentiality and use provisions—and, if needed, an additional protective order—suffice to protect the business interests advanced by Verus. *Syngenta*, 2016 WL 4925099, at *2. *See also Hancock v. Credit Pros Int’l Corp.*, No. 2:20-cv-02826-SRC-CLW, 2021 WL 2948154, at *9 (D.N.J. July 13, 2021) (“Courts encountering the objection raised here [that the information requested is confidential, proprietary, and a trade secret] routinely overrule it where ... confidentiality orders are in place.”); *Federal Trade Comm’n v. Thomas Jefferson Univ.*, Civ. No. 20-01113, 2020 WL 3034809, at *3 (E.D. Pa. June 5, 2020); *In re Mushroom Direct Purchaser*, 2012 WL 298480, at *5–6; *Ford Motor Co. v. Edgewood Props., Inc.*, Civ. No. 06-1278 (WJM)(ES), 2011 WL 601312, at *3 (D.N.J. Feb. 15, 2011).

Last, the remaining cases that the Matching Claimants cite have no factual similarity to the Subpoenas here and similarly fail to support their position. *See*,

e.g., *Mannington Mills, Inc. v. Armstrong World Indus., Inc.*, 206 F.R.D. 525, 529, 532 (D. Del. 2002) (involving company’s subpoena for its primary competitor’s “trade secrets”); *Singletary v. Sterling Transp. Co.*, 289 F.R.D. 237, 241 (E.D. Va. 2012) (noting that the subpoenas “could lead to the production of medical information, social security numbers, payroll information, income tax information, information about family members, and other documents completely extraneous to this litigation,” and that it was “difficult to conceive of subpoenas which could be more expansively written”); *In re Schaefer*, 331 F.R.D. 603, 608–09 (W.D. Pa. 2019) (listing factors involved in an “undue hardship” analysis and without including privacy or confidentiality); *Wilshire v. Love*, No. 3:14-cv-08374, 2015 WL 1482251 (S.D. W. Va. Mar. 31, 2015) (involving private education information that party had not shown was necessary to claim). Indeed, in certain cases cited by the Matching Claimants, the courts did not quash the subpoena at issue. *See, e.g.*, *Thomas v. Marina Assocs.*, 202 F.R.D. 433 (E.D. Pa. 2001). In short, none of these cases indicate that a subpoena seeking this information sought here should be limited or quashed.

2. The Bankruptcy Court Order’s Extensive Protections Adequately Protect Any Confidentiality Interest.

Second and relatedly, the anonymization and other confidentiality-related provisions outlined in the Bankruptcy Court Order provide extensive protections to safeguard the information implicated by the Subpoenas. Pursuant to the

Bankruptcy Court Order, the Debtors have provided to Verus and the Trusts a “Matching Key” which contains the last name, social security number and a unique numerical identifier for each claimant that asserted and resolved claims against the Debtors. *See* Bankruptcy Court Order [D.I. 20 Rider to Exs. A–I] ¶ 6. Then, pursuant to the Bankruptcy Court Order, Verus and the Trusts utilize the Matching Key to determine which of those claimants also asserted claims against the Trusts—the matches comprise the “Matching Claimants.” *Id.* ¶ 7. For each Matching Claimant, Verus produces only the requested trust data and the unique numerical identifier that allows the Debtors to match them to those in their own database. *Id.* ¶ 10. No PII is produced by Verus and the Trusts, and no Trust information produced in compliance with the subpoenas will include claimant names to other PII. *See id.* The Matching Key provided by the Debtors, which contains the PII, must remain “separate” from other data “in a password-protected folder,” “accessible only to [authorized] individuals.” *See id.* ¶ 9. And contrary to Verus’ argument that the Subpoena “provides virtually no limitation on how” the Debtors or their expert may use this data, Verus Motion [D.I. 5-1] at 20, the Bankruptcy Court Order extensively details and limits the manner in which any data can be used. *See* Bankruptcy Court Order [D.I. 20 Rider to Exs. A–I] ¶¶ 12–13, 15.

Verus argues that this anonymization scheme does not “meaningful[ly] protect claimants’ confidential information, as it allows the Debtors’ expert “to aggregate claimant data post-production” and is, at one point, “de-anonymize[d].” Trusts Motion [D.I. 1-1] at 26. But as the *DBMP* court noted, without a Matching Key that temporarily de-anonymizes the data, Trust Discovery is useless: “the debtor needs to be able to match [Trust data with a specific claimant] or otherwise, this is unusable to it for its purposes.” *See* Debtor’s Counsel’s Sept. 26, 2022 Decl. Ex. A, Dec. 16, 2021 *DBMP* Trans. at 134:17–18.

Movants repeatedly state that the Subpoenas will result in a “clearinghouse” of claimant information. Movants draw that term from a case involving whether the general public should have access through a FOIA request to data compiled by the government. *See* Verus Motion [D.I. 5-1] at 20–21 (citing *U.S. Dep’t of Just. v. Repts. Comm. For Freedom of Press*, 489 U.S. 749 (1989)); *see also* Matching Claimants Motion [D.I. 13-3] at 18 (same). More, each of the cases that Movants cite that show “grave concerns about similar data compilation schemes,” Trusts Motion [D.I. 1-1] at 26–27, assessed whether the compiled information should be made public under FOIA or the *government’s* extensive power to compile private information. *See id.* at 27; Verus Motion [D.I. 5-1] at 20–21 (citing *U.S. Dep’t of Just. v. Repts. Comm. For Freedom of Press*, 489 U.S. 749 (1989) (FOIA); *United States v. Jones*, 565 U.S. 400, 416 (Sotomayor, J., concurring) (“[T]he

government's unrestrained power to assemble data is susceptible to abuse.”)

(emphasis added); *U.S. Dep't of Def. v. Fed. Lab. Rels. Auth.*, 500 U.S. 487 (1994) (FOIA); *Havemann v. Colvin*, 537 F. App'x 142, 147–48 (4th Cir. 2013) (FOIA)).

None of those cases are about Rule 45 discovery.

But more, the data requested by the Subpoenas bears no resemblance to a “clearinghouse.” The Debtors do not seek to make the data public. The data will be kept confidential, *see, e.g., id.* ¶ 13, made available only to lawyers and experts for the parties “who ha[ve] a clear need to know or access the data to perform work in connection with a Permitted Purpose” under the Bankruptcy Court Order, *id.* ¶ 13(a), and used solely for such limited purposes within the Bankruptcy Case. *Id.* ¶¶ 12–13. Further, the data will be produced anonymously, will remain anonymous, and will be cross-referenced to claimant names and SSNs only for the strictly limited purposes necessary to use the data. *Id.* ¶¶ 10, 12–13. And Bates White, the Debtors’ expert that will ultimately analyze the information produced, routinely maintains similar information and has implemented extensive security measures that should eliminate any of Movants’ speculative concerns. *See Mullin Decl.* ¶ 28.¹⁹

¹⁹ According to the Trusts, the fact that the Debtors’ law firm and its expert “are the same counsel and expert for other debtors seeking substantively identical claimant information from trusts in other bankruptcy cases ... amplifies the risk that any data collected may be used” improperly. Trusts Motion [D.I. 1-1] at 27. Verus goes further, and speculates that the data might be “malicious[ly]

CONCLUSION

For the foregoing reasons, the Debtors respectfully request that this Court deny the Motions to Quash in full.

misappropriat[ed]” after it is consolidated and this “‘big data’ tool can be weaponized, used invasively to reveal still more about any individual claimant, and may be used for purposes wholly unrelated to claims estimations.” Verus Motion [D.I. 5-1] at 21–22. These flippant arguments are inappropriate, unsupported, *see, e.g.*, Mullin Decl. ¶ 13, and improper speculation, and should be ignored.

Dated: September 26, 2022

Respectfully submitted,

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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

IN RE:

ALDRICH PUMP LLC, et al.,

Debtor.

AC&S ASBESTOS SETTLEMENT TRUST,
COMBUSTION ENGINEERING 524(G)
ASBESTOS PI TRUST, GI HOLDINGS INC.
ASBESTOS PERSONAL INJURY
SETTLEMENT TRUST, GST SETTLEMENT
FACILITY, KAISER ALUMINUM &
CHEMICAL CORPORATION ASBESTOS
PERSONAL INJURY TRUST, QUIGLEY
COMPANY, INC. ASBESTOS PI TRUST, T H
AGRICULTURE & NUTRITION, L.L.C.
ASBESTOS PERSONAL TRUST, and
YARWAY ASBESTOS PERSONAL INJURY
TRUST,

Petitioners,

v.

ALDRICH PUMP LLC and MURRAY BOILER
LLC,

Respondents,

VERUS CLAIMS SERVICES, LLC,

Interested Party,

NON-PARTY CERTAIN MATCHING
CLAIMANTS,

Interested Party.

Chapter 11

Underlying Case No.: 20-30608
(JCW)

(United States Bankruptcy Court
for the Western District of North
Carolina)

Case No.: 22-05116 (MAS-TJB)

Honorable Michael A. Shipp

Honorable Tonianne J.
Bongiovanni

DECLARATION OF PAUL R. DeFILIPPO

I, Paul R. DeFilippo, hereby declare under penalty of perjury:

1. I am a partner of the law firm of Wollmuth Maher & Deutsch LLP; my office is located at 90 Washington Valley Road, Bedminster, New Jersey 07921. I am a member in good standing of the Bar of New Jersey. There are no pending disciplinary proceedings against me.

2. I submit this declaration in connection with *Aldrich Pump LLC and Murray Boiler LLC's Memorandum of Law in Opposition to: (I) Third-Party Trusts' Motion to Quash Subpoenas and in Support of Stay; (II) Verus Claim Services, LLC's Motion to Quash Subpoena and to Stay; and (III) Non-Party Certain Matching Claimants' Joinders and Motion to Quash*, filed contemporaneously herewith. I have personal knowledge of the matters set forth herein.

3. Attached hereto as **Exhibit A** is a true and correct copy of an excerpt from the transcript of the December 16, 2021 hearing in In re DBMP LLC, No. 20-30080 (Bankr. W.D.N.C.) (JCW) [D.I. 1260].

4. Attached hereto as **Exhibit B** is a true and correct copy of a letter from Stephen M. Juris to Garland S. Cassada dated September 5, 2012.

5. Attached hereto as **Exhibit C** is a true and correct copy of *Order Granting in Part and Denying in Part Debtors' Motion for Leave to Serve Subpoena on Manville Trust, In re Garlock Sealing Techs. LLC*, Case No. 10-

31607 (Bankr. W.D.N.C. July 24, 2015) [D.I. 4721].

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: September 26, 2022
Bedminster, New Jersey

/s/ Paul R. DeFilippo
Paul R. DeFilippo

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

| | | | |
|----|-------------------------------|---|-----------------------------|
| 3 | IN RE: | : | Case No. 20-30080-JCW |
| 4 | DBMP LLC, | : | Chapter 11 |
| 5 | Debtor, | : | Charlotte, North Carolina |
| 6 | | : | Thursday, December 16, 2021 |
| 7 | | : | 9:30 a.m. |
| 8 | OFFICIAL COMMITTEE OF | : | AP 21-03023 (JCW) |
| 9 | ASBESTOS PERSONAL INJURY | : | |
| 10 | CLAIMANTS and SANDER L. | : | |
| 11 | ESSERMAN, etc., | : | |
| 12 | Plaintiffs, | : | |
| 13 | | : | |
| 14 | v. | : | |
| 15 | DBMP LLC and CERTAINTEED LLC, | : | |
| 16 | Defendants. | : | |
| 17 | | : | |

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

APPEARANCES:

| | | |
|----|-----------------------|-----------------------------------|
| 18 | For Debtor/Defendant, | Robinson, Bradshaw & Hinson, P.A. |
| 19 | DBMP: | BY: GARLAND CASSADA, ESQ. |
| 20 | | RICHARD C. WOLF, ESQ. |
| 21 | | 101 N. Tryon Street, Suite 1900 |
| 22 | | Charlotte, NC 28246 |

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

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7 For Plaintiff, ACC:

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23 For Manville Personal Injury
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25 Facility:

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1 APPEARANCES (continued):

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5 Sander L. Esserman:

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15 ALSO PRESENT:

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Bankruptcy Administrator
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APPEARANCES (via telephone):

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and Saint-Gobain Corporation:

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1 ALSO PRESENT (via telephone): SANDER L. ESSERMAN
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1 happened, I don't think I ought to be weighing in to approve
2 partial remedies through amendments, particularly when we don't
3 have all of the parties onboard with them.

4 So the bottom line is that I don't even know that,
5 that the debtor and New CertainTeed need my endorsement. If
6 you want to make these changes, just basically stipulate that
7 this is, this is how you will construe it and you don't need
8 anyone's agreement. Just put that in a filed document and
9 whatever concern you had that I might be thinking bad things
10 about the funding agreement, putting it in writing certainly
11 would take care of, of establishing what you're willing to do.

12 So bottom line is that one, I'm inclined to deny and
13 would call upon the Representatives for the order there. Keep
14 it short and consistent with, with what we have.

15 Okay. Let's see. Where's that take us?

16 The trust motions, No. 2 on your contested matter
17 agenda, the debtor's motion for the 2004 examinations of the
18 trusts.

19 I wanted to ask a question here of the parties. I'm
20 prepared to give you a ruling on this, but I've spent some time
21 over the last two or three weeks trying to figure out what was
22 going on in Bestwall as well and that also involves what's
23 going on in, in the Delaware District Court. And it occurs to
24 me that events are moving fairly quickly up there and whatever
25 -- y'all, I think, are in front of Judge Beyer again tomorrow

1 with regard to this and by the time anyone tenders a ruling in
2 this one, things might have changed once again, depending on
3 what the second round of *subpoenas* does and what the district
4 court does if there are motions to quash.

5 So my inquiry is, does it really make sense for me to
6 rule on this now or would you like to sit on this one for a
7 month or two and see if the dust clears a little bit so you
8 know what is and isn't possible based on that case? Another
9 way of putting it is, do you want to go to all this trouble and
10 find out in Bestwall that what you've got teed up isn't going
11 to work?

12 MR. GORDON: Your Honor, Greg Gordon on behalf of the
13 debtor.

14 That, that's obviously a great question. You know, I
15 think from our perspective the way we looked at this is we
16 believe the authority that we sought in, in Bestwall and was
17 granted by Judge Beyer was appropriate.

18 THE COURT: Right.

19 MR. GORDON: And your Honor knows based on events that
20 transpired in Delaware that we disagree with the court's ruling
21 there, but we're, we're doing our best to now move --

22 THE COURT: Right.

23 MR. GORDON: -- forward in light of that, you know,
24 both to try to come up with something that would comply --

25 THE COURT: Uh-huh (indicating an affirmative

1 response).

2 MR. GORDON: -- but at the same time to preserve our
3 rights to appeal and we have appealed.

4 THE COURT: And that's at the Third Circuit --

5 MR. GORDON: Correct.

6 THE COURT: -- at the present time?

7 MR. GORDON: And in fact, I think argument -- it looks
8 -- it's looking now like argument may occur --

9 Is it in April?

10 MR. ELLMAN: March.

11 MR. GORDON: -- in March.

12 THE COURT: Okay.

13 MR. GORDON: We, we had some indications that the
14 Court was looking at some dates in the middle of March.

15 And so from our perspective the way, at least the way
16 I, I looked at it was we believe that what we've asked for is
17 appropriate, notwithstanding what happened there.

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

20 MR. GORDON: We, we considered should we be narrowing
21 our relief to try to fit it within the confines of what
22 happened in Delaware and if we did that, this company would be
23 in a different position --

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

1 MR. GORDON: -- than Bestwall. It would, sort of
2 prematurely limited its rights not knowing --

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

5 MR. GORDON: -- what would happen there. And again,
6 my feeling personally was if -- and obviously I don't know how
7 your Honor's going to rule -- but if your Honor were inclined
8 to follow Judge Beyer, we'd have the same kind of authority
9 that we had in that case and if events transpire where things,
10 you know, things develop where it's clear we're going to have
11 to limit the scope of what this Court's authorized, we can do
12 that. It's hard, though, to do the reverse, which is --

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

15 MR. GORDON: -- to say, come in with something more
16 limited and then find out that maybe our appeal is, is granted
17 by the Third Circuit and we're back to where Judge Beyer was
18 initially, which we thought was correct.

19 So I guess that's -- so -- so that's one thing and I
20 probably didn't answer your question?

21 THE COURT: The question is, is it a yes or a no.

22 MR. GORDON: I was just --

23 THE COURT: I, I understood all of that except do you
24 propose that it would be better to get a ruling today or, and,
25 and just go forward and adjust on the fly, or do you, are you

1 suggesting it might be best to wait till, perhaps -- I don't
2 know how long the Third Circuit takes to get an opinion out
3 or --

4 MR. GORDON: Right.

5 THE COURT: -- or the next round at --

6 MR. GORDON: Well, that's the thing. And -- and --

7 THE COURT: -- Delaware District Court.

8 MR. GORDON: Yeah. And, and I apologize for not
9 addressing that. I was coming to that. I, I guess I spent too
10 much time on the context.

11 But no. I think our preference, if it's okay with
12 your Honor, would be to get the ruling today. Because we don't
13 know how long --

14 THE COURT: Right.

15 MR. GORDON: -- that process is going to take. We
16 were, unfortunately, advised during this hearing that Judge
17 Beyer has cancelled the hearing tomorrow --

18 THE COURT: Okay.

19 MR. GORDON: -- because of her, her mom -- and we're
20 sorry about that -- which means that doesn't go then forward
21 until late January.

22 THE COURT: Okay.

23 MR. GORDON: We have the argument in March,
24 potentially. It hasn't been definitively set, but we don't
25 know how long it will take for a ruling and I think from our

1 perspective we'd like to move forward, if we can.

2 THE COURT: How about on this side?

3 MS. RAMSEY: Your Honor, we, we would propose that the
4 Court hold its ruling until the decisions are made in Bestwall.
5 We, we think that all we're going to end up seeing if we have a
6 ruling that, if the Court were to follow Judge Beyer, is more
7 of the same type of litigation. You're going to have
8 duplicative issues raised on different time frames that are
9 ultimately likely to be informed, if not resolved, by the
10 decision that is going to be made before the Third Circuit and
11 the proceedings that follow. And it seems as though trying to
12 proceed with, with a, a decision on this at this point when we
13 know that in the relatively short term we are expecting that
14 there will be some further guidance on the issue is both
15 unnecessary and, and unhelpful.

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

18 Anyone else?

19 MR. GORDON: Your Honor, there, there is one other
20 point I, I neglected to make and Mr. Cassada reminded me.

21 You know, we, we have, as your Honor knows, I think,
22 tailored the relief here to --

23 THE COURT: Right.

24 MR. GORDON: -- eliminate what we view as the primary
25 problem that arose in Delaware, which was the request for

1 personally --

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

4 MR. GORDON: -- personal identifiable information, or
5 PII.

6 THE COURT: Right.

7 MR. GORDON: As you know from the revised *subpoena*,
8 that's been eliminated. We're not asking for any and we're
9 hoping that that gets us past any issues that the Delaware
10 District Court might have in this case.

11 THE COURT: Yeah. I, I had that factored into my
12 decision.

13 MR. GORDON: Okay.

14 THE COURT: The question was what happens if things
15 change again a week from now or, you know, whenever, tomorrow?

16 MR. GORDON: Right.

17 THE COURT: When I started to ask you these questions
18 I knew that you were coming back in Bestwall to talk about this
19 again and just hate to have inconsistent rulings going up and
20 having you folks have to, to change things again and come back
21 here once more.

22 So does the trusts have a feeling for this one?
23 Where's trust counsel? I'm sorry.

24 Yes.

25 MR. EWING: Your Honor, Mr. Rubinstein's on the phone.

1 So he may feel differently than me, but I --

2 THE COURT: Do you want to ask him?

3 MR. EWING: Well, I, I think I have, but, but I think
4 our position would be, you know, we are again concerned about
5 getting ruling in this case, get the ruling in Bestwall. We
6 share the same concern, also especially to the extent it can
7 affect if we're forced to produce documents, you know.

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

10 MR. EWING: I mean, that's just another factor in
11 there. Because that, you know, we could be told to produce one
12 set of documents in this case, a slightly different thing in
13 Bestwall, and then they could change again and again.

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

16 MR. EWING: And so we do think it would be more
17 efficient maybe in the long run if the Court held its ruling or
18 even if the Court didn't hold its ruling, that the Court at
19 least held our compliance deadline until all this could be
20 sorted out. Then we could only produce, we'd only have to
21 produce one set of documents and essentially the same thing.

22 Thank you.

23 THE COURT: And, and potentially, that would be until
24 the Third Circuit ruled. I was thinking more of the next time
25 around in front of Judge Connolly, but --

1 MR. EWING: Well, you know, your Honor, the DCPF and
2 the Manville Trust are not parties to the Delaware litigation.
3 I don't really know where that's at, but --

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

6 MR. EWING: -- I, I assume the debtor, I assume the
7 debtor does and I guess that may be right.

8 THE COURT: Okay. Well, all right.

9 I guess what I want to say at this point is I, I
10 alluded to this early on about, in great measure, this is, this
11 is procedural and Judge Beyer and I try to do our best to stay
12 consistent on procedure, so. We don't always manage it, but
13 we're likely to see things in the same way, having been raised
14 in the same court and, and having similar cases here.

15 The bottom line is I'm inclined to -- I agree with
16 Bestwall on this, as modified. I think we've got to bear in
17 mind what Judge Connolly has done. So I'm inclined to grant
18 this motion without the PII, effectively allowing the proposed
19 keying with the, the relevant so that it can be matched up when
20 it comes back to the debtor, but anonymized when it's produced.
21 I think it's relevant. Other courts have found that.
22 Basically, I'm adopting Judge Beyer's original ruling, but
23 modified for the requirements that the district court has.

24 And so I think we've got information that is necessary
25 and relevant to an estimation here. I can go through all the

1 other arguments that have been made, but effectively, on the
2 things other than the technical issues I'm foursquare with
3 Judge Beyer on this. Whether the debtor relied on it or not, I
4 think it's something we sort out once we get to an estimation
5 hearing. I don't think that's a basis to foreclose it. The
6 debtor's -- the argument that the debtor should already know
7 about the trusts reason, we don't need this and don't need to
8 burden the trusts, well, it doesn't sound like it to me.

9 But I agree that with Judge Connolly's input we need
10 to have the pre-disclosure anonymization. We'll use the
11 debtor's arrangement where the debtor proposed to provide the
12 list and the like and then it comes back under the pseudonyms.
13 That, and the fact that there's no personal injury, personal
14 identifying information now satisfies the privacy concerns, at
15 least from my perspective. We'll see what Delaware thinks
16 about it.

17 But the bottom line is the debtor needs to be able to
18 match or otherwise, this is unusable to it for its purposes and
19 it sounds like the experts all agree on that. Whether they
20 agree that you should get it or not is something else.

21 I would say that, also, the fact that Judge Hodges
22 relied on this heavily in his estimation decision, I think,
23 accentuates both the relevance and the need for the
24 information.

25 Now don't jump to any conclusions there. I think

1 Judge Beyer may have said this to you before, but from my
2 vantage point, I have no present idea whether I will adopt
3 Judge Hodges' methodology or not. I, I have never really tried
4 to get down in the weeds except to the extent y'all've talked
5 about it in court and to go wade through all 60 or 90 pages of
6 his estimation opinion. I have a great deal of regard for his
7 opinions, but as has been pointed out before, Judge Fitzgerald
8 wasn't much on that theory at all and I, I think a lot of her
9 as well. So don't, don't get too excited.

10 But the bottom line, and including the proposed
11 stringent confidentiality use restrictions, I think that with
12 that I, I would be inclined to grant the motion now and we'll
13 just see where we, we go.

14 So that one, I'm going to call upon the, the debtor to
15 propose an order consistent with the remarks.

16 All right. Time for another question. I want to talk
17 now about the personal injury questionnaire, No. 3 on the
18 matter.

19 It is a curiosity to me that I've got Aldrich under
20 submission right now with the debtor wanting to use,
21 effectively, a bar date and a, and a follow-on questionnaire
22 and in here, we're, we're talking about a PIQ. Just from
23 personal efficiency, I sort of hate to have two different
24 methodologies in two very similar cases and my question is --
25 the debtor didn't ask for the bar date -- but do the parties

1 Happy Holidays. And we'll, we'll see you back in the New Year,
2 okay?

3 MR. MACLAY: Thank you, your Honor.

4 MS. RAMSEY: Happy Holidays to you, your Honor.

5 MR. GORDON: Thank you, your Honor.

6 MR. ELLMAN: Thank you, your Honor.

7 THE COURT: We're in recess.

8 MS. ZIEG: Happy Holidays.

9 (Proceedings concluded at 12:57 p.m.)

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CERTIFICATE

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/s/ Janice Russell

December 21, 2021

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Janice Russell, Transcriber

Date

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EXHIBIT B

MORVILLO, ABRAMOWITZ, GRAND, IASON, ANELLO & BOHRER, P. C.

ELKAN ABRAMOWITZ
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ROBERT J. ANELLO***
LAWRENCE S. BADER
BARRY A. BOHRER
BENJAMIN S. FISCHER
CATHERINE M. FOTI
PAUL R. GRAND
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ROBERT G. MORVILLO
1938-2011
MICHAEL C. SILBERBERG
1940-2002
JOHN J. TIGUE, JR.
1939-2009

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***ALSO ADMITTED IN WASHINGTON, D.C.

September 5, 2012

By Federal Express

Garland S. Cassada, Esq.
Robinson, Bradshaw & Hinson, P.A.
101 North Tryon Street, Suite 1900
Charlotte, North Carolina 28246

Re: *In re: Garlock Sealing Technologies LLC*, 10-BK-31607

Dear Garland:

Enclosed, on behalf of the Armstrong World Industries, Inc. Asbestos Personal Injury Settlement Trust, the Babcock & Wilcox Company Asbestos Personal Injury Settlement Trust, the DII Industries, LLC Asbestos PI Trust, the Federal-Mogul Asbestos Personal Injury Trust, the Owens Corning/Fibreboard Asbestos Personal Injury Trust, and the United States Gypsum Asbestos Personal Injury Settlement Trust (collectively, the "Producing Trusts") are six separate CD-ROMs containing trust information called for by Judge Hodges's Order Granting in Part and Overruling in Part Objections to Subpoena by Delaware Claims Processing Facility, LLC and Associated Trusts, Establishing Claimant Objection Procedures, and Governing the Confidentiality of Information Provided in Response to the Subpoena, dated August 7, 2012 (the "Order").

The data fields and information being produced by the Producing Trusts have been limited to the specific categories of information required to be produced under the terms of the Order for those individuals whose names and social security numbers, as maintained by the Producing Trusts, exactly matched the names and social security numbers supplied by Debtors in connection with their subpoena and the Order. The Producing Trusts hereby designate this trust information as "Confidential" pursuant to the Order.

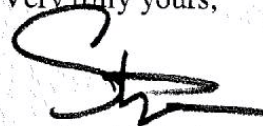
MORVILLO, ABRAMOWITZ, GRAND, IASON, ANELLO & BOHRER, P. C.

Garland S. Cassada, Esq.
September 5, 2012
Page 2

Consistent with Paragraph 6 of the Order, we will provide you with information regarding the costs associated with this production by separate correspondence.

Please do not hesitate to contact me at (212) 880-9475 if you have any questions regarding the enclosed materials or any other matter.

Very truly yours,



Stephen M. Juris

Enc.

cc: Trevor W. Swett III, Esq. (w/enclosures)
Edwin J. Harron, Esq. (w/o enclosures)

EXHIBIT C

FILED & JUDGMENT ENTERED
Steven T. Salata

Jul 24 2015

Clerk, U.S. Bankruptcy Court
Western District of North Carolina



J. Craig Whitley
J. Craig Whitley
United States Bankruptcy Judge

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
Charlotte Division**

IN RE:

GARLOCK SEALING TECHNOLOGIES LLC,
et al.,

Debtors.¹

Case No. 10-BK-31607
Chapter 11
Jointly Administered

**ORDER GRANTING IN PART AND DENYING IN PART DEBTORS' MOTION FOR
LEAVE TO SERVE SUBPOENA ON MANVILLE TRUST**

This matter came before the Court pursuant to Debtors' Motion for Leave to Serve Subpoena on Manville Trust (Docket No. 4599) (the "Motion"), filed to obtain discovery relevant to the hearing on confirmation of Debtors' Second Amended Plan of Reorganization (the "Confirmation Hearing"). Upon consideration of the Motion, the Objection of Non-Party Manville Personal Injury Settlement Trust to the Debtors' Motion for Leave to Serve Subpoena

¹The Debtors in these jointly administered cases are Garlock Sealing Technologies LLC, Garrison Litigation Management Group, Ltd., and The Anchor Packing Company.

(Docket No. 4638), the Response and Limited Objection of the Official Committee of Asbestos Personal Injury Claimants to Debtors' Motion for Leave to Serve Subpoena on Manville Trust (Docket No. 4644), Debtors' Reply in Support of Motion for Leave to Serve Subpoena on Manville Trust (Docket No. 4646), the Sur-Reply of Non-Party Manville Personal Injury Settlement Trust to Debtors' Motion for Leave to Serve Subpoena (Docket No. 4660), and the arguments of counsel at the hearing on June 17, 2015, and for the reasons stated on the record at the hearing on June 30, 2015, the Court grants the Motion in part and denies the Motion in part and hereby orders as follows:

1. The Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334, and it is a core proceeding under 28 U.S.C. § 157(b)(2). Venue of this proceeding and the Motion is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409. Adequate notice of the Motion was given and it appears that no other notice need be given.

2. Debtors are authorized to issue and serve a subpoena on the Manville Personal Injury Settlement Trust (the "Manville Trust") forthwith, consistent with the terms and conditions of this Order. Debtors shall reimburse the Manville Trust's reasonable expenses in complying with the subpoena.

3. On or before July 15, 2015, Debtors shall provide to the Manville Trust a list (in electronic, text searchable format) of first and last names, in separate fields, for claimants listed as having pending non-mesothelioma or unknown disease claims in the latest version of Debtors' claims database. The list may delete punctuation marks, prefixes (Mr., Miss, Ms., etc.), suffixes (Sr., Jr., III, IV, etc.), and any other words that do not constitute part of the name ("executor," "deceased," "dec," etc.) but that may be contained in the first and last name fields, and may also

close spaces between parts of a name (i.e., “Van” or “De”) as necessary to ensure the most comprehensive initial match.

4. On or before July 31, 2015, the Manville Trust shall match the claimants described in the list to be provided by Debtors pursuant to paragraph 3 above with the filings in the Manville Trust database whose injured party datafield or related claimant datafield matches a first and last name in the list provided by Debtors (“Initial Matching Claimants”). In performing this match, the Manville Trust shall disregard punctuation marks, prefixes (Mr., Miss, Ms., etc.), suffixes (Sr., Jr., III, IV, etc.), and any other words that do not constitute part of the name (“executor,” “deceased,” “dec,” etc.). The Manville Trust shall then notify the Initial Matching Claimants’ counsel of record of the Manville Trust’s receipt of a subpoena from Debtors, and inform such counsel that the Initial Matching Claimants’ data will be produced if they do not notify the Manville Trust and Debtors in writing, within 14 days (*i.e.*, by August 14, 2015), that the Initial Matching Claimant has not filed a proof of claim and has no present intention of filing a proof of claim in the above-captioned action, or that the Initial Matching Claimant intends to file a motion to quash.

- a. If an Initial Matching Claimant has not filed a proof of claim and has no present intention of filing a proof of claim in the above-captioned action, counsel for such Initial Matching Claimant shall notify both the Manville Trust and Debtors’ counsel, in writing, on or before August 14, 2015. Upon receiving such written notice, the Manville Trust shall withhold from production any records relating to such Initial Matching Claimant.
- b. If counsel for any Initial Matching Claimant communicates to the Manville Trust by August 14, 2015 an intent to file a motion to quash the subpoena, the Manville

Trust shall stay the production of any records relating to such Initial Matching Claimant for an additional two weeks (*i.e.*, until August 28, 2015). If a motion to quash is filed within that time, the Manville Trust will stay the production of any records relating to such Initial Matching Claimant until such motion is resolved.

If a motion is not filed within that time, the Manville Trust shall produce to Debtors the records described in paragraph 4(c) below relating to the Initial Matching Claimant on or before September 4, 2015.

- c. If counsel for any Initial Matching Claimants do not on or before August 14, 2015 (i) notify the Manville Trust and Debtors that the Initial Matching Claimant has not filed a proof of claim and has no present intention of filing a proof of claim in the above-captioned action, or (ii) communicate to the Manville Trust an intent to file a motion to quash the subpoena, the Manville Trust shall produce to Debtors the information in paragraph 5 relating to any such Initial Matching Claimants on or before August 28, 2015, as well as a copy of the computer code the Manville Trust used to identify the Initial Matching Claimants.
 - d. The records produced by the Manville Trust relating to the Initial Matching Claimants are referred to herein as the “Initial Production.”
5. The Manville Trust shall produce to Debtors (in electronic database format) the following information pertaining to Initial Matching Claimants (to the extent the Manville Trust database contains such information):
- a. Manville POC number;
 - b. Injured party name;
 - c. Related party name;

- d. Social Security number;
- e. Date of birth;
- f. Gender;
- g. Claimant address and contact information;
- h. Date of death (if applicable);
- i. Whether death was asbestos-related (if applicable);
- j. Personal representative (if any);
- k. Law firm representing claimant;
- l. Whether Manville Trust claim has been approved or paid;
- m. Date Manville Trust claim was filed;
- n. Disease level, both as filed and as approved, and related database fields including diagnosis date, diagnosing doctor, diagnosing facility, claimant B-reader, medical audit, disease category, PFT, and ILO score(s) and related diagnosis assessment fields;
- o. Claim type (i.e., first injury claim or second injury claim);
- p. Amount paid by Manville Trust to claimant (if applicable);
- q. Database fields containing exposure information, including occupation, industry, dates of exposure, and related database fields in the “exposure” table;
- r. Database fields containing information about tort suit, including jurisdiction and other such database fields;
- s. Smoking history;
- t. Nature of co-worker’s exposure (if applicable); and

- u. Copies of medical records, exposure affidavits, death certificates, and other non-privileged documents maintained by the Manville Trust and typically provided to co-defendants pursuant to subpoena, linked to Manville POC number.

6. Debtors' claims expert (Bates White) shall use the following data fields from the Initial Production (as well as any other data fields that can reliably be used for this purpose) in conjunction with its standard matching algorithms to identify claimants in the Initial Production who do not in fact have pending claims against Debtors according to their database ("Non-Matching Claimants"):

- a. Injured party name;
- b. Related claimant name;
- c. Claimant address and contact information;
- d. Personal representative (if any);
- e. Social Security number;
- f. Date of birth;
- g. Date of death (if applicable);
- h. Disease level (both as filed and as approved);
- i. Lawsuit filing date;
- j. Law firm representing claimant; and
- k. Jurisdiction.

7. After identifying Non-Matching Claimants, Bates White shall perform the following tasks:

- a. Bates White shall permanently delete the records of Non-Matching Claimants from the Initial Production (thus creating the "Matched Production").

- b. Bates White shall assign a unique identifier to each claimant record in the Matched Production.
- c. Bates White shall create a separate file (the “Matching Key”) containing the unique identifier and the following fields from the Matched Production (to the extent the data produced by the Manville Trust include such information):
 - i. Manville POC number, injured party name, related claimant name, SSN, date of birth (except month and year for each claimant), claimant address and contact information;
 - ii. Personal representative name, SSN, address and contact information;
 - iii. Occupationally exposed person name, SSN, address and contact information;
 - iv. Other exposed person name, SSN, address and contact information;
 - v. Exposure affiant name;
 - vi. Dependent name;
 - vii. Dependent date of birth (except year for each dependent); and
 - viii. Lawsuit case numbers (except jurisdiction).

The Matching Key shall also contain the documents listed in paragraph 5(u) of this Order, linked to the unique identifier and other fields.

- d. After creating the Matching Key, Bates White shall permanently delete from the Matched Production the datafields and documents contained within the Matching Key. The resulting database will be the “Anonymized Matched Production.”
- e. Bates White shall store the Matching Key in a separate, password-protected folder on its network, accessible only to Bates White professionals engaged in work

relating to the Confirmation Hearing (or, in the case of the documents in paragraph 5(u), a litigation support company engaged to extract data from such documents and that signs a joinder to the Stipulated Protective Order). The Matching Key shall be used only for the following purposes: (i) matching and combining the Anonymized Matched Production, on a claimant-by-claimant basis, with data from Debtors' database or other sources, (ii) verifying the accuracy of any matching of data performed by any expert for the Committee, (iii) defending challenges to the accuracy of Bates White's matching of such data to other data sources, and (iv) in the case of the documents listed in paragraph 5(u) of this Order, to perform expert analysis relating to the Confirmation Hearing (by extracting data from those documents and adding such extracted data to the Anonymized Matched Production, so long as the extracted data does not include claimant identifying information including claimant identifying information of the type contained within paragraphs 7(c)(i) to 7(c)(viii) (which, for purposes of this Order, may also include, without limitation, information such as Medicare HIC numbers, Medicaid identification numbers, and patient record locator numbers)). Absent further order by this Court, Debtors and Bates White shall not use the Matching Key, or any portion or element thereof, for any other purpose, and shall not retain any other record of any kind linking the unique identifiers in the Anonymized Matched Production to the Matching Key. To the extent the Matching Key is used to match the Anonymized Matched Production, on a claimant-by-claimant basis, to Debtors' database or other sources of information, Debtors and their agents (including, without limitation, Bates White) shall delete

from any resulting database any datafields, information or documents of the type contained within paragraphs 7(c)(i) to 7(c)(viii), without regard to whether such information was derived from data produced by the Manville Trust, data and information already maintained by the Debtors, or any other public or nonpublic source (any such database being an “Anonymized Database”).

8. On or before September 18, 2015, Bates White shall serve a declaration on the Manville Trust and the Official Committee of Asbestos Personal Injury Claimants (the “Committee”) that describes the process used to match claimants and identify Non-Matching Claimants, attests to the permanent deletion of the records of Non-Matching Claimants; identifies the Non-Matching Claimants whose records were deleted; attests to the creation of the Anonymized Matched Production and the Matching Key (and the deletion of the records contained in the Matching Key from the Matched Production); and attests to the storage of the Matching Key in a separate password-protected network folder. The declaration shall be designated “Confidential” pursuant to the March 22, 2011 Stipulated Protective Order as amended. Bates White shall contemporaneously serve the Manville Trust and the Committee with copies of the computer code for the matching algorithms used (“Matching Code”), Matching Key and Anonymized Matched Production, on a password-protected hard drive. The Committee and any of its experts shall likewise store the Matching Key in a separate, password-protected network folder accessible only by professionals engaged in work relating to the Confirmation Hearing. To the extent the Matching Key is used by the Committee or its agents to match the Anonymized Matched Production, on a claimant-by-claimant basis, to any other database or other sources of information, the Committee and its agents shall delete from any resulting database any datafields, information or documents of the type contained within

paragraphs 7(c)(i) to 7(c)(viii), without regard to whether such information was derived from data produced by the Manville Trust, data and information already maintained by the Committee, or any other public or nonpublic source (any such database being an “Anonymized Database”).

9. On or before October 13, 2015, Debtors shall provide to the Manville Trust (in electronic, text searchable format) a list of first names, last names, and SSNs, in separate fields, for claimants and associated related claimants who filed proofs of claim in this bankruptcy case alleging non-mesothelioma or unknown disease claims and who were not in the Matched Production.

10. On or before October 27, 2015, the Manville Trust shall match the claimants described in the list to be provided by Debtors pursuant to paragraph 9 above with the following records in the Manville Trust database (together, “Supplemental Matching Claimants”): (a) Manville Trust records where the injured party or related claimant SSN matches the injured party or related claimant SSN provided by Debtors, (b) Manville Trust records where the injured party or related claimant first name, last name, and last four digits of SSN match the injured party or related claimant first name, last name, and last four digits of SSN provided by Debtors; or (c) in the case of claimants who did not provide an SSN in their proof of claim form or ballot, Manville Trust records where the injured party or related claimant first and last name matches the claimant or related claimant first and last name in the list provided by Debtors. In performing this match, the Manville Trust shall disregard punctuation marks, prefixes (Mr., Miss, Ms., etc.), suffixes (Sr., Jr., III, IV, etc.), and any other words that do not constitute part of the name (“executor,” “deceased,” “dec,” etc.). The Manville Trust shall then notify the Supplemental Matching Claimants’ counsel of record of the Manville Trust’s receipt of a subpoena from Debtors, and inform such counsel that the Supplemental Matching Claimants’ data will be produced if they do

not notify the Manville Trust and Debtors in writing, within 7 days (*i.e.*, by November 3, 2015) that the Supplemental Matching Claimant has not filed a proof of claim in the above-captioned action, or that the Supplemental Matching Claimant intends to file a motion to quash.

- a. If the Supplemental Matching Claimant has not filed a proof of claim in the above-captioned action, counsel for such Supplemental Matching Claimant shall notify both the Manville Trust and Debtors' counsel, in writing, on or before November 3, 2015. Upon receiving such written notice, the Manville Trust shall withhold from production any records relating to such Supplemental Matching Claimant.
- b. If counsel for any Supplemental Matching Claimant communicates to the Manville Trust and Debtors before November 3, 2015 an intent to file a motion to quash the subpoena, the Manville Trust shall stay the production of any records relating to such Supplemental Matching Claimant for one week (*i.e.*, until November 10, 2015). If a motion to quash is filed within that time, the Manville Trust will stay the production of any records relating to such Supplemental Matching Claimant until such motion is resolved. If a motion is not filed on or before November 10, 2015, the Manville Trust shall produce to Debtors the records described in Paragraph 10(b) below relating to the Supplemental Matching Claimant on or before November 11, 2015.
- c. If counsel for any Supplemental Matching Claimants do not communicate to the Manville Trust and Debtors before November 3, 2015 (i) that the Supplemental Matching Claimant has not filed a proof of claim, or (ii) an intent to file a motion to quash the subpoena, the Manville Trust shall produce to Debtors the

information in paragraph 5 relating to any such Supplemental Matching Claimants on or before November 4, 2015, as well as a copy of the computer code the Manville Trust used to identify Supplemental Matching Claimants.

- d. The records produced by the Manville Trust relating to the Supplemental Matching Claimants are referred to herein as the “Final Production.”
- e. Promptly upon the production of the Final Production, Bates White shall follow the procedures in paragraphs 6 and 7 to identify Non-Matching Claimants in the Final Production; delete the records of Non-Matching Claimants in the Final Production; separate the Final Production into a Second Anonymized Matched Production and Second Matching Key; and then add the Second Anonymized Matched Production and Second Matching Key to the Anonymized Matched Production and Matching Key to create the “Final Anonymized Matched Production” and “Final Matching Key.”

11. For the avoidance of doubt, the requirements set forth in paragraph 7 above relating to the use and deletion of datafields, information and/or documents contained within the Matching Key apply with full force and effect to the datafields, information and/or documents contained in the Second Matching Key and Final Matching Key. Accordingly, to the extent the Second Matching Key and/or Final Matching Key are used to match the Second Anonymized Matched Production, the Final Anonymized Matched Production, and/or any other records produced by the Manville Trust on a claimant-by-claimant basis, to Debtors’ database or other sources of information, Debtors and their agents (including, without limitation, Bates White) shall delete from any resulting database any datafields, information or documents of the type contained within paragraphs 7(c)(i) to 7(c)(viii), without regard to whether such information was

derived from data produced by the Manville Trust, data and information already maintained by Debtors, or any other public or nonpublic source (any such database being an “Anonymized Database”).

12. On or before November 16, 2015, Bates White shall serve on the Manville Trust and Committee a second confidential declaration in the form of the one described in paragraph 8 above, and shall contemporaneously serve Manville Trust and the Committee with copies of the Final Anonymized Matched Production and Final Matching Key. Bates White shall be bound by the same restrictions contained in paragraph 7(e) above with respect to the Final Matching Key. The Committee and any of its experts shall likewise store the Final Matching Key in a separate, password-protected network folder accessible only by professionals engaged in work relating to the Confirmation Hearing, and shall be subject to the same restrictions contained in paragraph 8 above with respect to the Final Matching Key.

13. The Final Matching Key and Final Anonymized Matched Production as well as (while they exist) the Initial Production, Second Production, and intermediate steps before creation of the Final Matching Key and Final Anonymized Matched Production (including the Matched Production, the Matching Key, the Anonymized Matched Production, the Second Matching Key, and the Second Anonymized Matched Production), the declarations required by paragraphs 8 and 12, and any Anonymized Databases (together, “Manville Confidential Information”) and the Matching Code shall be designated “Confidential” pursuant to the March 22, 2011 Stipulated Protective Order as amended. In addition to and without diminution of the protections in that Order, the provisions in this Order will apply, including the following:

- a. Records relating to Non-Matching Claimants shall not be used for any purpose.

- b. For the purposes of Section 5 of the Stipulated Protective Order, the Court hereby rules that Manville Confidential Information is appropriately treated as Confidential.
- c. No claimant-specific data from or derived from the Manville Confidential Information, including without limitation the kinds of claimant information listed in paragraphs 7(c)(i) through 7(c)(viii) above, shall be (i) offered as evidence in the Confirmation Hearing, (ii) placed on the public record, or (iii) filed with the Bankruptcy Court, the District Court, or any reviewing court, absent further order by this Court made after notice of hearing of a motion authorizing such use (with notice to claimants provided to their attorneys at the addresses contained in the data produced by the Manville Trust), brought by the proponent by the earlier of April 18, 2016 or 60 days before such offer or use.
- d. Without diminishing or limiting the restrictions set forth in paragraph 13(c) above, such Manville Confidential Information that is not subject to the terms of paragraph 13(c) may be offered as evidence in the Confirmation Hearing or otherwise placed on the public record, but only upon further order of the Court made after notice of hearing of a motion authorizing such use, brought by the proponent by the earlier of April 18, 2016 or 60 days before such offer or use.
- e. If, in connection with a motion pursuant to Paragraph 13(c) or (d), or any response to such motion, a party proposes to place such Manville Confidential Information under seal, that party shall have the burden of making the showing required for sealing under applicable law.

- f. In addition to, and without diminution of any other use restrictions in this Order, the Manville Confidential Information shall be used only in connection with the Confirmation Hearing.
 - g. Notwithstanding the foregoing, in the course of the Confirmation Hearing and solely for the purposes thereof, a party may use in the Bankruptcy Court, or any reviewing court, summaries or analyses derived from Manville Confidential Information if such material is redacted so as not to reveal any identifying detail of any individual claimant including, without limitation, information subject to the restrictions of paragraph 13(c) above.
 - h. Likewise, nothing herein shall prohibit an expert witness with access pursuant to the Stipulated Protective Order from using or referring to Manville Confidential Information in an expert report, preparing summaries of information for other experts to rely on, or testifying concerning Manville Confidential Information, so long as such testimony, summary, or report does not reveal any identifying detail of any individual claimant including, without limitation, information subject to the restrictions of paragraph 13(c) above.
14. Pursuant to section 105(a) of the Bankruptcy Code, none of the Manville Confidential Information shall be subject to subpoena or otherwise discoverable by any person or entity other than the Debtors, the Committee, the Future Asbestos Claimants' Representative ("FCR"), or Coltec Industries Inc. ("Coltec"). If the FCR or Coltec request copies of the Manville Confidential Information, they shall be bound by all the provisions of this order that apply to the Debtors, Bates White, and the Committee.

15. Within one month after the later of the entry of a final confirmation order or the exhaustion of any appeals therefrom, the parties and any retained professionals, experts or agents possessing the Final Anonymized Matched Production and Final Matching Key (or any other Manville Confidential Information) shall (i) permanently delete those files, and any excerpts thereof, without in any way retaining, preserving, or copying the Final Anonymized Matched Production, Final Matching Key, or Manville Confidential Information, and (ii) certify in writing to the Manville Trust that they have permanently deleted such files and any excerpts thereof.

16. Subject to the requirements of paragraphs 7, 8, 11, 12, and 13 of the Order, nothing in this Order shall restrict any person's right to make lawful use of:

- a. any discrete data set or materials that came into the possession of such person lawfully and free of any confidentiality obligation;
- b. any exhibit or other document that is placed on the public record in the Confirmation Hearing in conformity with this Order, or any data or material that is or becomes publicly available other than by a breach of this Order; or
- c. any discrete data set or materials developed by or on behalf of such person independent of any Manville Confidential Information.

17. This Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

This Order has been signed electronically. The judge's signature and court's seal appear at the top of the Order.

United States Bankruptcy Court

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

In re

ALDRICH PUMP LLC, *et al.*,

Debtors.

Case No. 22-cv-5116

Underlying Case No. 20-30608 (JCW)
(United States Bankruptcy Court for the
Western District of North Carolina)

DECLARATION OF CHARLES H. MULLIN, PH.D.

Pursuant to 28 U.S.C. § 1746, I, Charles H. Mullin, Ph.D., hereby declare:

1. I am the Managing Partner of Bates White, LLC (“Bates White”), which maintains offices at 2001 K Street NW, North Building, Suite 500, Washington, DC 20006. A copy of my curriculum vitae is attached hereto as Exhibit 1. Bates White has been retained by Aldrich Pump LLC (“Aldrich”) and Murray Boiler LLC (“Murray” and with Aldrich, the “Debtors”) who are debtors in a jointly administered bankruptcy proceeding pending in the United States Bankruptcy Court for the Western District of North Carolina (the “Bankruptcy Court”). *See* Case No. 20-30608 (Bankr. W.D.N.C) (the “Aldrich Bankruptcy Proceeding”).

2. I am duly authorized to make this Declaration on behalf of Bates White. I make this Declaration in support of Aldrich Pump LLC’s and Murray Boiler LLC’s Memorandum of Law in Opposition to (i) Third Party Trusts’ Motion to Quash Subpoenas and in Support of Stay; (ii) Verus Claims Services LLC’s Motion to Quash Subpoena and Stay; and (iii) Non-Party Matching Claimants Joinders and Motion to Quash. I have personal knowledge of the facts set forth in this Declaration and, if called as a witness, I could and would testify competently to such facts under oath.

Qualifications

3. I provide advice and expert analysis on, among other things, issues involving mass torts, class actions, bankruptcies, and insurance coverage. I am an expert on statistical and data analysis, econometrics, economic and microsimulation modeling, sample design, insurance allocation, and the valuation of mass torts. For more than 20 years I have provided expert advice and opinions, in both the private and public sectors, on statistical and data analysis in the area of mass torts.

4. I am frequently retained as an expert on the valuation of personal-injury tort claims and have worked on numerous personal injury and mass tort quantification-related proceedings. I have valued mass tort expenditures allegedly derivative of numerous sources, including asbestos exposure, silica exposure, food additives, PFAS, airbags, respirators, pharmaceutical products, sex abuse, and medical devices. I have provided these services in connection with numerous bankruptcy proceedings, including *In re LTL Management LLC*, *In re Mallinckrodt PLC*, *In re Aearo Technologies LLC, et al.*, *In re Paddock Enterprises, LLC*, *In re TK Holdings Inc.*, *In re Bltiz U.S.A., Inc.*, *In re Specialty Products Holding Corp.*, and *In re Owens Corning*.¹ As part of that work, I routinely estimate the value of personal-injury tort claims and forecast a company's liability for those claims.

5. In the Aldrich Bankruptcy Proceeding, the Bankruptcy Court approved the retention and employment of Bates White as asbestos consultants to the Debtors.² As part of that

¹ *In re LTL Management LLC*, No. 21-30589 (MBK) (Bankr. D.N.J. Oct. 14, 2021); *In re Mallinckrodt PLC*, No. 20-12522 (JTD) (Bankr. D. Del. Oct. 12, 2020); *In re Aearo Technologies LLC, et al.*, No. 22-02890 (JJG) (Bankr. S.D.Ind. July 26, 2022); *In re Paddock Enterprises, LLC*, No. 20-10028 (LSS) (Bankr. D. Del. Jan. 6, 2020); *In re TK Holdings Inc.*, No. 17-11375 (BLS) (Bankr. D. Del. June 25, 2017); *In re Bltiz U.S.A., Inc.*, No. 11-13603 (PJW) (Bankr. D. Del. Nov. 9, 2011); *In re Specialty Products Holding Corp.*, No. 10-11780 (LSS) (Bankr. D. Del. May 31, 2010); *In re Owens Corning*, No. 00-03837 (KG) (Bankr. D. Del. Oct. 5, 2000).

² Ex Parte Order Authorizing the Debtors to Retain and Employ Bates White, LLC as Asbestos Consultants as of the Petition Date, *In re Aldrich Pump LLC, et al.*, No. 20-30608 (W.D.N.C. June 18, 2020), as modified by the Amended Order Authorizing the Debtors to Retain and Employ Bates White, LLC as Asbestos Consultants as of the Petition Date, *In re Aldrich Pump LLC, et al.*, No. 20-30608 (W.D.N.C. Aug. 18, 2020).

retention, I am directly involved in the estimation process and understand the relevance of the trust data being sought in the Aldrich Bankruptcy Proceeding.

6. In addition to my mass tort valuation work, I have designed statistically reliable sampling methodologies in multiple contexts. I have sampled claims from workers in numerous occupational settings—such as insulators, refractory workers, and steelworkers—and have studied their exposure to various workplace contaminants, including asbestos, silica, and lead.

7. I received my PhD in economics from the University of Chicago and my BA in economics and mathematics from the University of California at Berkeley. I have taught courses in advanced statistical economic analysis and labor economics while on the faculty in the Department of Economics at Vanderbilt University and at the University of California at Los Angeles. I have published papers on applied and theoretical econometrics and labor economics in peer-reviewed journals. Exhibit 1 contains my curriculum vitae, which includes a complete list of expert testimony I have provided in the last four years, and a complete list of publications I have authored to date.

Scope of charge

8. I submit this declaration at the request of the Debtors' counsel in relation to the August 19, 2022 filings on behalf of Verus Claim Services, LLC ("Verus"), moving to quash the subpoena issued by the Debtors. In addition, this declaration responds to certain objections raised by the Non-Party Matching Claimants and Third Party Trusts (collectively along with Verus the "Objecting Parties") as those substantively overlap with points raised in the Verus filings.³ Debtors' counsel asked me to evaluate, from a statistical and economic

³ The Third-Party Trusts include (i) ACandS Asbestos Settlement Trust; (ii) Combustion Engineering 524(g) Asbestos PI Trust; (iii) G-I Holdings Inc. Asbestos Personal Injury Settlement Trust; (iv) GST Settlement Facility; (v) Kaiser Aluminum

perspective, the scope of data requested under the subpoena and to reply to the statements made by Verus in relation to that discovery and Verus' counterproposal of sampling, including statements in the declaration by Mark Eveland submitted in support of the Verus Motion. This includes an explanation of the opinions expressed in the *Bestwall* bankruptcy proceeding regarding sampling by my Partner, Dr. Jorge Gallardo-Garcia.⁴ Further, Debtors' counsel asked me to address the speculation expressed on behalf of Verus regarding Bates White's data security, business, and adherence to confidentiality and related agreements.

Summary of opinions

9. The Verus filings reflect a basic lack of understanding of the purpose of the Aldrich Bankruptcy Proceeding, the estimation proceeding, trust discovery, my methodology, and Bates White's business. The fact that Verus argues in its papers that information sought in the Debtors' subpoena is not useful to the Debtors demonstrates that Verus either does not understand the purpose of the Debtors' discovery, my methodology for asbestos claims valuation, or the Aldrich Bankruptcy Proceeding. In a joint tort such as asbestos, information about the exposure to one defendant's product is highly relevant to their codefendants.

10. The subpoena requests information for approximately 12,000 claimants who previously asserted and resolved asbestos personal injury claims against the Debtors or their predecessors (the "Claimant Population"). First, Verus argues that a sampling methodology should be imposed. In support of this argument, Verus cites the Manual for Complex Litigation,

& Chemical Corporation Asbestos Personal Injury Trust; (vi) Quigley Company, Inc. Asbestos PI Trust; (vii) T H Agriculture & Nutrition, L.L.C. Asbestos Personal Injury Trust; and (viii) Yarway Asbestos Personal Injury Trust; Memorandum of Law in Support of Third-Party Asbestos Trusts' Motion to Quash Subpoenas and in Support of Stay, In re Aldrich Pump LLC, et al., No. 22-cv-5116 (D.N.J. Aug. 19, 2022).

Non-party Certain Matching Claimants' Memorandum of Law in Support of (I) Motion to Quash or Modify Subpoenas and (II) Joinders, In re Aldrich Pump LLC, et al., No. 22-cv-5116 (D.N.J. Sept. 2, 2022).

⁴ See October 28, 2021 Declaration of Jorge Gallardo-Garcia; Motion of the Debtor to (A) Approve Resolved Claim Sample and (B) Authorize Related Disclosure Pursuant to Rule 502(d) of the Federal Rules of Evidence, In re Bestwall LLC, No. 17-31795 (W.D.N.C. Oct. 28, 2021), Exhibit B.

which notes that sampling “can save” time and expense.⁵ Notably, the Manual for Complex Litigation does not say sampling *always* saves time and expense. Hence, for the purposes of the instant matter, it is necessary to assess whether limiting production to a “statistically significant sample” of the Claimant Population would save time and expense in the context of the Debtors’ estimation proceeding.⁶ Verus provides no such analysis. As discussed below, given the facts of this request, sampling has at least three significant downsides: (a) sampling would increase costs, (b) sampling would create delays, and (c) sampling would decrease the precision of the ultimate analyses.

11. Verus erroneously asserts sampling would limit the amount of sensitive personal or health information related to the Claimant Population that would be shared with the Debtors and Bates White. This assertion is wrong, for at least two reasons: (a) the subpoena does not seek any such sensitive personal or health information; and (b) the claimants’ personal and health information is already in the Debtors’ and Bates White’s possession as a result of the fact that those claimants asserted and resolved publicly filed asbestos personal injury claims against the Debtors.

12. Verus incorrectly asserts that the sampling approach outlined by my Bates White Partner, Dr. Gallardo-Garcia, in the *Bestwall* matter demonstrates that sampling is appropriate in this matter. Verus fails to note that Dr. Gallardo-Garcia clearly stated in his declaration, consistent with the Manual for Complex Litigation, that sampling is a useful strategy when the analysis of the entire dataset is not an option, and that, relative to a full data set analysis, sampling increases the analytical costs and may reduce the precision of the results.⁷

⁵ Federal Judicial Center, *Manual for Complex Litigation*, 4th ed. Washington, DC: Federal Judicial Center, 2004, at §11.493.

⁶ Verus Claim Services, LLC’s Memorandum of Law in Support of its Motion to Quash Subpoena and to Stay, In re Aldrich Pump LLC, et al., No. 22-cv-5116 (D.N.J. Aug. 19, 2022) at 2.

⁷ Federal Judicial Center, *Manual for Complex Litigation*, 4th ed. Washington, DC: Federal Judicial Center, 2004, at § 11.493.

13. Finally, Verus asserts that Bates White might use any data produced under the subpoena for ulterior business purposes outside of the current matter and questions Bates White's data security. This allegation is both unsupported and incorrect. Bates White has been involved in hundreds, if not thousands, of litigation matters with confidentiality provisions and steadfastly adheres to protective orders and confidentiality agreements pertaining to data collection and use. Bates White only accesses and utilizes any confidential data produced in this, or any other matter, for analyses within the provisions of such orders and agreements. Bates White implements industry best practices for data security and has no history of security breaches. Verus also incorrectly asserts that the subpoena seeks proprietary trade secrets that competitors such as Bates White could use to "reverse engineer" its "proprietary" claim valuation algorithms.⁸ Not only is Bates White not a competitor of Verus, but also the requested information does not contain the valuation of any trust claims. Thus, Bates White could not "reverse engineer" any algorithms proprietary to Verus.

14. My work on this matter is ongoing. I reserve the right to supplement this report at the request of counsel or if I receive any new information that materially affects my opinions.

The subpoena seeks highly relevant information

15. Verus claims that "the requested information is completely irrelevant to the Debtors' stated purpose" and instead reflects "something closer to a dredging of the entire ocean," positions which are effectively mirrored by the other Objecting Parties.⁹ In reality, the

⁸ Verus Claim Services, LLC's Memorandum of Law in Support of its Motion to Quash Subpoena and to Stay, In re Aldrich Pump LLC, et al., No. 22-cv-5116 (D.N.J. Aug. 19, 2022) at 24.

⁹ Verus Claim Services, LLC's Memorandum of Law in Support of its Motion to Quash Subpoena and to Stay, In re Aldrich Pump LLC, et al., No. 22-cv-5116 (D.N.J. Aug. 19, 2022) at 1, 8; Memorandum of Law in Support of Third-Party Asbestos Trusts' Motion to Quash Subpoenas and in Support of Stay, In re Aldrich Pump LLC, et al., No. 22-cv-5116 (D.N.J. Aug. 19, 2022) at 2-3; Non-party Certain Matching Claimants' Memorandum of Law in Support of (I) Motion to Quash or Modify Subpoenas and (II) Joinders, In re Aldrich Pump LLC, et al., No. 22-cv-5116 (D.N.J. Sept. 2, 2022) at 19-22.

information requested from the asbestos trusts is fundamental for estimating the Debtors' legal liability for asbestos claims and is limited to only the claimants and data fields necessary for that analysis. This information, among other analyses, is critical to test whether claimants provided full disclosure of exposure information while in the tort system and how the Debtors' payments to claimants were impacted, if at all, by such practices. All of this is necessary to assess expected contentions that the Debtors' historical settlements reflect their liability.

16. As described to the Bankruptcy Court at the time the subpoenas were authorized, the Debtors have already limited their discovery against the Verus trusts to the claims that are most important for their current bankruptcy estimation proceedings. More specifically, the Claimant Population relates only to "mesothelioma claims the Debtors or their predecessors resolved through settlement or verdict between January 1, 2005 and June 18, 2020."¹⁰ The request excludes mesothelioma claims that were resolved before 2005 or that were unresolved as of the date of the Debtors' bankruptcy filings, as well as lung cancer, other cancer, and non-malignant claims. These categories together account for multiple tens of thousands of additional claimants beyond the 12,000 included in the trust discovery.¹¹

Designing and utilizing a sample would increase expense

17. The process of designing a random, representative, and efficient sample of trust data that either the Debtors and claimant representatives agree upon, or the Court orders, would increase costs and likely lead to significant delays in the case. There are numerous sampling and extrapolation approaches that could be applied in any given context, and experts often disagree about the most appropriate design. Indeed, there has been substantial litigation

¹⁰ Motion of the Debtors for an Order Authorizing the Debtors to Issue Subpoenas on Asbestos Trusts and Paddock Enterprises, LLC, In re Aldrich Pump, et al., No. 20-30608 (W.D.N.C. Apr. 7, 2022) at 1–2.

¹¹ Informational Brief of Aldrich Pump, LLC and Murray Boiler, LLC, In re Aldrich Pump LLC, et al., No. 20-30608 (W.D.N.C. June 18, 2020) at 18, 30.

surrounding the use of sampling and the scope of an appropriate sample of claimants in the *Bestwall* matter.

18. Even assuming the parties here confer on the sample in good faith, sampling would inevitably lead to a delay. The Debtors would construct a sampling methodology, which would then be provided to the Official Committee of Asbestos Claimants and any other relevant parties for input from their expert(s), followed by a hearing to resolve any remaining disputes. Once a particular sample design has been approved, all parties would incur additional costs and delays associated with extrapolating and drawing inferences based on the sample data, including potential litigation over the most appropriate extrapolation method.

A sample would decrease precision

19. The use of a sample, by definition, introduces sampling error into the analysis. The presence of sampling error will, again by definition, decrease the precision of any estimates deriving from the sample. The size of that sampling error, and the impact on the precision of any resulting estimates, is a function of, among other things, the rarity of the event being studied and the size of the sample.¹² For example, a rare event and a small sample size leads to reduced precision.

20. Claimant representatives in the *Bestwall* matter have asserted that the lack of full disclosure of information by claimants during the relevant period is likely rare.¹³ If that assertion is true and applies to this matter, the required sample size to obtain an acceptable degree of precision could be quite large, further minimizing any alleged cost savings associated with a sampling approach. If that assertion is false (i.e., exposure withholding is not a rare

¹² William G. Cochran, *Sampling Techniques*, 3rd ed. (1977), at 54.

¹³ Transcript of Proceedings before the Honorable Laura Turner Beyer, United States Bankruptcy Judge, In re Bestwall, No. 17-31795 (W.D.N.C. Jan. 21, 2021), Vol. 1, at 200–202.

event), then the requested Claimant Population dataset is even more relevant for analyzing the Debtors' claims and liability.

21. In general, a sample is beneficial if the time and cost savings it provides, if any, outweigh the loss of analytical precision and the added burden of designing, implementing, and extrapolating from the sample. This tradeoff between potential cost savings in data retrieval and decreased precision of analyses is recognized by sampling authorities. For example, the United States General Accounting Office (GAO) guide on Using Statistical Sampling concludes that a population-level analysis is more appropriate than sampling in some situations:

[W]hen all the data are already on a computer or in some machine-readable form, it is usually just as easy to analyze every item. This is because most of the work is in setting up the programs, not in processing the items, and because the computer must read every record for the decision of whether to include or exclude the record from the sample.¹⁴

A sample would provide minimal cost savings for Verus

22. Verus admitted that the requested information resides in electronic format organized by claimant.¹⁵ Accordingly, retrieving information for any specified claimant should involve a relatively straightforward, automated search and extraction of data, which I understand the Debtors have agreed to pay for. Based on my prior experience with claimant-level electronic data productions from tort defendant databases and third-party trusts, I do not expect it would take Verus, or another competent third party, significant time to extract the electronic data specified by the subpoena. It took less than thirty days for the Verus managed T H Agriculture & Nutrition, L.L.C. Asbestos Personal Injury Trust to produce similar data in another matter in which I was involved as the Debtors' expert (*In re Specialty Products Holding Corp., et al.* aka

¹⁴ United States General Accounting Office, *Using Statistical Sampling*, May 1992, at 36.

¹⁵ Declaration of Mark T. Eveland, *In re Aldrich Pump LLC, et al.*, No. 22-cv-5116 (D.N.J. Aug. 19, 2022) at ¶9.

Bondex). I know of no reason a longer time period would be required here, especially since Verus has apparently already completed the first step: as evidenced by the “Matching Claimants” having filed Motions to Quash the subpoenas, Verus has presumably already identified the claimant records in its systems that would be responsive to the subpoenas and provided notice to the relevant third-party claimants where appropriate. I would expect most of the time associated with extracting these electronic data fields for the population of relevant claimants to be associated with computer run time rather than the type of expensive manual review and extraction that Verus alleges. Consequently, the costs in complying with the Subpoena are likely only minimally impacted by the number of claimants at issue—the burden of electronically extracting data from a database and using an automated program is not significantly impacted by the number of claimants whose data is extracted. Unlike a request for 12,000 documents, whose burden could be reduced by reducing the number of documents, a sample here that reduces the number of claimants whose data already resides in electronic format does little to nothing to reduce the burden on Verus and the Trusts.

23. Verus also overstates any potential risk associated with the transmission of sensitive information when it incorrectly asserts that the “Subpoena seeks protected material consisting of the claimants’ (and others’) sensitive and confidential medical information.”^{16,17} First, the subpoena does not request sensitive personal or health information. Instead, the requested fields are factual and discrete in nature: claimant pseudonym, claimant’s law firm, dates (i.e., date filed, date approved, and date paid), claim status (e.g., paid, rejected, pending),

¹⁶ Verus Claim Services, LLC’s Memorandum of Law in Support of its Motion to Quash Subpoena and to Stay, In re Aldrich Pump LLC, et al., No. 22-cv-5116 (D.N.J. Aug. 19, 2022) at 17.

¹⁷ The opinions that follow also apply to similar claims made by other Objecting Parties.

and exposure-related fields (e.g., dates of exposure, industry and occupation when exposed, products to which exposed, and manner of exposure).¹⁸

24. Based on my experience analyzing similar trust data, I would expect that most if not all the requested fields are encoded categorical or date fields that are unlikely to contain long, narrative text of the type that Verus alleges would require extensive manual review to remove sensitive information. Given the nature of the information requested, and the basic structure of databases of this type, the requested fields should not reasonably contain any of the long list of sensitive information identified by Verus (none of which is sought by the subpoena in any event), such as “Social Security Administration earning statements, dates of birth, birth certificates, medical records, death certificates, divorce records, tax returns and military records” or “economic loss reports or statements describing the mental and physical disabilities / drug addictions / marital issues / special needs of spouses, children and dependents.”¹⁹

25. Second, Bates White already possesses the relevant claimant personal and health information for all 12,000 claimants. That is, for a claimant to appear on the “Matching Key” that Bates White provided to Verus identifying those claimants for whom the subpoena requests that Verus provide information, Bates White necessarily already had the claimant’s last name, Social Security Number, and mesothelioma diagnosis. In other words, no Personal Identifiable Information or Protected Health Information will be communicated to the Debtors or Bates White.

Reconciliation with Dr. Gallardo-Garcia’s *Bestwall* declaration

¹⁸ Order Granting Motion of the Debtors for an Order Authorizing the Debtors to Issue Subpoenas on Asbestos Trusts and Paddock Enterprises, LLC, In re Aldrich Pump LLC, et al., No. 20-30608 (W.D.N.C. July 1, 2022) at ¶10.

¹⁹ Declaration of Mark T. Eveland, In re Aldrich Pump LLC, et al., No. 22-cv-5116 (D.N.J. Aug. 19, 2022) at ¶12.

26. Verus incorrectly asserts that the sampling approach outlined by my Bates White Partner, Dr. Gallardo-Garcia, in the *Bestwall* matter “conclusively demonstrates that Bates White does not actually need all of the information requested in the Subpoenas and that it can perform its services with a sample of truly anonymized data.”²⁰ Verus fails to note that Dr. Gallardo-Garcia clearly stated in the same declaration that sampling is a useful strategy when the analysis of the entire population is not an option, and that, relative to a population-level analysis, sampling increases the analytical costs and may reduce the precision of the results:

[S]ampling is a useful strategy if gathering and reviewing information for the whole population by conducting a census is not an option, for example, due to the financial cost or time delay associated with such an exercise. Because a sample includes only a fraction of the whole population, it invariably increases the analytical burden and can reduce the precision of results when compared to performing the same analysis on data for the whole population. Thus, any sample of a population should be designed in a manner that reduces the analytical burden and the uncertainty in the results.²¹

27. In the *Bestwall* matter, at the time Dr. Gallardo-Garcia submitted his declaration, a population-level analysis was not feasible because the Delaware District Court had ordered a sample.²² Dr. Gallardo-Garcia’s declaration, therefore, focused on how to best design the sample to comply with the Delaware order.²³ I understand that the Delaware District Court’s decision has been recently overturned and that the Debtor in the *Bestwall* matter will now receive

²⁰ Verus Claim Services, LLC’s Memorandum of Law in Support of its Motion to Quash Subpoena and to Stay, In re Aldrich Pump LLC, et al., No. 22-cv-5116 (D.N.J. Aug. 19, 2022) at 11.

²¹ Motion of the Debtor to (A) Approve Resolved Claim Sample and (B) Authorize Related Disclosure Pursuant to Rule 502(d) of the Federal Rules of Evidence, In re Bestwall LLC, No. 17-31795 (W.D.N.C. Oct. 28, 2021), Exhibit B, at ¶15.

²² Order, In re Bestwall LLC, No. 21-mc-00141 (D. Del. June 17, 2021) at 1–2.

²³ The *Bestwall* sample discussed in Dr. Gallardo-Garcia’s declaration was originally designed to assess historical claim documents for mesothelioma claims resolved through settlements, dismissals, or verdicts. Specifically, the *Bestwall* resolved claim sample involved material data collection costs, as this information did not already reside in electronic format. These records might include depositions, interrogatories, medical records, and other lengthy files requiring significant time to identify, gather, and review. Because the Delaware court ordered a sample for trust discovery and such discovery was on mesothelioma claims resolved through settlement or verdict, Bestwall proposed using the same sample for trust discovery, given that it had already invested time and incurred costs on designing the sample and collecting and reviewing the files.

discovery for all the 15,000 claims it initially sought in the subpoena that was approved by the Bankruptcy Court in that case.²⁴

Bates White business

28. Verus asserts that Bates White might use any data produced under the subpoena for ulterior business purposes outside of the current matter.²⁵ This speculation is untrue, and Verus provides no basis to support it. In the ordinary course of business, Bates White routinely receives privileged and confidential information, often highly sensitive in nature. In addition to adhering to protective orders and confidentiality agreements governing such information, Bates White has data security protocols that implement industry best practices for data confidentiality and protection. Such protocols include, but are not limited to, the following safeguards: (a) each staff member has unique log-in credentials to access Bates White’s systems; (b) data access in each matter is limited to staff based on “need to know” and “least privilege” principles; (c) confidential or privileged information is transmitted through encrypted file sharing systems; (d) all media that leaves Bates White are encrypted and password-protected; (e) data at rest are encrypted; (f) physical external media with confidential information are secured in a locked safe or cabinet; (g) to comply with data destruction requirements, external media are destroyed, and external hard drives and laptops are wiped to ensure all data are removed; and (h) Bates White’s network is protected by next-generation firewalls, web filtering, intrusion detection and prevention capabilities, and 24/7 monitoring by a third party managed security service provider. Bates White also deploys next-generation antivirus protection to all endpoints, data loss protection designed to monitor theft and unauthorized uses of data, and two-factor authentication for remote access to the Bates White network and for accessing cloud-based

²⁴ Opinion, In re Bestwall LLC, No. 21-2263 (3d Cir. Aug. 24, 2022) at 4.

²⁵ The opinions that follow also apply to similar claims made by other Objecting Parties.

applications and resources. All Bates White employees must complete an annual, multi-part cybersecurity training program, including annual phishing campaigns. Bates White also receives annual SOC 2 certification and received a third-party HITRUST certification.

29. Further, any information produced in response to the subpoena will be subject to the extensive Confidentiality Order in the Aldrich Bankruptcy Proceedings. Bates White has been subject to many such orders and has a long track record of preserving and protecting privileged and confidential information, often highly sensitive in nature.

30. Finally, Verus also incorrectly asserts that responding to the subpoena would “expose Verus’s proprietary trade secrets to third parties, including competitors such as Bates White.”²⁶ Bates White does not provide third-party claims administration services, nor does it process trust claims. As such, Bates White does not compete with Verus. Further, the requested information does not contain the valuation placed by Verus on any trust claims; it simply would identify whether a claimant received any payment (but not the value of that payment). Since the requested information does not contain Verus’s valuation of any trust claims, Bates White could not “reverse engineer” any algorithms proprietary to Verus.

²⁶ Declaration of Mark T. Eveland, In re Aldrich Pump LLC, et al., No. 22-cv-5116 (D.N.J. Aug. 19, 2022) at ¶7.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing
is true and correct.

Dated: September 26, 2022
Washington, DC



Charles H. Mullin, Ph.D.
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Washington, DC 20006
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Exhibit 1

Charles H. Mullin, Ph.D. Curriculum Vitae

Summary of experience

Charles H. Mullin is the Bates White Managing Partner. He provides advice and expert analysis on issues involving mass torts, class actions, insurance coverage, bankruptcies, and due diligence for mergers, acquisitions, and spin-offs. He is a recognized expert on statistical and data analysis, econometrics, economic and microsimulation modeling, insurance allocation, and asbestos-related matters. Since 2018, Who's Who Legal named him Insurance Expert of the Year, and he has been a Who's Who Legal Insurance and Reinsurance Expert Witness Thought Leader since 2016. Dr. Mullin has authored more than 75 expert reports and provided expert testimony in more than 50 matters, as well as provided due diligence reports for corporate transactions. He has more than 20 years of experience providing this expertise in both the private and public sectors.

He taught courses in statistics, econometrics, and labor economics while on the faculty in the Department of Economics at Vanderbilt University and at the University of California at Los Angeles. Dr. Mullin has published papers on applied and theoretical econometrics and labor economics in peer-reviewed journals, and he is frequently invited to speak at industry conferences.

Education

- PhD, Economics, University of Chicago
- BA, Mathematics and Economics, University of California at Berkeley

Selected experience

- Claims valuation consultant on behalf of the Debtors in *In re: Aearo Technologies LLC, et al.*, No. 22-02890-JJG-11 (Bankr. S.D. Ind.): 2022–present.

- Authored expert report and provided deposition testimony on behalf of multiple insurance companies in *AmerisourceBergen Drug Corporation, et al., v. ACE American Insurance Co., et al.*, No. 17-C-36 (W.V. Cir. Ct., Boone Cnty): 2021–present.
- Authored expert report, provided deposition testimony, and provided hearing testimony on behalf of the Debtor in *In re LTL Management LLC*, No. 21-30589 (MBK) (Bankr. D.N.J.) (formerly No. 21-30589 (JCW) (Bankr. W.D.N.C.)): 2021–present.
- Authored expert report, provided deposition testimony, and provided hearing testimony in *In re: Mallinckrodt PLC, et al.* No. 20-12522 (Bankr. D. Del.): 2021.
- Authored expert report and provided deposition testimony in *Kevin Brown et al. v. Saint-Gobain Performance Plastics Corporation and Gwenael Busnel*, No. 1:16-cv-00242 (U.S. Dist. Ct. D. N.H.): 2020–present.
- Assessed the value of pending and future asbestos-related personal-injury claims on behalf of the Debtors in *In re Aldrich Pump LLC, et al.*, No. 20-30608 (Bankr. W.D.N.C.): 2020–present.
- Assessed the value of pending and future abuse claims on behalf of the Debtors in *In re: Boy Scouts of America and Delaware BSA, LLC* No. 20-10343 (Bankr. D. Del.): 2020–present.
- Assessed the value of pending and future asbestos-related personal-injury claims on behalf of the Debtors in *In re DBMP, LLC*, No. 20-30080 (Bankr. W.D.N.C.): 2020–present.
- Assessed the value of pending and future asbestos-related personal-injury claims on behalf of the Debtors in *In re Paddock Enterprises, LLC*, No. 20-10028 (LSS) (Bankr. D. Del.): 2020–2022.
- Authored presentation for investor group and provided model of potential losses related to bodily-injury claims alleged related to agricultural pollutant: 2019.
- Retained on behalf of the Debtors in *In re Purdue Pharma L.P., et al.*, No. 19-23649 (Bankr. S.D.N.Y.): 2019–present.
- Authored expert report in *In re Midwest Generation, LLC, et al.*, No. 12-49218 (Bankr. N.D. Ill.): 2019.
- Authored expert report and provided deposition testimony on behalf of excess insurers in *In re Kaiser Gypsum Company, Inc., et al.*, No. 16-31602 (Bankr. W.D.N.C.): 2018–2021.
- Authored expert report in *Consumer Financial Protection Bureau v. Navient Corporation and Navient Solutions, Inc.*, No. 3:17-cv-00101 (M.D. Pa., Jan. 18, 2017). 2018–present.

- Authored expert report and provided deposition testimony in *Keyes Law Firm v. Napoli Bern Ripka Shkolnik, LLP, et al.*, No. 1:17-cv-02972 (U.S. Dist. Ct. D. Md.): 2018–2020.
- Authored expert report and provided deposition testimony in *St. Paul Surplus Lines Insurance Company v. Wright Medical Group, Inc., et al.*, No. CH-14-0927 (Tn. Ch. Ct. 13th Jud. Dist. Memphis): 2018–2019.
- Authored expert report, provided deposition testimony, and testified in *Cannon Electric, Inc., now known as ITT Cannon, Inc., et al. v. ACE Property and Casualty Company, et al.*, No. BC 290354 (Super. Ct. Cal. L.A. Cnty. Ct.): 2018.
- Assessed the value of pending and future asbestos-related personal-injury claims on behalf of the Debtors in *In re Bestwall, LLC*, No. 17-31795 (Bankr. W.D.N.C.): 2017–present.
- Assessed the value of pending and future airbag-related personal-injury claims on behalf of automobile manufacturers in the matter of *In re TK Holdings Inc., et al.*, No. 17-11375 (BLS) (Bankr. D. Del.) and related proceedings: 2017–2018.
- Authored expert reports and testified in *James D. Sullivan et al. v. Saint-Gobain Performance Plastics Corporation*, No. 5:16-cv-00125 (U.S. Dist. Ct. D. Vt.): 2017–2019.
- Authored expert report, provided deposition testimony, and testified in *In re the Receivership of Fraser’s Boiler Service, Inc.*, No. 15-2-01791-8 SEA (Wash. Super. Ct., King Cnty.): 2017.
- Authored expert report in *Gerrit H. Brouwer et al. v. Wyndham Vacation Resorts, Inc. et al.*, No. 2014-CA-008533 (Fl. Cir. Ct. 9th Jud. Cir. Orange Ct.): 2017–2022.
- Authored expert report in *Ernest Yaeger, Jr. et al. v. Wyndham Vacation Resorts, Inc. et al.*, No. 2014-CA-008054 (Fl. Cir. Ct. 9th Jud. Cir. Orange Ct.): 2017–2022.
- Authored declarations and testified in a reinsurance arbitration: 2017–present.
- Authored declaration and reports, provided deposition testimony, and testified in a reinsurance arbitration: 2016–present.
- Analyzed coverage issues on behalf of Columbia Casualty Co. regarding pharmaceutical-based losses: 2016.
- Authored expert reports on behalf of HDI-Gerling Industrial Insurance Co. regarding pharmaceutical-based losses: 2015–2016.
- Authored expert report and declaration and provided deposition testimony in *Appleton Papers Inc. & NCR Corp. v. George A. Whiting paper Co. et al.*, No. 08-C-16 (U.S. Dist. Ct. E.D.WI): 2015–2017.

- Authored expert reports on behalf of ACE Bermuda insurance Ltd. regarding an arbitration claim by 3M Company regarding allegedly defective masks and respirators against Bermuda-Form policies: 2015–2016.
- Authored expert report on behalf of Allstate Insurance Company regarding an insurance contribution claim in *Certain Underwriters at Lloyd’s London v. Allstate et al.*, No. C101-1674 (Ohio Ct. Com. Pl., Lucas Cnty.): 2015–2016.
- Analyzed coverage issues stemming from agricultural-related water contamination claims: 2015–2018.
- Analyzed coverage issues stemming from MTBE-related claims filed: 2015–2018.
- Authored expert report and provided deposition testimony in *Direct General Ins. Co. v. Indian Harbor Ins. Co.*, No. 1:14-CV-20050-MGC (S.D. Fla.): 2015.
- Authored expert report, provided deposition testimony, and testified during arbitration on behalf of General Re Corporation and SCOR SE in a reinsurance matter: 2014–2017, 2018–2021.
- Analyzed coverage issues stemming from Benzene claims filed in *Radiator Specialty Company vs. Arrowood Indemnity Company et al.*, No. 13 CVS 2271 (NC Super. Ct. Mecklenburg Cnty.): 2014–2015.
- Coauthored letters supporting the approximately \$700 million international legacy asbestos liability and related insurance valuations for the newly combined AMEC Foster Wheeler across US GAAP and IFRS accounting frameworks, as well as periodic updates to said analyses: 2014–present.
- Authored declaration on behalf of insurance companies in *AIU Ins. Co. v. Philips Elecs. N. Am. Corp.*, No. 9852-VCN (Del. Ch.): 2014–2015.
- Authored declaration on behalf of insurance companies in *In re T.H. Agric. & Nutrition, LLC*, No. 08-14692 (Bankr. S.D.N.Y.): 2014.
- Analyzed coverage issues stemming from environmental loss in *Olin Corporation v. Insurance Company of North America et al.*, No. 84 CIV. 1968 (TPG) (U.S. Dist. Ct. S.D.N.Y.): 2014–2015.
- Provided legacy liability valuation report that parsed liability for a large-scale energy generator across specific facilities and over time: 2014.
- Authored expert report, provided deposition testimony, and testified during arbitration on behalf of Allstate Insurance Company in a reinsurance matter: 2013–2015.
- Provided deposition testimony on behalf of National Indemnity Company in *Nat’l Indem. Co. v. State*, No. XDDV 2012-140 (Mont. Dist. Ct., Lewis & Clark Cnty.): 2013–2018.

- Authored expert report, provided deposition testimony, and testified on behalf of insurance companies in *Nooter Corp. v. Allianz Underwriters Ins. Co.*, No. 1022-CC01145-01 (Mo. Cir. Ct. 22nd Jud. Cir. St. Louis City): 2013–present.
- Coauthored expert report, provided deposition testimony, and testified on behalf of multiple insurance companies in *In re Blitz U.S.A.*, No. 11-13603 (PJW) (Bankr. D. Del.): 2013–2014.
- Provided deposition testimony on behalf of The Hartford Accident and Indemnity Company in the matter *Fluor Corp. v. Hartford Accident & Indem. Co.*, No. 06CC00016 (Cal. Super. Ct., Orange Cnty.): 2013.
- Authored expert report on behalf of The Hartford Accident and Indemnity Company in the matter *Hartford Accident & Indemnity Co. v. Travelers Indem. Co.*, No. X07-HHD-CV-11-6021732-S (Conn. Super. Ct., Hartford Cnty.): 2013–2015.
- Provided deposition and trial testimony on behalf of The Travelers Indemnity Company in *US Silica Co. v. ACE Fire Underwriters Ins. Co.*, No. 06-C-2 (W. Va. Cir. Ct., Morgan Cnty.): 2013.
- Authored expert report and testified during arbitration proceedings on behalf of the Massachusetts Insurance Insolvency Fund in *In re the Liquidation of Midland Ins. Co.*, No. 41294/86 (N.Y. Sup. Ct.): 2012–2013.
- Authored expert report, provided deposition testimony, and testified at trial on behalf of Defendant in *Cannon Elec., Inc. v. Affiliated FM Ins. Co.*, No. BC 290354 (Cal. Super. Ct., L.A. Cnty.): 2012–2013.
- Authored expert report and provided deposition testimony on behalf of multiple insurance companies in *Goodrich Corp. v. A.G. Securitas et al.*: 2013–2015.
- Authored expert reports and testified during arbitration proceedings on behalf of Munich Re regarding pharmaceutical-based losses: 2011–2013.
- Authored expert report on behalf of Zurich International (Bermuda) Ltd. in a Wellington ADR: 2011.
- Authored expert reports, provided deposition testimony, and testified during arbitration on behalf of Liberty Mutual Insurance Company in a series of related reinsurance arbitration matters: 2011–2013.
- Authored expert reports and declarations, provided deposition testimony, and testified during the confirmation hearing on behalf of multiple insurance companies in *In re Plant Insulation Co.*, No. 09-31347 TC (Bankr. N.D. Cal.): 2011–2014.

- Provided consulting services for a coalition of direct action plaintiffs in *In re Puerto Rican Cabotage Antitrust Litigation*.
- Analyzed liability and damages resulting from the indirect claim on behalf of a large coalition of direct-action plaintiffs in the United States, Asia, and Europe in *In re TFT-LCD (Flat Panel) Antitrust Litig.*, MDL No. 1827 (N.D. Cal.): 2011–2015.
- Authored expert reports, provided deposition testimony, and testified assessing the value of pending and future asbestos-related personal-injury claims on behalf of the Debtors in *In re Specialty Prods. Holding Corp.*, No. 10-11780 (JKF) (Bankr. D. Del.): 2010–2015.
- Assessed the value of pending and future asbestos-related personal-injury claims on behalf of the Debtors in *In re Garlock Sealing Techs., LLC*, No. 10-BK-31607 (Bankr. W.D.N.C.): 2010–2018.
- Assisted a Fortune 500 company in the completion of a limited portfolio transfer of thousands of asbestos claims to a major insurance company: 2010–2011.
- Authored declaration and provided deposition testimony on behalf of multiple insurance companies in *In re Leslie Controls, Inc.*, No. 10-12199 (CSS) (Bankr. D. Del.): 2010–2011.
- Authored declarations on behalf of Century Indemnity Company in *In re Thorpe Insulation Co.*, No. CV 10-1493 DSF (Bankr. C.D. Cal.): 2010–2011.
- Assessed the value of pending and future asbestos-related personal-injury claims on behalf of the Official Committee of Unsecured Creditors in *In re Motors Liquidation Co.*, No. 09-50026 (REG) (Bankr. S.D.N.Y.): 2010–2011.
- Assessed the value of diacetyl claims on behalf of the Official Committee of Equity Security Holders in *In re Chemtura Corp.*, No. 09-11233 (REG) (Bankr. S.D.N.Y.): 2010.
- Provided deposition and trial testimony in *Cannon Electric, Inc., now known as ITT Cannon, Inc., et al. v. Affiliate FM Insurance Company, et al.*, No. BC 290354 (Super. Ct. Cal. L.A. Cty. Ct.) Goulds: 2009–2017.
- Authored expert report on behalf of FM Global and Utica in an arbitration matter: 2009–2010.
- Authored expert reports and provided deposition testimony on behalf of Aviva Insurance Company in *Flintkote Co. v. Gen. Accident Assurance Co. of Can.*, No. C04-01827 MHP (N.D. Cal.): 2009–2010.
- Provided deposition testimony on behalf of NL Industries, Inc., in *Brown v. NL Indus., Inc.*, No. 06-602096-CZ (Mich. Cir. Ct., Wayne Cnty.): 2009–2010.

- Authored expert report on behalf of taxpayers in *Cencast Servs., L.P. v. United States*, Nos. 02-1916 T through 02-1925 T (Fed. Cl.): 2009–2012.
- Authored declaration on behalf of the State of Israel in *In re Holocaust Victim Assets Litig.*, No. 09-160 (ERK)(JO) (E.D.N.Y.): 2009–2010.
- Provided deposition testimony on behalf of multiple insurance companies in the matter *State of Minnesota v. Associated Medical Assurance Ltd.*, No. 27-CV-08-1912 (Minn. Dist. Ct., Hennepin Cnty.): 2008–2010.
- Authored expert reports, provided deposition testimony, and testified on behalf of multiple insurance companies in *Continental Casualty Co. v. BorgWarner Inc.*, No. 04 CH 01708 (Ill. Cir. Ct., Cook Cnty.): 2007–present.
- Authored expert reports, provided deposition testimony, and testified on behalf of multiple insurance companies in *Continental Ins. Co. v. Honeywell Int’l, Inc.*, No. MRS-L-1523-00 (N.J. Super. Ct., Morris Cnty.): 2007–2018.
- Authored expert report and provided deposition testimony on behalf of insurance company in *Nat’l Serv. Indus., Inc. v. Appalachian Ins. Co.*, No. E-22807 (Ga. Super. Ct., Fulton City): 2007.
- Authored expert report, provided deposition testimony, and testified on behalf of policyholder in *Imo Indus., Inc. v. Transamerica Corp.*, No. L-2140-03 (N.J. Super. Ct., Mercer Cnty.): 2007–2011.
- Authored expert report and provided deposition testimony on behalf of insurance company in *Degussa Corp. v. Century Indem. Co.*, No. UNN-L-2163-03 (N.J. Super. Ct., Union Cnty.): 2007.
- Authored expert report and provided deposition testimony on behalf of insurance joint defense group in *Foster Wheeler LLC v. Affiliated FM Ins. Co.*, No. 600777/01 (N.Y. Sup. Ct., N.Y. Cnty.): 2007–2011.
- Authored expert reports, provided deposition testimony, and testified on behalf of Argonaut Insurance Company in several reinsurance arbitrations: 2006–2007.
- Coauthored a report on the economic viability of the Trust Fund proposed under S.852, the Fairness in Asbestos Injury Resolution (FAIR) Act of 2005, which highlights how compensation criteria specified for the proposed Fund would change the number and composition of claims relative to the current tort environment: 2005.
- Authored due diligence reports on asbestos, silica, and other mass tort matters for corporate transactions that assessed potential future tort expenditures and evaluated the insurance assets that may provide coverage for those tort expenditures: 2005–present.

- Authored expert reports and provided deposition testimony assessing the Trust-based liquidated values and insurance allocation on behalf of Plaintiff in *Nat'l Union Fire Ins. Co. of Pittsburgh, Pa. v. Porter Hayden Co.*, No. 1:03-CV-03408-CCB (D. Md.): 2004–2015.
- Authored expert report and provided deposition testimony to address the fraction of expenditures associated with a company's asbestos installation operations on behalf of Defendants in *Owens Corning v. Birmingham Fire Ins. Co. of Pa.*, No. C10200104929 (Ohio Ct. Com. Pl., Lucas Cnty.): 2003–2005.
- Authored expert report focused on the design and implementation of claims file samples in *Hercules Inc. v. OneBeacon Am. Ins. Co.*, No. 02C-11-237 (Del. Super. Ct., New Castle Cnty.): 2004.
- Assisted with settlement negotiations by analyzing the total value of a national refractory company's products and nonproducts coverage associated with claims for both asbestos and potential silica liabilities.
- Evaluated future liabilities and projected insurance recoveries under various scenarios, such as geographic constraints regarding a regional insulation contractor and supply company.
- Served on behalf of the US Department of Labor in providing statistical analysis for discriminatory hiring cases and assessing damages.
- Analyzed demand-side management programs for utility companies. Evaluated different contract structures, software development options, and returns on subsidization programs.
- Investigated potential collusion and redlining by auto-insurance companies on behalf of the Office of the Chicago Mayor.

Other professional experience

Prior to joining Bates White, Dr. Mullin worked at Chicago Partners, where he provided damages assessments for antitrust matters. Previously, he worked at Quantum Consulting, where he conducted demand-side management for utility companies, and at Litigation Resolution Group. In addition to his professional experience, Dr. Mullin was on the faculty in the Departments of Economics at Vanderbilt University and the University of California at Los Angeles.

Industry presentations

- “Update on Talc Litigation.” Perrin Conferences—National Asbestos Litigation Conference, Oct. 1, 2018.
- “Corporate Roundtable: In-House Perspectives on Asbestos Litigation.” Perrin Conferences—Asbestos Litigation Conference: A National Overview & Outlook, Sept. 13, 2016.
- “Emerging Risks & Insurance Issues in 2016 Coverage Litigation.” Perrin Conferences—Emerging Insurance Coverage & Allocation Issues Conference, May 18, 2016.
- “Impact of Bankruptcies on Litigation Strategies.” Perrin Conferences—Asbestos Litigation Conference: A National Overview & Outlook, Sept. 28, 2015.
- “Emerging Issues, Coverage Trends and Key Jurisdictional Updates for 2015.” Perrin Conferences—Emerging Insurance Coverage & Allocation Issues, May 19, 2015.
- “National Trends Driving Asbestos Litigation.” Perrin Conferences—Asbestos Litigation Conference: A National Overview & Outlook, Sept. 17, 2013.
- “Asbestos Bankruptcy Update.” Perrin Conferences—Asbestos Litigation Conference: A National Overview & Outlook, Sept. 16, 2013.
- “Charting the Right Course in 2013: A Closer Look at This Year’s Emerging Insurance Coverage Issues.” Perrin Conferences—Emerging Insurance Coverage & Allocation Issues in 2013, May 14, 2013.
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- “Impact of Current Tort Environment on Asbestos Reserves.” 2010 Casualty Actuary Society Annual Meeting, Nov. 8, 2010.
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- “Role of the Bankruptcy Trusts in Civil Asbestos.” BVR Legal/Mealey’s Emerging Trends in Asbestos Litigation Conference, Mar. 9–11, 2009.
- “Damages in a Bad Faith Case.” BVR Legal/Mealey’s Bad Faith Litigation Conference, Nov. 6–7, 2008.
- “Emerging Issues and Important Developments.” West Legalworks, Insurance and Reinsurance Allocation 2008: A Comprehensive Workshop, June 12, 2008.
- “Impact of Underlining Litigation Developments.” West Legalworks, Insurance and Reinsurance Allocation, Nov. 7, 2007.
- “Removing the Asbestos Overhang—Is There an Alternative to Asbestos Bankruptcy?” Mealey’s Publications, Mealey’s National Asbestos Litigation SuperConference, Sept. 26, 2007.
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Grants

- 2004–2007: Principal Investigator (with V. J. Hotz and J. K. Scholz), National Science Foundation Grant, “Tax Policy and Low-Wage Labor Markets: New Work on Employment, Effectiveness and Administration.”
- 2000–2001: Principal Investigator (with V. J. Hotz and J. K. Scholz), Grant to the University of Wisconsin–Madison from Assistant Secretary of Planning and Evaluation, US Department of Health and Human Services.
- 1997–1998: National Institutes of Health Predoctoral Training Grant.

Professional associations and honors

- *Who’s Who Legal*: Insurance Expert of the Year, 2018–present
- *Who’s Who Legal* Thought Leader: Global Elite list, 2019, 2020
- *Who’s Who Legal*: Insurance & Reinsurance Expert Witnesses Thought Leader, 2016–present
- American Bar Association
- American Economic Association
- American Law and Economics Association
- Econometric Society
- Society of Labor Economist

Exhibit 2

Materials Relied Upon

Documents and materials related to *In re Aldrich Pump LLC*

- Declaration of Mark T. Eveland, In re Aldrich Pump LLC, et al., No. 22-cv-5116 (D.N.J. August 19, 2022).
- Ex Parte Order Authorizing the Debtors to Retain and Employ Bates White, LLC as Asbestos Consultants as of the Petition Date, In re Aldrich Pump LLC, et al., No. 20-30608 (W.D.N.C. June 18, 2020), as modified by the Amended Order Authorizing the Debtors to Retain and Employ Bates White, LLC as Asbestos Consultants as of the Petition Date, In re Aldrich Pump LLC, et al., No. 20-30608 (W.D.N.C. August 18, 2020).
- Informational Brief of Aldrich Pump, LLC and Murray Boiler, LLC, In re Aldrich Pump, et al., No. 20-30608 (W.D.N.C. June 18, 2020).
- Memorandum of Law in Support of Third-Party Asbestos Trusts’ Motion to Quash Subpoenas and in Support of Stay, In re Aldrich Pump LLC, et al., No. 22-cv-5116 (D.N.J. August 19, 2022).
- Motion of the Debtors for an Order Authorizing the Debtors to Issue Subpoenas on Asbestos Trusts and Paddock Enterprises, LLC, In re Aldrich Pump, et al., No. 20-30608 (W.D.N.C. April 7, 2022).
- Non-party Certain Matching Claimants’ Memorandum of Law in Support of (I) Motion to Quash or Modify Subpoenas and (II) Joinders, In re Aldrich Pump LLC, et al., No. 22-cv-5116 (D.N.J. September 2, 2022).
- Order Granting Motion of the Debtors for an Order Authorizing the Debtors to Issue Subpoenas on Asbestos Trusts and Paddock Enterprises, LLC, In re Aldrich Pump LLC, et al., No. 20-30608 (W.D.N.C. July 1, 2022).
- Verus Claim Services, LLC’s Memorandum of Law in Support of its Motion to Quash Subpoena and to Stay, In re Aldrich Pump LLC, et al., No. 22-cv-5116 (D.N.J. August 19, 2022).

Documents and materials related to *In re Bestwall LLC*

- Transcript of Proceedings before the Honorable Laura Turner Beyer, United States Bankruptcy Judge, In re Bestwall, No. 17-31795 (W.D.N.C. January 21, 2021), Vol. 1.
- Motion of the Debtor to (A) Approve Resolved Claim Sample and (B) Authorize Related Disclosure Pursuant to Rule 502(d) of the Federal Rules of Evidence, In re Bestwall LLC, No. 17-31795 (W.D.N.C. October 28, 2021).

- Opinion, In re Bestwall LLC, No. 21-2263 (3d Cir. August 24, 2022).
- Order, In re Bestwall LLC, No. 21-mc-00141 (D. Del. June 17, 2021).

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- US General Accounting Office. *Using Statistical Sampling* GAO/PEMD-10.1.6, revised May 1992.

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

IN RE:

ALDRICH PUMP LLC, et al.,

Debtor.

AC&S ASBESTOS SETTLEMENT TRUST,
COMBUSTION ENGINEERING 524(G)
ASBESTOS PI TRUST, GI HOLDINGS INC.
ASBESTOS PERSONAL INJURY
SETTLEMENT TRUST, GST SETTLEMENT
FACILITY, KAISER ALUMINUM &
CHEMICAL CORPORATION ASBESTOS
PERSONAL INJURY TRUST, QUIGLEY
COMPANY, INC. ASBESTOS PI TRUST, T H
AGRICULTURE & NUTRITION, L.L.C.
ASBESTOS PERSONAL TRUST, and
YARWAY ASBESTOS PERSONAL INJURY
TRUST,

Petitioners,

v.

ALDRICH PUMP LLC and MURRAY BOILER
LLC,

Respondents,

VERUS CLAIMS SERVICES, LLC,

Interested Party,

NON-PARTY CERTAIN MATCHING
CLAIMANTS,

Interested Party.

Chapter 11

Underlying Case No.: 20-30608

(JCW)

(United States Bankruptcy Court
for the Western District of North
Carolina)

Case No.: 22-05116 (MAS-TJB)

Honorable Michael A. Shipp

Honorable Tonianne J.
Bongiovanni

CERTIFICATE OF SERVICE

I, **PAUL R. DeFILIPPO**, of full age, certify as follows:

1. I am an attorney-at-law of the State of New Jersey and partner with the law firm of Wollmuth Maher & Deutsch LLP, counsel to Aldrich Pump LLC and Murray Boiler LLC (“Respondents”).

2. On September 26, 2022, I caused a true and correct copy of *Aldrich Pump LLC and Murray Boiler LLC’s Memorandum of Law in Opposition to: (I) Third-Party Trusts’ Motion to Quash Subpoenas and in Support of Stay; (II) Verus Claim Services, LLC’s Motion to Quash Subpoena and to Stay; and (III) Non-Party Certain Matching Claimants’ Joinders and Motion to Quash* to be electronically filed via the Court’s CM/ECF system.

I certify that the foregoing statements made by me are true and correct. I am aware that if any of the foregoing statements are willfully false, I may be subject to punishment.

Dated: September 26, 2022

Respectfully submitted,

/s/ Paul R. DeFilippo
Paul R. DeFilippo

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*Co-Counsel for Aldrich Pump LLC and
Murray Boiler LLC*

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

IN RE:
ALDRICH PUMP LLC, et al.,

Debtors.

AC&S ASBESTOS SETTLEMENT
TRUST, et al.,

Petitioners,

VERUS CLAIMS SERVICES, LLC

Interested Party,

NON-PARTY CERTAIN MATCHING
CLAIMANTS,

Interested Party,

v.

ALDRICH PUMP LLC and MURRAY
BOILER LLC,

Respondents.

Underlying Case No. 20-30608
(JCW)
(U.S. Bankruptcy Court for the
Western District of North Carolina)

Case No.: 22-05116
Hon. Michael A. Shipp
Hon. Tonianne J. Bongiovanni
Motion Day: November 7, 2022

**ORAL ARGUMENT
REQUESTED**

**THIRD-PARTY ASBESTOS TRUSTS' MEMORANDUM OF LAW IN
OPPOSITION TO DEBTORS' MOTION TO TRANSFER**

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The eight third-party asbestos settlement trusts identified below¹ (collectively, the “**Trusts**”), by and through their undersigned counsel, respectfully submit this memorandum of law in opposition to Respondents Aldrich Pump LLC and Murray Boiler LLC (the “**Debtors**”)’s motion to transfer the Trusts’ pending motion to quash.

PRELIMINARY STATEMENT

The Bankruptcy Court for the Western District of North Carolina (the “**Bankruptcy Court**”) cannot unilaterally grant itself jurisdiction to issue subpoenas or hear motions for which the Federal Rules of Civil Procedure do not provide. Rule 45 explicitly states that only “the court for the district where compliance is required,” that is, the district where the target of the subpoena resides, has jurisdiction to compel compliance with a subpoena because it has personal jurisdiction over the subpoena recipient. The Bankruptcy Court has not established jurisdiction over the Trusts such that it could order their compliance with its July 1, 2022 order (the “**Order**”) or their response to the subpoenas issued pursuant to it.

¹ The eight trusts are: (i) ACandS Asbestos Settlement Trust; (ii) Combustion Engineering 524(g) Asbestos PI Trust; (iii) G-I Holdings Inc. Asbestos Personal Injury Settlement Trust; (iv) GST Settlement Facility; (v) Kaiser Aluminum & Chemical Corporation Asbestos Personal Injury Trust; (vi) Quigley Company, Inc. Asbestos PI Trust; (vii) T H Agriculture & Nutrition, L.L.C. Asbestos Personal Injury Trust; and (viii) Yarway Asbestos Personal Injury Trust.

Despite the clear language of the Rules and federal law, the Debtors seek to transfer the Trusts' and other parties' pending motions to quash the subpoenas to the Bankruptcy Court. Their motivation is clear: the Debtors are flocking to this particular Bankruptcy Court for an improper forum-shopping reason, that is, because they strongly suspect that the subpoenas they served on the Trusts (the "**Subpoenas**") will be rubberstamped as enforceable based on past rulings rendered by that court. While the bankruptcy system permits debtors to file their actions in forums that they perceive as favorable to their bankruptcy objectives, the Federal Rules do not permit debtors (or bankruptcy courts) to run roughshod over non-parties who may be subject to subpoenas related to the bankruptcy matter. Rule 45 exists to balance the rights of a party that believes it is entitled to information from a non-party against the non-party's right to have a fair opportunity to be heard in its home jurisdiction as to the reasons why the subpoena is improper or should be narrowed. Through their motion to transfer, the Debtors seek to do a blatant end-run around the Rule and do violence to its very purpose. This Court should reject the Debtors' transparent forum-shopping efforts. Instead, this Court should protect one of its corporate citizens and provide a proper forum and appropriate due process for consideration of the Subpoenas.

To transfer this case out of the District of New Jersey, the Debtors bear the burden of establishing exceptional circumstances (i) warranting the motions'

transference, and (ii) outweighing the Trusts’ right to resolve their motion to quash in the compliance Court. The Debtors have not, and cannot, satisfy either requirement.

First, the “exceptional circumstances” upon which the Debtors rely are not exceptional at all: no inconsistent ruling can exist as to the Trusts because the Trusts did not appear before the Bankruptcy Court, and in any event, Rule 45 specifically contemplates the possibility, and indeed, the likelihood that different courts evaluating different individuals’ burdens and interests are inherently likely to come to different conclusions about whether a subpoena is enforceable or not. Further, the Debtors’ “judicial economy” argument is as unexceptional as it is unconvincing, and flatly ignores the Bankruptcy Court’s own instruction during a recent hearing that, as to contesting a subpoena, “the first shot comes to the bankruptcy court that has the case. The second goes to the compliance court.” *In re Aldrich Pump LLC*, No. 20-30608 (Bankr. W.D.N.C.) (Dkt No. 1195 (May 26, 2022 Tr. 112–13).) The Debtors’ interpretation of “exceptional circumstances” warranting transference of a motion to quash would render superfluous Rule 45(d)(3)(A), which designates the compliance court to resolve motions to quash subpoenas.

Second, the Debtors make hardly any effort to analyze whether these supposed “exceptional circumstances” actually outweigh the Trusts’ strong interests in resolving their motion to quash in the compliance court. This is a high bar to

overcome, and the Debtors have not even approached it. Critically, the Trusts’ motion to quash is based in part on the fact that the Order was jurisdictionally defective. Accordingly, the Bankruptcy Court—which the Trusts contend lacked jurisdiction to bind them by way of the Order in the first place—could not be a less appropriate venue to decide the motion to quash. Moreover, the Trusts filed their motion in the District of New Jersey because Interested Party Verus Claims Services, LLC (“**Verus**”), the Trusts’ claims services provider, is based in New Jersey and as a result, the extraordinarily sensitive data it compiles, processes, maintains, and analyzes on behalf of the Trusts is located in this district and subject to this Court’s jurisdiction.

As detailed in the Trusts’ motion to quash, the existing Order – from the Court to which the Debtors seek transfer – seeks to transform the non-party Trusts into information clearinghouses for the sole benefit of the Debtors, with whom the Trusts have no relationship and to whom the Trusts owe no duty whatsoever. Rather, the Order to produce claimant information to strangers (the Debtors) will distract the Trusts from performing their sole bankruptcy court-approved duty, which is to administer the claims of those claimants to whom each Trust does owe a duty, in accordance with the bankruptcy court-approved Trust Distribution Procedures (“**TDPs**”) that bind each Trust.

Accordingly, this Court – the compliance court – is clearly the appropriate venue to resolve the Trusts’ motion to quash to protect the Trust data within this jurisdiction. For the reasons that follow, the Trusts respectfully request that the Debtors’ motion to transfer be denied.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

A. The Trusts and Their Connection to New Jersey

Each of the Trusts is a settlement trust established by a bankruptcy court pursuant to Section 524(g) of Chapter 11 of the Bankruptcy Code to assume a corporate debtor’s present and future liability for personal injury claims related to asbestos exposure. The sole purpose of the Trusts is to pay asbestos victims of each Trust’s pertinent corporate debtor. Each Trust is governed by its own TDP, maintains its own assets, and has its own exposure and proof requirements and a unique evaluation methodology. The Trusts do not act in concert as to claim settlements and do not engage in global or multi-trust settlements with individual claimants. (*See* Dkt. No. 1 at 6.)

The Trusts have deep ties to New Jersey. Each Trust employs Verus, a New Jersey corporation, as a third-party claims administrator to process and administer the personal injury claims filed with each Trust. (*See id.*) Verus maintains all records and documents requested in the Trust Subpoenas, and those records are stored in New Jersey and subject to this Court’s jurisdiction. (*See id.*) The Trusts

also do not operate in North Carolina and have minimal, if any, contacts in the state. As the Trusts set forth in the motion to quash, the Bankruptcy Court does not have personal jurisdiction over the Trusts and the Debtors do not contest that fact. (*Id.* at 17–19.)

B. The TDPs Require the Trusts to Maintain the Confidentiality of Highly Sensitive Claimant Data

The TDPs require the Trusts to maintain the confidentiality of the extraordinarily sensitive claimant data with which they are entrusted. Claimants submit medical and other personal records to whichever Trust they assert a claim against for review and analysis. Those records include very personal medical and financial information of claimants and their dependents or other third-parties, including, among other things, Social Security Numbers, and even tax returns. (*Id.* at 7.)

As settlement trusts, the Trusts are required by their respective bankruptcy courts to treat all submissions “as made in the course of settlement discussions between the holder and the Trust and intended by the parties to be confidential and to be protected by all applicable state and federal privileges, including, but not limited to, those directly applicable to settlement discussions.” (*Id.* at 8.) Verus reviews claimant submissions according to each Trust’s TDP, but the various Trusts cannot access each other’s data through Verus or otherwise, and Verus does not aggregate or commingle the data across the Trusts. (*Id.* at 7.) The TDPs’

confidentiality provisions “make clear that the Trusts are not to serve as information clearinghouses or ‘public libraries’ for [unrelated outside] entities that wish to obtain confidential claimant information for their own commercial purposes.” *In re Bestwall LLC*, No. 21-141, 2021 WL 2209884, at *3 (D. Del. June 1, 2021). Indeed, the Trusts are required to notify claimants’ counsel upon receipt of any subpoena seeking claimants’ submissions to the Trusts, and must take all other reasonable and necessary steps to protect the confidentiality of claimants’ highly sensitive data when it is sought by third parties. (Dkt. No. 1 at 8.)

C. The Subpoenas and the North Carolina Order

As detailed in the Trusts’ motion to quash, the Debtors moved the U.S. Bankruptcy Court for the Western District of North Carolina for an order authorizing their issuance of subpoenas seeking discovery of thousands of confidential claim submissions made to the Trusts, among other parties, on April 7, 2022. (*Id.* at 11.) As non-parties having no ties to North Carolina, the Trusts did not appear in the North Carolina matter. On July 1, 2022, the Bankruptcy Court issued the Order granting the Debtors’ motion and authorizing the Debtors’ issuance of the subpoenas. (*Id.* at 11–12.) The Order purports to require the non-party Trusts, over which the Bankruptcy Court has no jurisdiction, to draw crucial resources away from their duty to promptly evaluate asbestos claims and compensate victims, just so that the Debtors may receive what they speculate would be better, or “more complete”

information about claimants who are seeking payments from the Debtors. (*Id.* at 14.) Moreover, the Order purports to require the Trusts to aggregate into a single database information regarding thousands of claims that is normally maintained separately for each of the Trusts, which presents significant data security concerns. (*Id.*)² Finally, the Order to produce that aggregated claimant information will distract the Trusts from performing their sole bankruptcy court-approved duty: administering the claims of those claimants to whom each Trust does owe a duty, in accordance with the TDPs that bind each Trust. (*Id.* at 5.)

ARGUMENT

I. THE MOTION TO TRANSFER MUST BE DENIED.

“[T]he limitations of Rule 45(c) and the requirements in Rules 45(d) and (e) that motions [to quash] be made in the court in which compliance is required” are meant “[t]o protect local nonparties” from overly burdensome and jurisdictionally improper discovery requests. *See* Fed. R. Civ. P. 45(f) Advisory Committee’s Note (2013) (“**Rule 45 Note**”). Rule 45(f) “authorizes transfer of a subpoena-related

² Other subpoenaed parties filed motions to quash in the District of Delaware, where their compliance with the subpoenas would be required. The Debtors filed a similar motion to transfer in that court, which was granted on September 26, 2022. In that case, however, the claims administrator appeared in the issuing court to oppose the issuance of the subpoenas, whereas here, neither Verus nor the Trusts appeared in the issuing court. Thus, the Delaware court’s decision, which is not binding on this Court, is factually distinct and inapplicable to this matter.

motion “to the issuing court if the person subject to the subpoena consents or if the court finds exceptional circumstances.” *Harapeti v. CBS Television Stations, Inc.*, No. 21-15675, 2021 WL 8316391, at *2 (D.N.J. Dec. 1, 2021) (denying request to transfer to issuing court where no “exceptional circumstances warranting transfer” were presented); *see* Fed. R. Civ. P. 45(f). When considering a motion to transfer, “[t]he prime concern should be avoiding burdens on local nonparties subject to subpoenas.” Rule 45 Note. That is, even if exceptional circumstances are present, “[t]ransfer is appropriate *only* if such interests outweigh the interests of the nonparty served with the subpoena in obtaining local resolution of the motion.” *Id.* (emphasis added). The Debtors’ motion to transfer should be denied because (i) the Debtors have not established, and cannot show, that exceptional circumstances exist, and (ii) even if exceptional circumstances did exist, they would not outweigh the Trusts’ interests in resolving the motion to quash in the compliance court.

A. Exceptional Circumstances Do Not Exist

Rule 45(f) does not define “exceptional circumstances,” but the Advisory Committee’s Note states that “the proponent of transfer bears the burden of showing that such circumstances are present.” Rule 45 Note. Exceptional circumstances can exist where there is a “need ‘to avoid disrupting the issuing court’s management of the underlying litigation, as when that court has already ruled on issues presented by the motion’” *Harapeti*, 2021 WL 8316391, at *2 (finding no exceptional

circumstances warranting transfer where the motion to quash “raise[d] a straightforward application of federal law” and “the motion papers provide[d] sufficient background information about the underlying [actions] to enable this Court to resolve the dispute”). The Debtors have not established that either of these exceptional circumstances exist as to the Trusts.

1. There is No Risk of Inconsistent Rulings as to the Trusts

As detailed *supra*, the Trusts did not appear in the issuing court, rendering moot the Debtors’ apparent concern that the “Bankruptcy Court already considered the same arguments raised in the Motions to Quash when it previously overruled objections made by other parties to issuance of the Subpoenas.” (Mov. Br. at 16.) In any event, the Debtors misguidedly compare the concerns raised by the Trusts in this Court with those raised by the Official Committee of Asbestos Personal Injury Claimants and Paddock Enterprises, LLC, in the issuing court (*see id.*), but as non-parties, the Trusts did not appear in the issuing court and had no opportunity to advance their arguments against disclosure – based on their individual TDPs – in that forum. Moreover, the Debtors have not even remotely established that either of these parties adequately represented the Trusts’ interests in the issuing court.

Further, as detailed *infra*, the Trusts have asserted that the issuing court lacked jurisdiction to bind them by way of the Order, which issue certainly was not adjudicated in the North Carolina matter. Indeed, the entire basis for the Trusts’

argument on this point is that the Bankruptcy Court made no effort to establish that it had personal jurisdiction over the Trusts before issuing the Order. (*See* Dkt. No. 1 at 17–19.) The Trusts are entitled to adjudicate this sensitive issue in this, the compliance court, as Rule 45(d) specifically provides. Any risk of inconsistent rulings related to the Debtors’ subpoenas is entirely based on the Debtors’ decision to serve subpoenas on dozens of individual entities in various jurisdictions, many of which have now filed motions to quash. The Debtors cannot now turn around and leverage their own strategic decision to serve jurisdictionally diverse subpoenas in order to compel transfer of the pending motions to quash those same subpoenas to the venue the Debtors consider most favorable (i.e., the Bankruptcy Court). The motion to transfer should be denied on this basis alone.

2. Rule 45 Contemplates Differing Rulings in Issuing and Compliance Courts

Rule 45(d)(3)(A) makes clear that a motion to quash *in the compliance court* is the standard procedure by which a subpoenaed party can seek relief from an unduly burdensome or otherwise impermissible subpoena. The Rule’s very existence specifically contemplates that the issuing court and compliance court will frequently vary, and accordingly, that the compliance court may have a different view on the validity of a subpoena than does the court that issued it. Indeed, the Advisory Committee’s Note to the 2013 Amendment to the Rule explain that subdivision (d) was revised to incorporate provisions formerly in subdivision (c) and

to “recognize the court where the action is pending as the issuing court,” as opposed to the compliance court. Rule 45 Note. The Note further explains that subsections (d) and (e) instruct litigants to make “subpoena-related motions and applications” in “the court where compliance is required.” *Id.* Contrary to the pleas of the Debtors, transferring a motion to quash out of the compliance court is *the exception* and not the rule, as evinced by the requirement to find “exceptional circumstances” in order to effect such a transfer. With the complete context of Rule 45 in mind, the Debtors’ arguments that this Court’s adjudication of the Trusts’ motion to quash is “likely to disrupt the Bankruptcy Court’s management of the case,” (Mov. Br. at 18 (internal quotation marks and citation omitted)), and that “judicial economy favors the transfer,” (*id.*), fall flat for the following reasons.

First, the Trusts have raised arguments that they are entitled to have resolved in the compliance court, including whether the Bankruptcy Court had jurisdiction to issue the Order that underpins the subpoenas at issue. Indeed, the Bankruptcy Court itself specifically instructed that as to contesting a subpoena, “the first shot comes to the bankruptcy court that has the case. The second goes to the compliance court.” *In re Aldrich Pump LLC* (Dkt No. 1195 (May 26, 2022 Tr. 112–13)). More recently, the same court stated – after a motion to quash was transferred back to it – that it “never envisioned . . . that [it] would be hearing [a] motion to quash.” *In re DBMP LLC*, No. 20-30080-JCW (Bankr. W.D.N.C.) (Aug. 11, 2022 Tr. 59). Clearly, the

Bankruptcy Court is not concerned about its management of the case being disrupted by the resolution of motions to quash in appropriate districts. Moreover, the Debtors do not explain *how* the Bankruptcy Court’s “management of the case” would be disrupted if the motion is resolved in this court, except to claim that “proceedings in the Debtors’ chapter 11 cases would be stalled awaiting the determination of whether or not the Debtors can obtain the information sought.” (Mov. Br. at 18.) The Debtors fail to inform this Court, however, that the Bankruptcy Court has not set a trial date for Aldrich Pump’s estimation and recently entered a limited case management order that specifically excluded a trial date and did not set deadlines for discovery from the Trusts. *In re Aldrich Pump LLC* (Dkt. No. 1302 (Aug. 2, 2022 Case Mgmt. Order ¶¶ 3–10); *id.* (Dkt. No. 1248 (July 7, 2022 Hr’g Audio Rec.)). Accordingly, there is no risk that resolution in this Court of the Trusts’ motion to quash will stall or otherwise disrupt the Debtors’ bankruptcy proceeding.

Second, if judicial economy were the deciding factor in determining the venue for a motion to quash, then there would be no need for Rule 45 to differentiate between the issuing court and the compliance court, and certainly no need to favor the compliance court for subpoena-related motions. The Debtors’ purported concern that “[l]itigating the merits of the [m]otions in this Court would require a careful, time-consuming review and analysis of the record,” (Mov. Br. at 18), is based on

their desire to avoid exactly that type of review in favor of a rubber stamp from the Bankruptcy Court, which has itself indicated a desire *not* to decide motions to quash.

The Trusts’ motion to quash seeks to resolve “straightforward [questions] of federal law,” *Harapeti*, 2021 WL 8316391, at *2: (i) whether the subpoenas are jurisdictionally proper, and if so, (ii) whether they comply with Rule 45. The Debtors have failed to establish that exceptional circumstances warranting transfer exist, and accordingly, their motion to transfer should be denied.

B. The Trusts’ Strong Interests in a Local Resolution Outweigh the Circumstances Upon Which Debtors Rely

Even if the Debtors had established that exceptional circumstances exist in this case—which they have not—“[t]ransfer is appropriate *only if* such interests outweigh the interests of the nonparty served with the subpoena in obtaining local resolution of the motion.” Rule 45 Note (emphasis added). The Trusts have strong interests in resolving their motion to quash in the compliance court that outweigh the decidedly unexceptional circumstances upon which the Debtors base their motion.

First, asbestos claimants submit extraordinarily sensitive data (medical and financial information of claimants and their dependents or other third-parties, including Social Security Numbers, and even tax returns (Dkt. No. 1 at 7) to the Trusts that must be treated “as made in the course of settlement discussions between the holder and the Trust and intended by the parties to be confidential and to be

protected by all applicable state and federal privileges, including, but not limited to, those directly applicable to settlement discussions.” (*See id.* at 8.) Verus, a New Jersey entity, reviews claimant submissions according to each Trust’s TDP and is responsible for storing the vast quantities of confidential data submitted to the Trusts. (*Id.* at 7.) That is, all of the data sought pursuant to the subpoenas is stored in New Jersey and subject to this Court’s jurisdiction. This Court accordingly has a vested interest in the Trusts’ and Verus’ operations and the claimants’ data security and privacy.

Second, the Trusts’ sole purpose is to compensate victims of asbestos-related diseases. (*See id.* at 5.) If the motion to quash is transferred to the Bankruptcy Court, there is a real risk that the Bankruptcy Court’s denial of the motion could fundamentally alter the Trusts’ ability to discharge their responsibilities to administer the asbestos claims presented to them as the Trusts effectively will be transformed into information clearinghouses or “public libraries” for unrelated outside entities wishing to obtain confidential claimant information for their own commercial purposes. *See Bestwall*, 2021 WL 2209884, at *3. The scale at which the Bankruptcy Court has authorized debtors to obtain confidential claimant information by way of mass subpoenas trespasses on the rights and duties of the Trusts and is out of step with how discovery from non-parties is supposed to work. *See, e.g., In re Novo Nordisk Secs. Litig.*, 530 F. Supp. 3d 495, 504 (D.N.J. 2021)

(“non-parties are entitled to broader discovery protections”); *Hall v. Johnson & Johnson*, No. 18-1833, 2022 WL 1284466, at *3 (D.N.J. Apr. 29, 2022) (Bongiovanni, M.J.) (“non-parties . . . are afforded greater protection from discovery than a normal party.”). Given the opportunity, debtors will surely continue to seek the Bankruptcy Court’s nearly guaranteed approval of similar subpoenas. Continued, unchecked onslaughts of subpoenas present a material risk to undermine the nature and purpose of the Trusts.

Third, the Trusts have identified in their motion to quash that the Bankruptcy Court lacked the basic personal jurisdiction required to bind the Trusts by way of the Order, rendering both the Order and the subpoenas issued pursuant to it void and unenforceable. (See Dkt. No. 1 at 17–19 (citing *Arrowhead Cap. Fin., Ltd. v. Seven Arts Ent., Inc.*, No. 14 Civ. 6512, 2021 WL 411379, at *2 (S.D.N.Y. Feb. 5, 2021) (“[A] district court must have personal jurisdiction over a nonparty to compel compliance with a subpoena.” (internal quotation marks and citation omitted))).) In issuing the Order, the Bankruptcy Court unilaterally and inappropriately vested itself with authority to bind parties over which it lacks personal jurisdiction. Accordingly, the compliance court’s resolution of this core issue would serve the interests of justice, whereas the Bankruptcy Court’s resolution of the issue would fundamentally impair those interests.

Taken together, the Trusts’ interests in adjudicating their motion in the compliance court clearly outweigh the unremarkable circumstances the Debtors attempt to present as “exceptional.” Indeed, the Debtors do not even endeavor to analyze the Trusts’ interests in resolving the motion in the compliance court. Rather, they state only that any “minimal burden” caused by a transfer can be alleviated using “telephonic or video conferencing” and that compliance with the subpoenas will be no different regardless of which court orders it. (Mov. Br. at 18–19.) The Trusts’ interests in resolving this motion in the compliance court are not based on any unwillingness to travel; it is based on their fundamental right, laid out with perfect clarity in the Rules, to move to quash in the compliance court, which is the only court with jurisdiction to compel compliance with the subpoenas. The Trusts have raised significant, substantive procedural defects associated with the subpoenas that deserve thoughtful and impartial resolution by the compliance court, as contemplated by the Rules. Accordingly, the motion to transfer should be denied.

CONCLUSION

For the foregoing reasons, the Trusts respectfully request that the Debtors’ motion to transfer be denied.

Respectfully submitted,

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Dated: October 3, 2022

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

IN RE:) Misc. No. 22-cv-05116-MAS-TJB
)
ALDRICH PUMP LLC, et al.,) Underlying Case: 20-BK-30608-JCW
) (U.S. Bankr. W.D.N.C.)
Debtors.)

**MEMORANDUM OF LAW OF CERTAIN MATCHING
CLAIMANTS IN OPPOSITION
TO ALDRICH'S MOTION TO TRANSFER**

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INTRODUCTION

The Certain Matching Claimants (collectively, “Certain Matching Claimants”)¹, by and through undersigned counsel², submit this Response in opposition to Aldrich Pump LLC and Murray Boiler LLC’s (collectively, Aldrich)” *Motion to Transfer Subpoena-Related Motions* (“Motion to Transfer”). The Certain Matching Claimants also join in other oppositions filed which are consistent with this response.

PRELIMINARY STATEMENT

The arguments advanced by Aldrich in support of the Motion to Transfer are circular and are intended to manipulate the system designed to protect Matching Claimants, among others. Aldrich wants this Court to transfer the Motion to Quash back to the same bankruptcy court from which Aldrich secured the very provisions which permit the Certain Matching Claimants to move to quash the subpoenas in this Court, despite that Certain Matching Claimants have not appeared in the bankruptcy proceedings. Aldrich’s justification for the Motion to Transfer is essentially that the Motions to Quash should be transferred to the court which ordered the subpoenas to be issued because the bankruptcy court has already ruled on the same issues raised in

¹ The Certain Matching Claimants have filed *Non-Party Certain Matching Claimants’ (I) Motion to Quash or Modify Subpoenas and (II) Joinders* [D.I. 13] (the “Motion to Quash”), and a *Motion to Proceed Anonymously* [D.I. 14], (the “Motion to Proceed Anonymously”). Counsel for the Certain Matching Claimants maintains lists containing the identity of each of the individual Certain Matching Claimants and their claims.

² A list of the Certain Matching Claimants’ counsel of record is attached to the Certification of Timothy P. Duggan, Esq. In Support of Certain Matching Claimants’ Motion to Quash, at Exhibit A [D.I. 13]. On Additional Matching Claimants’ counsel of record is Belluck & Fox, a formal joinder on their behalf will be filed via ECF.

the Motion to Quash. This reasoning turns the purpose of Rule 45 on its head, as no exceptional circumstances exist to deprive the Certain Matching Claimants of their right to have the motions decided in this Court, the court of compliance. Aldrich’s Motion to Transfer also repeats arguments from its opposition to the Certain Matching Claimants’ Motion to Quash subpoenas that lie at the heart of this controversy.

While Certain Matching Claimants recognize that an identical motion to transfer relating to subpoenas issued in connection with Aldrich’s bankruptcy case was granted by the District Court of Delaware on September 26 20022, such decision reflected a misapprehension of applicable law and the rights of similarly situated matching claimants which should be protected. *In re Aldrich Pump LLC, No. 22-mc-00308 (D. Del.)*. Accordingly, the subpoenas are procedurally and substantively flawed pursuant to Federal Rule of Civil Procedure 45 and should be quashed.

BACKGROUND

This miscellaneous action arises from subpoenas duces tecum (the “Subpoenas”)³ served by Aldrich Pump LLC and Murray Boiler LLC, as debtors in the United States Bankruptcy Court for the Western District of North Carolina (the “Bankruptcy Court”), on eight third-party asbestos settlement bankruptcy trusts (the “Trusts”)⁴ and on their New Jersey-based administrator, Verus Claims

³ See, Subpoenas, attached as Exhibits K– to the Certification of Lynda A. Bennett, Esq. In Support of the Trusts’ Motion to Quash and Stay (“Bennett Cert.” [D.I.1].

⁴ The eight trusts are:

- ACandS Settlement Trust;
- Combustion Engineering 524(g) Asbestos PI Trust;

Services, LLC (“Verus”). The Subpoenas seek a vast trove of confidential data and personal identifying information (“PII”), located in this district belonging to the Certain Matching Claimants, including many thousands of unique mesothelioma victims, and in some cases, their respective successors in interest, who have long-since settled their claims against Aldrich or its predecessors, the former Trane Technologies Company LLC, successor by merger to Ingersoll-Rand Company (a former New Jersey Corporation) (“Ingersoll-Rand”), or Murray Boiler LLC's predecessor, the former Trane U.S. Inc. (“Old Trane”). Their PII is contained in the many thousands of unique claim files sought by Aldrich, pursuant to the Subpoenas directed to the Trusts and Verus.

As was the case in *In re Bestwall, LLC*, No. 21-mc-00141 (D. Del.) and in *In re DBMP LLC*, No. 22-mc-00139 (D. Del.), these Subpoenas seek the Certain Matching Claimants’ PII from the Trusts and from Verus concerning thousands of mesothelioma claims long ago resolved, claims not asserted against Aldrich but against the Trusts. Specifically, Aldrich seeks information from the Trusts and from Verus about the historical settlement of mesothelioma cases resolved by individual claimants against the Trusts to support the theory that its estimated liability for present and future asbestos personal injury claims is lower than the amounts it paid

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- G-I Holdings, Inc. Asbestos Personal Injury Settlement Trust;
 - GST Settlement Facility;
 - Kaiser Aluminum & Chemical Corporation Asbestos Personal Injury Trust;
 - Quigley Company, Inc. Asbestos PI Trust;
 - TH Agriculture & Nutrition, L.L.C Asbestos Personal Injury Trust; and
 - Yarway Asbestos Personal Injury Settlement Trust.

on account of asbestos personal injury claims in settlements prior to its bankruptcy. The PII that Aldrich seeks is located in this district, where the day-to-day processing of the claims is conducted by the Trusts. [*See*, D.I. 5-2].

Aldrich’s asbestos litigation history largely relates to its manufacture, sale, or distribution of pumps and compressors that incorporated metal piping through which liquids or gases flowed. Their 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. A ring-shaped sealing product known as a gasket was typically inserted into the connection between the pipes or metal surfaces to avoid leaks and to protect against sealing failures that could cause injury or death. The gaskets spent their entire lives inserted between two pieces of metal except when the equipment needed repair. Until approximately 30 years ago, Aldrich utilized asbestos-containing gaskets for use in their equipment.⁵ During repairs to the pump equipment, the gaskets would be disturbed causing potential exposure to asbestos fibers. For decades, asbestos victims have sued Aldrich and their predecessors in tort for injuries wreaked by its asbestos-containing pumps and related products.⁶

Aldrich moved the Bankruptcy Court for authority to subpoena Verus and the

⁵ *See In re Aldrich Pump LLC*, No. 20-30608, (Bankr. W.D.N.C.) D.I. 5 (“*Informational Brief of Aldrich Pump LLC and Murray Boiler LLC*”) at p. 1.

⁶ For a comprehensive recitation of Aldrich’s historical settlement history, *See, Non- Party Certain Matching Claimants’ (I) Motion to Quash or Modify Subpoenas and (II) Joinders* [D.I. 13-3].

Trusts for electronically stored data concerning the approximately 12,000 mesothelioma claimants who appeared in both the Trusts' and Aldrich's database prior to the Aldrich bankruptcy. Aldrich's motion also sought authority to subpoena: (i) Manville Personal Injury Settlement Trust (the "Manville Trust"), a Virginia entity; (ii) Delaware Claims Processing Facility ("DCPF") with respect to seven asbestos personal injury trusts for which it processes claims in Delaware; and (iii) Paddock Enterprises, LLC. *See, In re Aldrich Pump LLC*, No. 20-30608, Bankr. W.D.N.C.,D.I. 1111, *Motion of the Debtors for an Order Authorizing the Debtors to Issue Subpoenas on Asbestos Trusts and Paddock Enterprises, LLC*, at 1.

On July 1, 2022, the Bankruptcy Court entered the Aldrich Subpoena Order, *See, Bennet Cert.*, Exhibit K. [D.I. 1-2] On July 15, 2022, Aldrich served the Subpoenas purportedly pursuant to Federal Rule of Civil Procedure 45. *Id.* Exhibit L. Pursuant to the Subpoenas, Aldrich's estimation expert, Bates White, has created a matching key, ("Matching Key"). The Matching Key is a comprehensive list derived from Aldrich's Asbestos Claims Database of approximately 12,000 claimants who asserted mesothelioma claims against Aldrich or its predecessors that were resolved by settlement or verdict and for whom the Debtors possess Social Security Numbers, as well as the corresponding last names and Social Security Numbers of any injured party if different from the claimant, (the "Claimants"), as well as a unique numerical pseudonym (the "Claimant Pseudonym"). *Id.*

Pursuant to the terms of the Subpoenas, Verus was required to notify counsel

for Trust claimants on the matching key that the relevant Trusts have received a subpoena and that their data will be produced unless they file a motion to quash. *Id.*

¶9. In turn, the Certain Matching Claimants were notified by Verus about the existence of the Subpoenas and subsequently filed the Motion to Quash.

On September 26, 2022, the District Court for the District of Delaware granted a motion to transfer relating to subpoenas issued by Aldrich to DCPF and related trusts and matching claimants. *In re Aldrich Pump LLC*, No. 22-mc-00308 (D. Del.)[DI 40]. It appears that the District Court misapplied governing law intended to protect those from whom production of information is sought, based upon estoppel arguments which should not have bound the Certain Matching Claimants.

ARGUMENT

I. No Exceptional Circumstances Exist

Federal Rule of Civil Procedure 45(d)(3)(A) requires a subpoenaed party to move to quash or modify a subpoena in the district where compliance is required, not in the court that issued the subpoena (unless the two are the same). A district court where subpoena compliance is required “may transfer” a motion to quash or modify a subpoena “to the issuing court . . . if the court finds exceptional circumstances.” FED. R. CIV. P. 45(f). “[T]ransfer to the court where the action is pending is *sometimes* warranted.” FED. R. CIV. P. 45(f) Advisory Committee Note to 2013 amendment (emphasis added). “[T]he proponent of transfer bears the burden of showing that [exceptional] circumstances are present.” FED. R. CIV. P. 45(f)

Advisory Committee Note to 2013 amendment. “[A]nd, it should not be assumed that the issuing court is in a superior position to resolve subpoena-related motions.”

Id.

Rule 45(f) does not specify “exceptional circumstances,” but Rule 45(f) Advisory Committee Note makes clear that the party requesting transfer bears the burden of showing such circumstances are present. Fed. R. Civ. P. 45(f), Advisory Committee Note (2013 amendments). According to the Advisory Committee Note, “it should not be assumed that the issuing court is in a superior position to resolve subpoena-related motions.” *Id.* The Court’s primary consideration is to avoid “burdens on local nonparties subject to subpoenas.” *Id.*

The Trusts and Verus have not consented to the transfer. The Certain Matching Claimants do not consent to the transfer. Therefore, this Court may only exercise its discretion to transfer the Motion to Quash if “exceptional circumstances” exist. “The ‘exceptional circumstances’ standard was selected to ensure that transfer is a rare event.” WRIGHT & MILLER, FED. PRACTICE & PROCEDURE § 2463.1 (3d ed. 2021), *citing* Report of the Civil Rules Advisory Committee to the Standing Committee on Rules of Practice and Procedure May 2, 2011, available at <http://www.uscourts.gov/uscourts/RulesAndPolicies/rules/Reports/CV05-2011.pdf>, *Int’l Controls and Measurements Corp. v. Honeywell Int’l, Inc.*, 2018 WL 5994189 (D. Minn. 2018).

Federal district courts have considered a number of factors in determining

whether Rule 45(f) transfer is appropriate, including duration of pendency, case complexity, procedural posture, and the nature of issues previously resolved or currently pending before the issuing court in the underlying litigation. *Hausauer v. TrustedSec, LLC*, 2020 WL 6826368, *6 (N.D. Ohio. 2020). Transfer is only appropriate if the interests supporting transfer “outweigh the interest of the nonparty served with the subpoena in obtaining local resolution of the motion.” FED. R. CIV. P. 45(f) Advisory Committee Note to 2013 amendment. The principal concern “should be avoiding burdens on local nonparties subject to subpoenas....” *Id.*

Aldrich’s bankruptcy has been pending since 2020. Aldrich is largely responsible for the delay in, and current posture of, its bankruptcy case, and Aldrich, its insurance carriers, and the myriad Aldrich corporate affiliates, including those subject to substantive consolidation, fraudulent conveyance and similar proceedings, have all profited and all continue to profit from the continued delay. Material delay or disruption to the bankruptcy proceedings is a pretense, not an exceptional circumstance. *See, Snow v. Kurr*, 2018 WL 4101519, *2 (W.D. Mo. 2018) (“The underlying litigation, no matter how complex, does not justify waiting until the eve of the discovery deadline to begin” discovery). Aldrich predicates its Motion to Transfer on the notion that the Bankruptcy Court received extensive briefing and objections on the Motion to Authorize Subpoenas⁷ and that the Bankruptcy Court

⁷ *See, Motion of the Debtors for an Order Authorizing the Debtors to Issue Subpoenas on Asbestos Trusts and Paddock Enterprises, LLC*, Case No. 20-30608, D.I. 1111 (hereinafter “Motion to Authorize Subpoenas”), attached as Exhibit J to the *Declaration of Paul R. DeFilippo* [D.I. 20-2].

overruled the objections to the Subpoenas. *See, Motion to Transfer*, pp. 5-9. But not one of the objections overruled in the Bankruptcy Court were advanced by a matching claimant and not one of the objections overruled would have included a right to file a motion to quash in this Court, the court of compliance. The filing of such motions in this Court was the procedure Aldrich specifically requested that the Bankruptcy Court approve.

The issuing court's familiarity with the bankruptcy proceedings is also not an exceptional circumstance favoring transfer. *Isola USA Corp. v. Taiwan Union Tech. Corp.*, 2015 WL 5934760, *3 (D. Mass. 2015), report and recommendation adopted 2015 WL 5944286. "[A] Rule 45-subpoena-related motion will always be resolved by a court less familiar with the underlying litigation." *Id.* So, familiarity is not an exceptional circumstance, "otherwise the exception would swallow the rule." *Id.*

Aldrich argues that transfer is warranted when there is a risk that the courts will enter orders inconsistent with those entered by the judge presiding over the case." Citing *United States ex rel. Simpson v. Bayer Corp.*, 2016 WL 7239892, at *2 (E.D. Pa. Dec. 15, 2016). As to a risk of inconsistent rulings, Aldrich has failed to demonstrate such a risk. Issuance of similar subpoenas to other third parties does not, in and of itself, establish a district court's resolution of the discovery issues before it will pose any risk of inconsistent rulings warranting transfer. *Hausauer*, 2020 WL 6826368 at *7. The potential for a ruling in one court, under Rule 45 having a different result than a ruling from another court under Bankruptcy Rule

2004, is not an instance of inconsistent legal results between courts; it is an instance of different rules engendering different results. *Cf. In re Aldrich Pump, LLC*, No. 22-mc-00308 (D. Del.) (motion to transfer granted based upon potential for inconsistent rulings and issuing court having previously considered issues presented) [D.I. 40].

While Certain Matching Claimants understand that the District Court in Delaware recently granted Aldrich’s motion to transfer relating to subpoenas issued to DCPF, the District Court misapprehended the protections afforded by Rule 45(f) and the paramount importance of protecting local parties – here Verus and the Certain Matching Claimants. The District Court in Delaware also failed to appreciate that the issue preclusion arguments present in the recent Third Circuit Court of Appeals decision *In re Bestwall* are inapplicable where neither the Trusts, Verus nor Certain Matching Claimants appeared in the Aldrich bankruptcy proceedings to argue against the Aldrich Subpoena Motion. *Id.*

Aldrich has not established any exceptional circumstances warranting transfer, and Aldrich certainly has not met its burden of demonstrating exceptional circumstances that outweigh the interests of the non-parties served with the Subpoena in obtaining local resolution of the motions. *See*, FED. R. CIV. P. 45(f) Advisory Committee Note to 2013 amendment; *see also*, *In re Mathews*, 2018 WL 5024167, *1 (D. Del. 2018) (finding “an absence of exceptional circumstances required to transfer the motions to the Bankruptcy Court....”).

The Bankruptcy Court’s familiarity with the issues involved in the Motion to

Quash does not create “exceptional circumstances.” As noted in *Isola USA Corp. v. Taiwan Union Tech. Corp.*, No. 12-CV-01361-SLG, 2015 U.S. Dist. LEXIS 140416, 2015 WL 5934760, at *3 (D. Mass. June 18, 2015), adopted, No. 15-mc-94003, 2015 U.S. Dist. LEXIS 142797, 2015 WL 5944286 (D.Mass. Aug. 27, 2015), such a view would eviscerate Rule 45.

Aldrich also relies upon the fact that the Third Circuit recently reversed this Court’s decision in *In re Bestwall* and argues that Verus and the Trusts have been ordered to comply with Bestwall’s subpoenas which are far more expansive than the Subpoenas at issue here. *See, In re Bestwall LLC*, No. 21-2263, 2022 WL 3642106 -- F.4th -- (3d Cir. Aug. 24, 2022).⁸ However, the issue preclusion arguments present in *In re Bestwall* are inapplicable in this instance as neither the Trusts nor Verus appeared in the Aldrich bankruptcy proceedings to argue against the Aldrich Subpoena Motion, and thus, the privity requirements necessary to attribute their arguments to the Certain Matching Claimants are absent.

Before this Court is a narrow dispute. Only the straightforward application of the Civil Rules and settled decisional law are needed to resolve the pending motion. *See, Snow*, 2018 WL 4101519 at *2 (reasoning the court “need not comprehend the intricacies of the underlying factual dispute” or the particular facet of applicable law to understand “an undue burden on the producing party.”). The *Trusts’ Motion to*

⁸ On September 7, 2022, the Certain Matching Claimants identified in *Bestwall* filed a *Petition for Panel Rehearing*, [D.I. 80]. *See, In re Bestwall LLC*, No. 21-2263.

Quash [D.I. 1], Verus’ *Motion to Quash* [D.I. 5] and the *Certain Matching Claimants’ (i) Motion to Quash or Modify Subpoenas and (ii) Joinders* [D.I. 13], were each properly filed in this district. The Court must deny the instant transfer request because Aldrich has not satisfied the exceptional circumstances requirement that outweigh the local non-parties interests in obtaining local resolution of the motions.

II. Judicial Economy is Not an Exceptional Circumstance

Aldrich contends that the Bankruptcy Court’s familiarity with the record, the complexity of the underlying suit, and the potential disruptions to the case management schedule argue in favor of transferring the Motions to Quash. These arguments do not satisfy the exceptional circumstance requirements for a motion to transfer. Moreover, the issuing court’s familiarity with the bankruptcy proceedings is also not an exceptional circumstance favoring transfer. *Isola USA Corp. v. Taiwan Union Tech. Corp.*, 2015 WL 5934760, *3 (D. Mass. 2015), report and recommendation adopted 2015 WL 5944286. “[A] Rule 45-subpoena-related motion will always be resolved by a court less familiar with the underlying litigation.” *Id.* So, familiarity is not an exceptional circumstance, “otherwise the exception would swallow the rule.” *Id.*

Despite Aldrich’s arguments to the contrary, Certain Matching Claimants were not afforded a voice in the Bankruptcy Court as they have not appeared in those proceedings. The Certain Matching Claimants are not creditors in Aldrich’s

bankruptcy proceedings, and they are not tort litigants. The Certain Matching Claimants do not have “current” claims⁹ and will not be future claimants or “demand holders.”¹⁰ Their data relates to long resolved claims and is not ordinary asbestos litigant data. The Certain Matching Claimants are historical victims of asbestos-related diseases who long ago submitted protected claim information to the Trusts knowing that, pursuant to the Trusts’ TDPs, their PII will (i) remain confidential, (ii) be treated as made in the course of settlement discussions between the claimant and the Trust, and (iii) be protected by all applicable privileges, including those applicable to settlement discussions. Aldrich purposefully conflates the Certain Matching Claimants with current claimants who are asserting active claims against Aldrich in the bankruptcy.

Certain Matching Claimants were *not even served* with the Subpoenas which seek the dissemination of their confidential data and personal identifying information [D.I. 1]. Any ties Certain Matching Claimants have to the issuing court in North Carolina are tenuous, at best, and arguably nonexistent. This Court *is* the proper court for the Certain Matching Claimants to voice their objections.

In seeking to transfer the Motion to Quash to the Bankruptcy Court, Aldrich appears to be attempting to backdoor the establishment of the Bankruptcy Court’s jurisdiction over the Trusts, Verus and the Certain Matching Claimants. The

⁹ “Current” claims being claims pending against Aldrich at the time of the Aldrich bankruptcy.

¹⁰ Future claimants or “demand holders” being victims whose injuries will manifest in the future.

Bankruptcy Court expressly mandated in the Aldrich Subpoena Order that the court of compliance, here this Court, will be deciding the Motions to Quash filed by the Trusts, Verus and the Certain Matching Claimants. *See*, Subpoenas and attached Aldrich Subpoena Order, ¶ 10. This provision is a manifestation of the Bankruptcy Court’s recognition that it did not have jurisdiction over the Trusts, Verus and the Certain Matching Claimants. Aldrich cannot be allowed to manufacture jurisdiction by virtue of the Motion to Transfer. This Court should recognize Aldrich’s scheme as an effort to deny the Certain Matching Claimants the due process expressly contemplated by Rule 45 and the Motion to Transfer should be denied.

III. New Jersey is the Proper Venue; Local Non-Parties and Local Data

“To protect local non-parties, local resolution” of subpoena disputes is assured by Rule 45(c)’s limitations and Rule 45(d) and (e)’s requirements “that motions be made in the court in which compliance is required under Rule 45(c).” *See*, FED. R. CIV. P. 45(f) Advisory Committee Note to 2013 amendment. Verus and the are unique entities irrevocably intertwined with New Jersey generally, where the Trusts are administered.

New Jersey residents are among the Certain Matching Claimants who have long-since settled their claims against Aldrich and who have asserted the Motion to Quash. The PII Aldrich seeks is located in this district and subject to this Court’s jurisdiction. The Trusts have contracted with Verus to receive, and process claims in this district, so the Trusts’ primary purpose of reviewing claims in order to pay

those that meet TDP requirements is carried out almost exclusively in New Jersey.

Finally, the Certain Matching Claimants direct the court to recent determination in *In Re Aldrich Pump, LLC et al.*, No. 1:22-mc-00080 (D. DC, Memorandum and Order, August 25, 2022) (**Exhibit A**). This proceeding involves many of the same Certain Matching Claimants asserting their right to proceed anonymously to quash the same Subpoena and Aldrich Subpoena Order served by Aldrich on the Manville Trust and its Virginia-based administrator, Claims Resolution Management Corporation. There, the court was “persuaded that movants have met the burden of showing that their privacy interests outweigh the public’s presumptive and substantial interest in knowing the details of judicial litigation. The public’s interest in knowing movants’ addresses and identities is *de minimis* compared to the significant privacy interests of the movants, whose sole purpose in pursuing this litigation is to prevent such information from falling into Aldrich’s possession.” *Id.* at 4.

CONCLUSION

The Motions to Quash (or Modify) were properly filed in this District pursuant to Rule 45(c). Rule 45(c)’s limitation and Rule 45(d) and (e)’s requirements are present to assure local resolution to protect local non-parties. Only a showing of exceptional circumstances (as the Trusts, Certain Matching Claimants have not, and will not, consent to transfer) may warrant transfer of the motions to quash or modify the subpoenas to the issuing court. Aldrich has not shown exceptional circumstances

exist. Aldrich's Motion to Transfer must be denied.

Dated: October 3, 2022

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EXHIBIT A

FILED
AUG 25 2022

Clerk, U.S. District & Bankruptcy
Court for the District of Columbia

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

IN RE:

ALDRICH PUMP, LLC, et al.,

Debtor.

Case: 1:22-mc-00080
Assigned To : Kelly, Timothy J.
Assign. Date : 8/25/2022
Description: Misc.

Misc. Action No. ____

Chief Judge Beryl A. Howell

MEMORANDUM AND ORDER

Movants, who are “thousands of asbestos victims,” have moved to proceed under pseudonym in this action seeking to quash a subpoena issued by Aldrich, LLC, a company in bankruptcy proceedings in the Western District of North Carolina, to the “Manville Personal Injury Settlement Trust” (the “Manville Trust”) and “its Virginia-based administrator Claims Resolution Management Corporation.” Movants the Manville Trust Matching Claimants’ Motion to Proceed Anonymously (“MTMC Mot.”) at 1. Movants are nonparties to the subpoena, but seek to quash Aldrich from “improperly seek[ing]” their “personal identifying information—names, Social Security numbers, etc.,” as “asbestos victims who have long-settled their claims against Aldrich.” *Id.* They move to proceed under pseudonym in this suit to prevent Aldrich from learning their identities and other personal data, which is “precisely the information that [it] is not entitled to” and the reason for the suit. *Id.* at 2. For the reasons set forth below, movants’ motion is granted, subject to any further consideration by the United States District Judge to whom this case is randomly assigned.¹

¹ See LCvR 40.7(f) (providing that the Chief Judge shall “hear and determine . . . motion[s] to seal the complaint and motion[s] to file a pseudonymous complaint”); see also LCvR 5.1(h)(1) (“Absent statutory authority, no case or document may be sealed without an order from the Court.”).

I. BACKGROUND

As part of its bankruptcy proceedings in the Western District of North Carolina, Aldrich has subpoenaed the Manville Trust “for electronically stored data concerning approximately 9,000 mesothelioma claimants who settled with Aldrich prior to its bankruptcy,” including movants here. *Id.* at 1. This data includes “the claimant’s last name and Social Security Number” as well as those of “family members or an estate representative if the claimant is deceased.” *Id.* at 2. Movants challenge this subpoena under Federal Rule of Civil Procedure 45, on the grounds that the subpoena “is overbroad, and fails to adequately protect the claimants’ data.” Manville Trust Matching Claimants’ Mot. Quash or Modify Subpoena, or Alternatively for Protective Order (“MTMC Mot. Quash”) at 18. They seek to proceed under pseudonym because their “personal data . . . including their identity . . . is precisely the information that Aldrich is not entitled to, and which the Motion to Quash seeks to prevent,” such that requiring movants to provide “the names of all claimants to Aldrich in the Motion to Quash would render the Motion a complete nullity.” MTMC Mot. at 1–2. ²

II. LEGAL STANDARD

Generally, a complaint must state the names of the parties and address of the plaintiff. FED. R. CIV. P. 10(a) (“The title of the complaint must name all the parties.”); LCvR 5.1(c)(1) (“The first filing by or on behalf of a party shall have in the caption the name and full residence address of the party,” and “[f]ailure to provide the address information within 30 days of filing may result in the dismissal of the case against the defendant.”). The Federal and Local Rules thus promote a “presumption in favor of disclosure [of litigants’ identities], which stems from

² Movants also assert that their motion should be granted because “naming the claimants in the public record” would violate an order issued in the bankruptcy proceedings before the Western District of North Carolina, MTMC Mot. at 1, but the extent to which, if at all, this Court may be bound by any protective orders issued by the court overseeing the Aldrich bankruptcy proceedings in a separate jurisdiction, need not be addressed.

the ‘general public interest in the openness of governmental processes,’ . . . and, more specifically, from the tradition of open judicial proceedings.” *In re Sealed Case*, 931 F.3d 92, 96 (D.C. Cir. 2019) (internal citations omitted) (quoting *Wash. Legal Found. v. U.S. Sentencing Comm’n*, 89 F.3d 897, 899 (D.C. Cir. 1996)). That “presumption of openness in judicial proceedings is a bedrock principle of our judicial system.” *In re Sealed Case*, 971 F.3d 324, 325 (D.C. Cir. 2020) (citing *Courthouse News Serv. v. Planet*, 947 F.3d 581, 589 (9th Cir. 2020)). Accordingly, courts “generally require ‘parties to a lawsuit to openly identify themselves to protect the public’s legitimate interest in knowing all of the facts involved, including the identities of the parties.’” *Id.* at 326 (internal quotation marks and alterations omitted) (quoting *United States v. Microsoft Corp.*, 56 F.3d 1448, 1463 (D.C. Cir. 1995) (per curiam)).

Despite the presumption in favor of disclosure, the Federal Rules of Civil Procedure describe circumstances in which filings may be redacted and where access to public filings may be limited. FED. R. CIV. P. 5.2. Minors, for example, must be referred to using only their initials. FED. R. CIV. P. 5.2(a)(3). The court may also, for good cause, “require redaction of additional information.” FED. R. CIV. P. 5.2(e)(1).

Courts have also, in special circumstances, permitted a party to proceed anonymously. A party seeking to do so, however, “bears the weighty burden of both demonstrating a concrete need for such secrecy, and identifying the consequences that would likely befall it if forced to proceed in its own name.” *In re Sealed Case*, 971 F.3d at 326. Once that showing has been made, “the court must then ‘balance the litigant’s legitimate interest in anonymity against countervailing interests in full disclosure.’” *Id.* (quoting *In re Sealed Case*, 931 F.3d at 96). When weighing those concerns, five factors, initially drawn from *James v. Jacobson*, 6 F.3d 233,

238 (4th Cir. 1993), serve as “guideposts from which a court ought to begin its analysis.” *In re Sealed Case*, 931 F.3d at 97. These five factors are:

(1) whether the justification asserted by the requesting party is merely to avoid the annoyance and criticism that may attend any litigation or is to preserve privacy in a matter of [a] sensitive and highly personal nature; (2) whether identification poses a risk of retaliatory physical or mental harm to the requesting party or[,] even more critically, to innocent non-parties; (3) the ages of the persons whose privacy interests are sought to be protected; (4) whether the action is against a governmental or private party; and relatedly, (5) the risk of unfairness to the opposing party from allowing an action against it to proceed anonymously.

Id. (citing *James*, 6 F.3d at 238).

At the same time, a court must not simply “engage in a wooden exercise of ticking the five boxes.” *Id.* Rather, “district courts should take into account other factors relevant to the particular case under consideration.” *Id.* (quoting *Sealed Plaintiff v. Sealed Defendant*, 537 F.3d 185, 189–90 (2d Cir. 2008)). In exercising discretion “to grant the ‘rare dispensation’ of anonymity . . . the court has ‘a judicial duty to inquire into the circumstances of particular cases to determine whether the dispensation is warranted’ . . . tak[ing] into account the risk of unfairness to the opposing party, as well the customary and constitutionally-embedded presumption of openness in judicial proceedings.” *Microsoft Corp.*, 56 F.3d at 1464 (quoting *James*, 6 F.3d at 238 (other internal citations and quotation marks omitted)).

III. DISCUSSION

At this early stage of the litigation, this Court is persuaded that movants have met the burden of showing that their privacy interests outweigh the public’s presumptive and substantial interest in knowing the details of judicial litigation. The public’s interest in knowing movants’ addresses and identities is *de minimis* compared to the significant privacy interests of the movants, whose sole purpose in pursuing this litigation is to prevent such information from falling into Aldrich’s possession. MTMC Mot. at 1–2.

First, as the description of movants' claim makes clear, they do not seek to proceed under pseudonym and limit disclosure of their residential addresses "merely to avoid . . . annoyance and criticism." *See In re Sealed Case*, 931 F.3d at 97. Instead, as movants explain, "the entire purpose of this Action is a Motion to Quash" and they "seek only the protection of their sensitive personal and private data." MTMC Mot. at 4 (emphasis in original). Requiring them to disclose their identities at this juncture would defeat that purpose.

Second, and relatedly, requiring movants to disclose identifying information that could permit Aldrich, or others, to obtain other personal information about them poses a risk of harm to movants, given that the data "could be used in a manner detrimental to the privacy interests of movants, particularly if it is misappropriated or inadvertently disclosed." *Id.* While the "risk of retaliatory physical or mental harm" to movants, *In re Sealed Case*, 931 F.3d at 97 (quoting *James*, 6 F.3d at 238), is perhaps less extreme than in other situations where this Court has permitted pseudonymity, this factor still weighs in favor of granting movants' motion, especially taken together with the reality that requiring movants to proceed under their real names would frustrate the sole purpose of the litigation.

The third *James* factor requires a court to consider the ages of the parties involved. *See In re Sealed Case*, 931 F.3d at 97 (quoting *James*, 6 F.3d at 238). Generally, this factor weighs in favor of pseudonymity only when the interests of minor children are involved, but here, movants argue persuasively that their *advanced* age, given that "[m]ost mesothelioma victims are elderly widows and widowers, simply due to the historic nature of exposure to asbestos and the latency period of the disease," weighs in favor of shielding their public information from the litigation, as "they are particularly likely to be victims of identity theft." MTMC Mot. at 5.

The fourth *James* factor, also weighs in movants' favor, given the suit challenges the actions of a non-governmental company, Aldrich. *See In re Sealed Case*, 971 F.3d at 329 (“[T]here is a heightened public interest when an individual or entity files a suit against the government.”) Here, movants seek to vindicate only their own rights, and anonymity appears to be necessary to provide them the opportunity to do so.

Fifth, and finally, Aldrich would suffer no “risk of unfairness” if movants’ motion were granted. *See In re Sealed Case*, 931 F.3d at 97 (quoting *James*, 6 F.3d at 238). As movants explain, if they “prevail on their Motion to Quash, Aldrich will not be entitled to [their] identity,” and if they are unsuccessful, “Aldrich will receive the information which the court has deemed it entitled to.” MTMC Mot. at 7. The company does not need movants’ personal information in order to defend its subpoena at this juncture, and permitting the company to have this information would defeat the purpose of the litigation. *See id.* at 1–2.

In sum, weighed against the minimal apparent interest in disclosure, movants’ significant and “legitimate interest in anonymity” and in maintaining the privacy of their personal information are more than sufficient to overcome “countervailing interests in full disclosure.” *In re Sealed Case*, 931 F3d at 97.

IV. CONCLUSION AND ORDER

For the foregoing reasons, it is hereby

ORDERED that the movants’ Motion to Proceed Anonymously is **GRANTED**, subject to any further consideration by the United States District Judge to whom this case is randomly assigned; it is further

ORDERED that movants may proceed with the case using the collective pseudonym “the Manville Trust Matching Claimants;” and it is further

ORDERED that movants must file, *ex parte* and under seal, within ten days of this Order, a declaration containing the real names and residential addresses of at least a representative sample of the claimants.

SO ORDERED.

Date: August 25, 2022



Handwritten signature of Beryl A. Howell in black ink.

BERYL A. HOWELL
Chief Judge

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

In re

ALDRICH PUMP LLC, et al.,

Debtors

Case No.: 22-cv-5116-MAS-TJB

Underlying Case No.: 20-30608 (JCW)
(United States Bankruptcy Court for the
Western District of North Carolina)

Return Date: November 7, 2022

ORAL ARGUMENT REQUESTED

**VERUS CLAIM SERVICES, LLC'S MEMORANDUM OF LAW IN
OPPOSITION TO DEBTORS' MOTION TO TRANSFER**

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PRELIMINARY STATEMENT

Non-party Verus Claims Services, LLC (“Verus”), respectfully submits this memorandum of law in opposition to the motion submitted by Debtors Aldrich Pump, LLC and Murray Boiler, LLC (collectively, the “Debtors”) seeking a transfer of pending motions to quash from this Court to the United States Bankruptcy Court for the Western District of North Carolina.

Although Debtors cite the “extraordinary circumstances” of this case, there is nothing extraordinary about it. The posture of this case – including a motion to quash pending in one district while the underlying matter pends in another – is exactly what Rule 45 intends. The Subpoena was served on Verus in New Jersey and Verus’s motion to quash was filed in New Jersey, as is required by the Rules.

Verus does not operate in North Carolina and has never participated in any of the North Carolina proceedings. Because Verus was not involved in any prior proceedings in the underlying action, there are no prior orders with preclusive effect as to Verus, and no risk of inconsistent results. Nor is there added efficiency or “judicial economy” to be had by transferring the motions to North Carolina.

Verus is a New Jersey company with trade secrets protected by New Jersey law. The Bankruptcy Court, in contrast, has already demonstrated that it will not protect the confidential claimant data at issue. Verus’s interests in local resolution of its motion far outweigh the interests of Debtors in transferring the matter.

BACKGROUND AND PROCEDURAL HISTORY

In the interest of efficiency and for the convenience of the Court, Verus refers to and hereby incorporates by reference the Factual Background and Procedural History set forth in the August 19, 2022 memorandum of law submitted by the Trusts in support of their motion to quash and the Trusts' October 3, 2022 opposition to the Debtors' transfer motion. *See* Memorandum of Law in Support of Third-Party Asbestos Trusts' Motion to Quash Subpoenas and in Support of Stay (ECF Doc. No. 1-1), 5-14; Memorandum of Law in Opposition to Debtors' Motion to Transfer (ECF Doc. No. 29). All capitalized terms not otherwise defined herein have the same meaning as in the Trusts' memoranda of law.

Following the submissions of motions to quash by the Trusts, Verus, and Certain Matching Claimants, the Debtors filed a Motion to Transfer Subpoena-Related Motions to the Issuing Court, the United States Bankruptcy Court for the Western District of North Carolina (ECF Doc. No. 20) on September 9, 2022.

ARGUMENT

I. LEGAL STANDARD: TRANSFER IS APPROPRIATE ONLY IN EXCEPTIONAL CIRCUMSTANCES.

A. Rule 45 provides for the transfer of a motion to quash only in very limited circumstances.

Debtors appropriately cite Rule 45(f) for the standard governing the motion to transfer. That rule provides that a transfer is appropriate only where "the court finds exceptional circumstances." Fed. R. Civ. P. 45(f).

A critical part of the Court’s analysis, then, is determining what constitutes “exceptional circumstances” under Rule 45(f). The Rule itself does not define this term. Although Debtors appropriately cite to comments of the Federal Rules Advisory Committee, they focus on the exception rather than the norm:

The prime concern should be avoiding burdens on local nonparties subject to subpoenas, and it should not be assumed that the issuing court is in a superior position to resolve subpoena-related motions. In some circumstances, however, transfer may be warranted in order to avoid disrupting the issuing court’s management of the underlying litigation, as when that court has already ruled on issues presented by the motion or the same issues are likely to arise in discovery in many districts. Transfer is appropriate only if such interests outweigh the interests of the nonparty served with the subpoena in obtaining local resolution of the motion.

Fed. R. Civ. P. 45(f) advisory note (2013 amendments) (emphasis added).

This advisory comment provides the Court with the governing principles necessary to decide this motion. First, the burden imposed upon the local nonparty (here, Verus) is the “prime concern.” Second, although it is possible that a transfer sometimes “may be warranted,” that will only be the case in limited circumstances. The inescapable import of the Rule and the advisory comment is that courts must not grant motions to transfer routinely. Indeed, the presumption (if any) is against transfer and in favor of “local resolution.”

B. Debtors misapply this standard.

As described below, Debtors invert these principles when they apply them to the matter before the Court. Debtors minimize the “prime concern” – that is, the

burden to Verus – and lump Verus’s unique interests in with various other parties who are not similarly situated. Debtors also perform the analysis in reverse, treating transfer – which should be granted only in exceptional circumstances – as a *fait accompli* from square one. Along the way, Debtors ignore the very framework of Rule 45 by citing purported “exceptional circumstances” that are in fact wholly unremarkable. Transfer is not, as Debtors appear to presume, theirs for the asking.

II. THERE ARE NO EXCEPTIONAL CIRCUMSTANCES TO JUSTIFY TRANSFER.

A. The circumstances of this case are not exceptional; rather, they are exactly what Rule 45 contemplates.

Here, exceptional circumstances – which are the only basis for transferring under Rule 45(f) – simply are not present. The things identified by Debtors as “exceptional” are actually quite mundane.

For example, there is nothing exceptional about a subpoena being issued in one district while the underlying action, already in progress, remains pending before a different court in another district. That is, in fact, exactly what Rule 45 contemplates. The nonparty bringing a motion to quash in the district where it resides is also unremarkable. *See In re SBN Fog Cap II LLC*, 562 B.R. 771, 774-75 (Bankr. D. Colo. 2016) (explaining how the 2013 amendments to Rule 45 “clarifie[d] the separate roles of the ‘issuing court’ and the ‘compliance court.’”).

Also not extraordinary is the notion that the compliance court may reach a different conclusion than what the issuing court might have decided had the motion to quash been made there. The fact that one court may be more or less likely to provide a particular outcome than another court is inherent in the task of forum selection. It is not extraordinary.

B. The prior orders of the Bankruptcy Court have no preclusive effect on Verus and do not constitute exceptional circumstances.

Debtors place great weight on the existence of a prior order of the Bankruptcy Court authorizing the issuance of the Subpoena. Debtors apparently hope that their vague reference to the Bankruptcy Court Order will cause this Court to assume that the Bankruptcy Court decided more than it actually did.

For example, Debtors argue that “[t]he Subpoenas here were issued after the Bankruptcy Court Order was issued, which came only after the Debtors filed the Bankruptcy Court Motion, multiple parties [*none* of which were Verus] opposed that motion, and the objections were fully litigated before the Bankruptcy Court.” *See* Debtors’ Aldrich Pump LLC and Murray Boiler LLC’S Memorandum of Law in Support of Their Motion to Transfer (ECF Doc. No. 20-1, the “Debtors Br.”), 13. Debtors add that “the Bankruptcy Court had previously overruled similar objections to a nearly identical subpoena” in yet another case – in which Verus was also not a participant. *Id.*

Debtors’ omnibus argument paints every moving party with the same brush. However, the above is not relevant at all with respect to Verus. As explained below, Verus is uniquely situated and it has interests in local resolution separate and apart from those of the other moving parties.

Verus never appeared before the Bankruptcy Court (which does not have jurisdiction over Verus). It never opposed Debtors’ Bankruptcy Court Motion. It certainly never “fully litigated” any of the issues raised in the motion to quash that it submitted to this Court. Nor were any of the concerns unique to Verus (or any “similar objections”) overruled in the Bankruptcy Court.

C. The decision of the Third Circuit in *Bestwall* also has no preclusive effect on Verus and does not constitute exceptional circumstances.

Debtors then cite the recent decision of the Third Circuit in *In re Bestwall LLC*, No. 21-2263, 2022 U.S. App. LEXIS 23685 (3d Cir. Aug. 24, 2022), affording far more weight to that decision than it actually warrants.

At one time it appeared that the Third Circuit’s decision in *Bestwall* might clarify the issues before the Court in this matter. Indeed, Verus requested that this Court stay the motions until that appeal was decided. Ultimately, however, the Court of Appeals decided that case on procedural grounds (the doctrine of collateral estoppel) that are not applicable here.

Debtors state that “the *Bestwall* Bankruptcy Court had previously overruled objections to similar, albeit far more expansive, subpoenas in *Bestwall* – subpoenas

which the Third Circuit recently ruled are to be enforced on their terms.” *Id.* Debtors argue that “the Third Circuit noted” that “‘the drafters of Rule 45 contemplated exactly’ the situation presented here, ‘saying it may not be appropriate of the court asked to enforce a subpoena to resolve a motion to quash if the issuing court ‘has already ruled on issues presented by the motion.’”” *Id.* at 14 (citing *Bestwall*, 2022 U.S. App. LEXIS 23685 at *21).

Critically, the Court of Appeals in *Bestwall* did not pass on the substantive merits of the motions to quash or the decision of the Bankruptcy Court in that case. Rather, the Court of Appeals found only that, as a procedural matter, “issue preclusion bars the [parties] from relitigating the Rule 2004 Motion” because they had already made their arguments to the Bankruptcy Court “and had come up short.” *In re Bestwall*, 2022 U.S. App. LEXIS 23685 at *13. The Court of Appeals did not opine whether the Bankruptcy Court’s decision was meritorious or not, only that it could not be relitigated by the same parties in a second proceeding.

Thus, the scenario described in the advisory comment is not even close to “exactly the situation presented here” (Debtors Br., 14). The Bankruptcy Court has not “already ruled on” any of the issues unique to Verus (which again, was not involved and did not participate in the proceedings before the Bankruptcy Court). There is no preclusive effect to bind Verus here and the fact that the Bankruptcy

Court has already ruled on the objections of one party does not create “exceptional circumstances” with respect to the different interests of a different party.

III. THE INTERESTS OF VERUS OUTWEIGH ANY BASES FOR THE REQUESTED TRANSFER.

As noted above, on a motion to transfer, “[t]he prime concern should be avoiding burdens on local nonparties subject to subpoenas.” Fed. R. Civ. P. 45(f) advisory note (2013 amendments). “Transfer is appropriate *only if*” the issues raised by the party seeking transfer “outweigh the interests of the nonparty served with the subpoena in obtaining local resolution of the motion.” *Id.* (emphasis added). Here, however, the interests of Verus of having its motion to quash decided in the District of New Jersey outweigh any concerns identified by Debtors.

A. Verus has an interest in local resolution of its motion to quash because it has substantial ties to New Jersey.

As described in Verus’s motion to quash, Verus is a New Jersey limited liability company with its principal place of business located in Princeton, New Jersey. Its servers and database – along with the information stored therein that is the subject matter of the Debtors’ Subpoena – are located in a colocation facility in Parsippany, New Jersey. *See* August 19, 2022 Declaration of Mark T. Eveland (ECF Doc. No. 5-2, the “Eveland Decl.”), ¶ 2.

In light of these ties to this District, Verus has a strong interest in having its motion to quash resolved here – exactly as Rule 45 intends.

B. Verus has an interest in having its motion to quash decided in accordance with the law and public policy New Jersey, which protects Verus's sensitive commercial information.

Further, in addition to the sensitive medical and financial information of the Matching Claimants and their dependents, the Subpoena also implicates Verus's own sensitive commercial information. These concerns are matters of important public policy in New Jersey, as reflected in New Jersey's Trade Secrets Act. *See* N.J.S.A. §§ 56:15-1 et seq.

Verus has created a proprietary web-based system to facilitate its claims administration responsibilities, including by significantly reducing turn-around time and ensuring timely and effective communications between parties to the claims process, giving Verus a competitive advantage in the market. *See* Eveland Decl., ¶ 6. Verus's computer software system and its trust databases are proprietary trade secrets that are vital to its business and extremely valuable. *Id.* Verus takes substantial measures to safeguard its software system and trust databases. *Id.* at ¶ 8.

Verus has invested a great deal of time, effort, and money into developing its proprietary algorithms. However, responding to the Subpoena will expose Verus's proprietary trade secrets to third parties and competitors. *Id.* at ¶ 7. Specifically, providing claimant data such as date of birth, date of death, occupations, jobsites, exposure dates, diagnosis dates, dependents, injury level, earnings information, name and SSN (to cite just a few examples) increases the likelihood that a competitor

like Bates White can potentially “reverse engineer” the data to recreate Verus’s proprietary algorithms. *Id.*

This protected trade secret information provides an additional interest in Verus having its motion to quash resolved in this District.

C. Verus has an interest in local resolution because the Bankruptcy Court has already demonstrated a willingness to disregard the confidentiality of the Matching Claimants’ data.

Verus’s substantial interests in having its motion to quash determined locally in this District are further cemented by the (undisputed) fact that Debtors and the Bankruptcy Court admit that they will not protect the Matching Claimants’ confidential information. Unlike Debtors and the Bankruptcy Court, however, Verus is not so willing – or able – to disregard its obligations to safeguard that information.

Debtors write at length about the putative anonymization process provided in the Subpoena and the Bankruptcy Court’s Order. *See* Aldrich Pump LLC and Murray Boiler LLC’s Memorandum of Law in Opposition (ECF Doc. No. 28), 10. However, Debtors also admit that this anonymization is nothing but a smokescreen: “without a Matching Key that temporarily *de-anonymizes* the data, Trust Discovery is useless.” *See id.* at 38 (emphasis added). In other words, Debtors can have anonymous data, or they can have useful data, but they cannot possibly have both – so the anonymization must go.

Debtors have not offered a single word of explanation as to how the data, once “de-anonymized” can ever be *re-anonymized*. They have not explained how this can be done because it cannot be done. Once the data is “de-anonymized” it is “de-anonymized” forever. The “Matching Key” prepared by Bates White already contains the Matching Claimants’ last names and SSNs. *See* Subpoena, ¶ 6. Once this information is linked to the corresponding data for each claimant, there is no meaningful way to ensure (or to even suggest) that it will ever be de-linked. The Bankruptcy Court has blessed the Subpoena, purportedly on the premise that it protects the data of the Matching Claimants through an anonymization procedure. But this premise is erroneous.

The fact that the Bankruptcy Court has accepted such a “de-anonymization” procedure demonstrates that it is not concerned with taking any concrete step to protecting claimant data. Accordingly, Verus’ interest in having its motion to quash resolved locally – and not in the Bankruptcy Court that is not amenable to protecting confidential data of non-parties – is insurmountable.

IV. THERE IS NO RISK OF INCONSISTENT RULINGS BECAUSE VERUS AND ITS INTERESTS ARE NOT BEFORE ANY OTHER COURT.

Debtors argue that their motion to transfer should be granted in order “to [a]void the [r]isk of [i]nconsistent [r]ulings.” Debtors Br., 14. Debtors state that inconsistent rulings are threatened here because “[t]he Bankruptcy Court already

considered the same arguments raised in the Motions to Quash” (*id.* at 15-16) and that “other recipients of subpoenas ... have all recently filed motions in districts around the country.” *Id.* at 16.

Again, Debtors’ omnibus argument and broad language is misleading with respect to Verus. There is no risk at all of inconsistent rulings with respect to Verus because none of Verus’s concerns have been litigated before. Verus was not a party to, and did not participate in, the Bankruptcy Court proceedings. The Bankruptcy Court never heard, considered, or decided any issues regarding the specific burdens and concerns of Verus. There is no risk that this Court’s ruling on Verus’s motion to quash – no matter what that ruling is – will be inconsistent with the ruling of any other court.

And, of course, none of the other subpoena recipients who are currently proceeding in other districts will be litigating the issues unique to Verus. So, regardless of how the various motions of these other recipients are decided, and regardless of whether their applications are transferred to North Carolina or not, there will be no inconsistent with the decision of this Court on Verus’s motion to quash.

V. TRANSFER WOULD NOT PROMOTE JUDICIAL ECONOMY.

Last, Debtors argue that granting their transfer motion would promote “judicial economy.” But what Debtors refer to as “judicial economy” appears to be nothing more than their belief that this Court will not understand the issues.

To be clear, Debtors do not argue that transferring one or more of the pending motions to North Carolina would reduce the aggregate judicial task. Nor would the requested transfer necessarily expedite the disposition of the pending motions. To the contrary, transfer would likely prolong the proceedings because the current November 7th return date for the motions to quash (which is also the return date for the transfer motion) would be replaced by a new return date for those motions before the North Carolina Bankruptcy Court in late 2022 or early 2023.

Instead, Debtors argue that “the Bankruptcy Court is particularly well-situated to resolve the Motions” because of “its familiarity with the record” and the “the complexity of the underlying suit.” Debtors Br., 18. This is not a “judicial economy” argument at all. Rather, Debtors’ argument appears to be premised on the implication that this Court is somehow incapable of deciding any issues relating to an underlying action pending elsewhere.

But again, this posture is nothing remarkable. The issuing court will always be more “familiar” with the underlying case than the compliance court. That is inherent in the framework of Rule 45. But “it should not be assumed that the issuing

court is in a superior position to resolve subpoena-related motions.” Fed. R. Civ. P. 45(f) advisory note (2013 amendments) (emphasis added). And again, Debtors misconstrue the advisory comment. The note that “[j]udges in compliance districts may find it helpful to consult with the judge in the issuing court presiding over the underlying case while addressing subpoena-related motions” (*see* Debtors Br., 18) is a recommendation *against* transferring, not for it.

Moreover, the premise that “[l]itigating the merits of the Motions in this Court would require a careful, time-consuming review and analysis of the record before the Bankruptcy Court” (Debtors Br., 18) – misplaced as it is – has no application to Verus. With respect to Verus, there is no meaningful record before the Bankruptcy Court. Everything the Court needs to be familiar with is contained within the briefs submitted to this Court.

Thus, there is no “judicial economy” to be gained by transferring (and adjourning) the motions currently before this court.

CONCLUSION

For the reasons set forth above, Verus respectfully submits that Debtors' Motion to Transfer should be denied.

Respectfully Submitted,

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October 3, 2022

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

IN RE:

ALDRICH PUMP LLC, et al.,

Debtor.

AC&S ASBESTOS SETTLEMENT TRUST,
COMBUSTION ENGINEERING 524(G)
ASBESTOS PI TRUST, GI HOLDINGS INC.
ASBESTOS PERSONAL INJURY
SETTLEMENT TRUST, GST SETTLEMENT
FACILITY, KAISER ALUMINUM &
CHEMICAL CORPORATION ASBESTOS
PERSONAL INJURY TRUST, QUIGLEY
COMPANY, INC. ASBESTOS PI TRUST, T H
AGRICULTURE & NUTRITION, L.L.C.
ASBESTOS PERSONAL TRUST, and
YARWAY ASBESTOS PERSONAL INJURY
TRUST,

Petitioners,

v.

ALDRICH PUMP LLC and MURRAY BOILER
LLC,

Respondents,

VERUS CLAIMS SERVICES, LLC,

Interested Party,

NON-PARTY CERTAIN MATCHING
CLAIMANTS,

Interested Party.

Chapter 11

Underlying Case No.: 20-30608
(JCW)
(United States Bankruptcy Court
for the Western District of North
Carolina)

Case No.: 22-05116 (MAS-TJB)

Honorable Michael A. Shipp

Honorable Tonianne J.
Bongiovanni

Motion Day: November 7, 2022

**ALDRICH PUMP LLC AND MURRAY BOILER LLC'S
REPLY BRIEF IN SUPPORT OF THEIR
MOTION TO TRANSFER SUBPOENA-RELATED
MOTIONS TO THE ISSUING COURT,
THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA**

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PRELIMINARY STATEMENT

The Debtors’¹ Motion to Transfer thoroughly demonstrated why transferring these Subpoena-related motions to the issuing court is warranted under Rule 45(f). Neither Verus, nor the Trusts, nor the Matching Claimants (together, the “Objectors”) address in their Oppositions² the exceptional circumstances outlined in the Debtors’ Motion to Transfer—the same circumstances which have led multiple courts, including other courts within this Circuit, to transfer nearly identical motions concerning nearly identical subpoenas to the Bankruptcy Court.

Rather than confront these realities, the Objectors set up a series of strawman arguments that have nothing to do with the facts and circumstances presented here. None are remotely relevant. The Debtors do not contend that the prior proceedings before the Bankruptcy Court are binding on Verus or the Trusts. *See, e.g.*, Trusts Opp. at 3–4. Nor do the Debtors contend that Verus and the Trusts are precluded by

¹ Capitalized terms not otherwise defined have the meanings given to them in Aldrich Pump LLC and Murray Boiler LLC’s Memorandum of Law in Support of their Motion to Transfer Subpoena-Related Motions to the Issuing Court, the United States Bankruptcy Court for the Western District of North Carolina (the “Motion to Transfer”) [D.I. 20].

² *See* Verus Claim Services, LLC’s Memorandum of Law in Opposition to Debtors’ Motion to Transfer [D.I. 31] (the “Verus Opp.”); Third-Party Asbestos Trusts’ Memorandum of Law in Opposition to Debtors’ Motion to Transfer [D.I. 29] (the “Trusts Opp.”); Memorandum of Law of Certain Matching Claimants in Opposition to Aldrich’s Motion to Transfer [D.I. 30] (the “Matching Claimants Opp.,” and together with the Verus Opp. and the Trusts Opp., the “Oppositions”).

arguments made by other objectors before the Bankruptcy Court. *See, e.g., Verus Opp.* at 5. Nor do the Debtors argue that it is exceptional that a subpoena was issued in one district “while the underlying action, already in progress, remains pending before a different court in another district,” or that a “compliance court may reach a different conclusion than what the issuing court *might have decided* had the motion to quash been made there.” *Id.* at 4–5 (emphasis added).

Rather, transfer is warranted here under Rule 45(f) because the Bankruptcy Court has already decided most of the issues raised by the Motions to Quash. *See, e.g., Green v. Cosby*, 216 F. Supp. 3d 560, 565 (E.D. Pa. 2016) (“The specific situation contemplated by the committee is the situation here: the issuing court ‘has already ruled on issues presented by’ the motion to quash.”). Transfer is also warranted here under Rule 45(f) because 22 identical subpoenas were issued and a dozen subpoena-related motions have been filed in multiple federal courts across the country, creating a real risk of inconsistent rulings. *See, e.g., In re Caesars Ent. Operating Co.*, 558 B.R. 156, 158–60 (Bankr. W.D. Pa. 2016) (“The Issuing Court’s familiarity, when combined with the risk that this Court will ... reach an inconsistent ruling ... is an exceptional circumstance that warrants the immediate transfer of the Motion to Compel to the Issuing Court.”).

Contrary to Verus’ claims, this is anything but a typical situation, where a lawyer issues a subpoena without the “issuing court’s” knowledge, much less

involvement and affirmative authorization after significant litigation. Instead, this is exactly the situation identified by the Third Circuit in *Bestwall* as the type of case that should be transferred. *See In re Bestwall LLC*, 47 F.4th 233, 246 (3d Cir. 2022) (“The drafters of Rule 45 contemplated exactly that, saying it may not be appropriate for the court asked to enforce a subpoena to resolve a motion to quash if the issuing court ‘has already ruled on issues presented by the motion.’”). Just two weeks ago, the District of Delaware, consistent with the Third Circuit’s statements, rejected the exact arguments the Objectors raise here when it transferred to the Bankruptcy Court motions concerning identical³ subpoenas issued by the Debtors to another claims processing facility (the Delaware Claims Processing Facility, or “DCPF”) and another group of trusts:

Both situations contemplated in the Advisory Note are present here. The Issuing Court considered the same arguments when it previously overruled the objections to issuance of the subpoenas. In addition, the other recipients of subpoenas that were authorized by the 2004 Order, not before this Court, have all recently filed motions in districts around the country. If these subpoena-related motions are not consolidated before a single court, there is a genuine potential for inconsistent rulings concerning essentially the same discovery, not only between this Court and the Issuing Court, but also between this Court and other district courts. The sensible solution is for this Court to transfer all subpoena-related motions to the Issuing Court for resolution.

³ *See, e.g.*, Subpoena to Produce Documents, Information or Objects or to Permit Inspection of Premises in a Bankruptcy Case (or Adversary Proceeding) served on The Delaware Claims Processing Facility, attached as Exhibit A to the accompanying Declaration of Debtors’ New Jersey counsel, Paul DeFilippo.

In re Aldrich Pump LLC, Misc. No. 22-308-CFC, 2022 WL 4465202, *5 (D. Del., Sept. 26, 2022). There is no material difference between the instant matter and the matter the District of Delaware just transferred.

The Debtors have come forward with numerous judicially-recognized reasons supporting transfer, and the Oppositions completely fail to rebut the exceptional circumstances present here. Because those exceptional circumstances outweigh any minimal burden on the Objectors, the Rule 45(f) balancing test weighs decidedly in favor of transferring the Subpoena-related motions to the Bankruptcy Court.

ARGUMENT

I. JUDICIAL ECONOMY FAVORS TRANSFERRING THIS ACTION.

Contrary to Verus' statements throughout its Opposition, the Debtors' Motion to Transfer has nothing to do with a belief that this Court cannot understand the issues presented. The Debtors have full faith that this Court can. But the 22 identical subpoenas that the Debtors issued with the Bankruptcy Court's approval are subject to motion practice in multiple different courts around the country. *See* Motion to Transfer at 9–10 n. 12–15. And they can only be consolidated in one court under Rule 45—and that is the issuing court, the Bankruptcy Court for the Western District of North Carolina. *See* Advisory Note. There is no procedural mechanism whereby all of the motions attacking these 22 identical subpoenas could be transferred to this Court (or any other court other than the Bankruptcy Court). Having these motions

consolidated before a single court would not only eliminate the risk of inconsistent judgments, as described in Section II *infra*, but would also achieve judicial economy: the Bankruptcy Court is extremely familiar with many of the issues presented here, and if these motions are not transferred, this Court will be ruling on the exact same issues which have already been ruled on by the Bankruptcy Court, and will be again as to the DCPF subpoenas recently transferred there.

A. The Bankruptcy Court Has Already Ruled on Many of the Issues Presented by the Motions.

As the Debtors' Motion to Transfer outlines in detail, transfer is particularly appropriate because "[t]he specific situation contemplated by the committee is the situation here: the issuing court 'has already ruled on issues presented by' the motion to quash." *Green*, 216 F. Supp. 3d at 565. The Objectors' arguments to the contrary are half-hearted and should be overruled.

As noted, since the time the Debtors' Motion to Transfer was filed, the Delaware District Court considered motions directed at identical subpoenas and found transfer appropriate:

As the Third Circuit noted, "the drafters of Rule 45 contemplated exactly" the situation presented by the motions to quash the subpoenas issued pursuant to both the Aldrich 2004 Order and the DBMP 2004 Order, "saying it may not be appropriate of the court asked to enforce a subpoena to resolve a motion to quash if the issuing court 'has already ruled on issues presented by the motion.'" *In re Bestwall LLC*, 2022 WL 3642106 at *7 (quoting Advisory Note). "The specific situation contemplated by the committee is the situation here: the issuing court 'has already ruled on issues presented by' the motion to quash." *Green*

v. Cosby, 216 F. Supp. 3d 560, 565 (E.D. Pa. 2016) (citing Advisory Note).

In re Aldrich Pump LLC, 2022 WL 4465202, at *4 (emphasis added). The Delaware District Court went on to address, and reject, the arguments raised against transfer—arguments that are identical to the ones advanced by the Objectors:

The oppositions to the Aldrich Motion to Transfer argue that the subpoenas issued under the Aldrich 2004 Order do not include the protections ordered by this Court in *Bestwall*, and that although the Third Circuit reversed this Court's decision in *Bestwall*, it did so on procedural grounds not present here—collateral estoppel based on DCPF's appearance and objection in the Issuing Court. But the Aldrich motions to quash raise nearly identical issues as those overruled in the DBMP 2004 Order. The Issuing Court has already ruled on these issues, and, accordingly, transfer is warranted. *Green v. Cosby*, 216 F. Supp. 3d at 565 (transferring motion to quash to the issuing court).

Id.

Verus does not even address the Delaware District Court's decision in its brief. And the Trusts and Matching Claimants incorrectly claim the decision is factually distinct because the claims administrator in the Delaware action, DCPF, "appeared in the issuing court to oppose the issuance of the subpoenas." *See* Trusts Opp. at 8 n.2; *see also* Matching Claimants Opp. at 10. The Trusts and Matching Claimants are wrong: neither DCPF, nor any of the trusts for whom DCPF administers claims, ever appeared in the Debtors' cases in the Bankruptcy Court.⁴

⁴ This is soon to change in light of the Delaware District Court's order transferring resolution of DCPF's and the related trusts' motions to quash to the Bankruptcy Court.

The procedural posture between the subpoenas to DCPF and the associated trusts, which were just transferred by the Delaware District Court, and the situation here is identical. The result of the Debtors’ Motion to Transfer should likewise be identical.

The Objectors also wholly fail to address another district court’s opinion that is directly on point. Earlier this summer, the Eastern District of Virginia transferred subpoena-related motions concerning nearly identical subpoenas (and nearly identical subpoena objections) issued by the debtors in the *DBMP* bankruptcy (also pending in the Bankruptcy Court) to the Manville Trust. *See In re DBMP LLC*, No. 1:22-mc-00009 (E.D. Va. May 31, 2022) [D.I. 42]. When certain matching claimants brought a motion to quash that subpoena in the court of compliance, that court, the Eastern District of Virginia, found transfer appropriate. *Id.* at 4. Specifically, the Eastern District found that the issues presented by the motion to quash, including privacy and data security concerns, access to personal identifying information, and burden, had “already been argued, considered, and ruled on by the [DBMP] bankruptcy court.” *Id.* at 3. As noted, the Objectors do not even attempt to explain why the result here should be different—because it should not be.

B. The Situation Here Is Anything but “Ordinary.”

The Objectors claim the Bankruptcy Court’s familiarity with the Subpoenas is irrelevant, arguing that all issuing courts are familiar with the subpoenas before them. *See Verus Opp.* at 13; *Matching Claimants Opp.* at 9. That is simply untrue.

The Objectors ignore that most subpoenas are issued by attorneys without court approval, meaning the court does not ordinarily first: (i) make findings on the “relevance and necessity” of the discovery; (ii) overrule objections; and (iii) satisfy itself that there are adequate protections in place with respect to the disclosure of confidential information. Indeed, most issuing courts are not even aware of the fact that subpoenas have been issued.

The “ordinary” situation could not be more different than the one here. The objections raised by the Motions to Quash (including relevance, sampling, anonymization, confidentiality, and the Delaware District Court’s now overturned 2021 decision in *Bestwall*) are all intertwined with the merits of the Debtors’ estimation proceeding, and were all considered by the Bankruptcy Court in making its ruling approving the Subpoenas. The Bankruptcy Court reviewed extensive briefing and relevant exhibits from the Debtors and two objectors (the asbestos claimants committee in the Debtors’ bankruptcies, along with one of the other targets of an identical subpoena, Paddock Enterprises, LLC) and heard extensive oral argument. *See* May 26, 2022 Trans. [D.I. 20 Ex. K]. The Bankruptcy Court made its rulings in this case just six months after confronting the same issues on nearly identical subpoenas in the DBMP case. *See* Dec. 16, 2021 DBMP Trans. [D.I. 28 Ex. A].

C. Courts within this Circuit Repeatedly Transfer Cases in Similar Circumstances to Promote Judicial Economy.

Ultimately, as explained in the Debtors’ Motion to Transfer, courts in this circuit frequently transfer complex issues to courts already familiar with those issues and to promote judicial economy. *See, e.g., Bell v. ATH Holding Co., LLC*, Misc. No. 18-148, 2018 WL 3429710, at *7 (E.D. Pa. July 16, 2018) (“The Southern District, having presided over the underlying litigation . . . , is best suited to assessing the merits of these ‘highly specific’ and ‘nuanced’ discovery requests.”); *N. Atl. Operating Co., Inc. v. Dunhuang Grp.*, No. 18-mc-154-LPS, 2018 WL 3381300, at *1–2 (D. Del. July 11, 2018) (“Given this degree of involvement and familiarity, allowing the issuing court to resolve enforcement of the subpoena would promote judicial economy and avoid the risk of inconsistent rulings.”). The Oppositions attempt to sidestep these precedents by citing three opinions from outside the Third Circuit that are all highly distinguishable.

First, the Matching Claimants cite an opinion from the District of Massachusetts, *Isola USA Corp. v. Taiwan Union Tech. Corp.* Even if this Court considers *Isola* persuasive, the case at most stands for the proposition that familiarity alone—without a significant risk of inconsistent rulings or disruption of the underlying litigation—does not warrant transfer. *See Isola*, No. 15-MC-94003-TSH, 2015 WL 5934760, at *3 (finding that the “potential for inconsistent rulings” and “disruption of management of the [underlying] litigation” was “minimized”). That

is not the case here. While the Objectors attempt to gloss over the concrete judicial economy interests at play in this case, they ignore the reality that there are now proceedings pending in four different federal courts throughout the country, which can only effectively be consolidated before the Bankruptcy Court. Moreover, the Matching Claimants ignore the fact that the Bankruptcy Court’s understanding of the issues implicated, having considered them multiple times and through the lens of multiple parties, far “surpasses mere ‘familiarity.’” *Drips Holdings, LLC v. Quotewizard.com, LLC*, No. 1:21-MC-00017-PAB, 2021 WL 1517919, at *6 (N.D. Ohio Apr. 16, 2021) (distinguishing *Isola* because the issuing court had already issued several rulings regarding the documents requested and had “developed a deep and rigorous understanding of the issues implicated in [the] dispute”).

Second, the Oppositions argue that judicial economy does not favor transfer here because the Motions to Quash involve “straightforward [questions] of federal law.” Trusts Opp. at 13–14; *see also* Matching Claimants Opp. at 11–12 (“Before this Court is a narrow dispute. Only the straightforward application of the Civil Rules and settled decisional law are needed to resolve the pending motion.”); Verus Opp. at 14 (“Everything the Court needs to be familiar with is contained within the briefs submitted to this Court.”). The only two cases that the Objectors cite for this proposition concern questions of law completely distinct from the issues presented in the underlying litigation. The Trusts cite *Harapeti v. CBS Television Stations*,

Inc.—but the issue presented in *Harapeti* was whether the subpoenaed party was protected by the apex doctrine. Civ. No. 21-15675 (JXN) (LDW), 2021 WL 8316391 (D.N.J. Dec. 1, 2021). The Matching Claimants cite *Snow v. Kurr*, No. 4:18-MC-09015-RK, 2018 WL 4101519 (W.D. Mo. Aug. 28, 2018), and argue that “the court ‘need not comprehend the intricacies of the underlying factual dispute’ or the particular facet of applicable law to understand ‘an undue burden on the producing party.’” Matching Claimants Opp. at 11. But the issues before the *Snow* court, too, were divorced from the underlying litigation, and instead concerned the notice the subpoenaed party received—and the full quote from *Snow* shows that that case is completely irrelevant here. *See Snow*, 2018 WL 4101519, at *3 (“This Court need not comprehend the intricacies of the underlying factual dispute or securities law in the shareholder-derivate context *to understand that short notice in discovery can cause* an undue burden on the producing party.”) (emphasis added).

II. TRANSFERRING THIS ACTION IS NECESSARY TO AVOID THE GENUINE RISK OF INCONSISTENT RULINGS.

This action presents the prototypical case for transfer because the issuing court “has already ruled on [the] issues presented by the motion[s]” and “the same issues are likely to arise in discovery in many districts.” Advisory Note. But the risk of inconsistent rulings, too, strongly counsels in favor of transfer. The Objectors offer no authority showing that transfer would be inappropriate in these circumstances, and make no attempt to distinguish the extensive authority that details why courts

within this circuit “routinely [find] exceptional circumstances” in this situation. *United States ex rel. Simpson v. Bayer Corp.*, Misc. No. 16-207, 2016 WL 7239892, at *2 (E.D. Pa. Dec. 15, 2016); *see also* Motion to Transfer at 15 (collecting cases).

A. There Is a Risk of Inconsistent Rulings Between this Court and the Bankruptcy Court and Between this Court and Other District Courts.

The propriety of 22 *identical* subpoenas, including decisions on relevance, sampling, the scope of production, and timing, have already been ruled on by the Bankruptcy Court. And with subpoena-related motions filed in the Bankruptcy Court for the District of Delaware and the District Courts for the Eastern District of Michigan and the Districts of Delaware, New Jersey, and the District of Columbia, there is a genuine risk that different courts will rule differently absent transfer.

Not one of the Objectors disputes that fact—the very circumstance contemplated by the Advisory Note. *See* Motion to Transfer at 9–10, n. 12–15. Instead, the Objectors make much of the fact that they did not appear before the Bankruptcy Court when that court considered the Debtors’ (and the *DBMP* debtor’s) contested motion seeking authority to issue the Subpoenas. But Verus, for example, fails to explain how the Objectors’ arguments related to relevance, confidentiality, anonymization, and sampling are any different from the same arguments raised by

others who received identical subpoenas,⁵ including those that have been considered and overruled by the Bankruptcy Court. *See* Motion to Transfer at 16 (comparing Motions to Quash with ACC’s Objection to Bankruptcy Court Motion and Paddock’s Objection to Bankruptcy Court Motion).

Verus’ argument also cannot be squared with applicable law. Courts routinely recognize the risk of inconsistent rulings in this exact circumstance—even if the objecting parties are not the same and the issues are not framed identically. *See, e.g., Genesis Abstract, LLC v. Bibby*, Civ. No. 17-302, 2017 WL 1382023, at *2 (D.N.J. Apr. 18, 2017) (overruling argument that the issue before the issuing court was different from that before the compliance court because it involved a different party, as the subpoenas were not “substantively different”). For example, in its decision this summer transferring subpoena-related motions filed by another set of matching claimants back to the Bankruptcy Court in the *DBMP* bankruptcy, the Eastern District of Virginia found that “all factors weigh[ed] in favor of transfer.” *In re DBMP LLC*, No. 1:22-mc-00009 (E.D. Va. May 31, 2022) [D.I. 42] at 3. As here, the issues before that court had “already been argued, considered, and ruled on by the [DBMP] bankruptcy court,” albeit in an objection brought by another party other

⁵ Compare, e.g., Matching Claimants Motion *with* Non-Party Certain Matching Claimants’ (I) Motion to Quash or Modify Subpoenas and (II) Joinders, *In re Aldrich Pump LLC*, No. 22-mc-00308-CFC [D.I. 13] (D. Del. Aug. 23, 2022).

than the matching claimants who were parties to the Eastern District of Virginia action. *Id.* Further, the Eastern District found it important that “nearly identical motions to quash, transfer, and proceed anonymously” were filed by another set of subpoena recipients and matching claimants in the District of Delaware “regarding the exact same subpoena, presenting the same arguments.” *Id.* Despite the differences in the parties moving to quash the subpoenas, the Eastern District nevertheless found the motions “present[ed] a great risk of inconsistent rulings—not only between [the compliance court] and the Bankruptcy Court but between [the compliance court] and the District of Delaware.” *Id.* at 3–4.

Both of the risks identified by the Eastern District of Virginia are present here. With motions attacking subpoenas identical to those here pending in multiple district courts, there is a genuine potential for inconsistent rulings concerning essentially the same discovery. There is one way to eliminate that risk: transferring the Subpoena-related motions to the Bankruptcy Court.

B. The Trusts’ Jurisdictional Argument Is Not a Reason to Deny Transfer.

The Trusts also argue that there is no risk of inconsistent rulings because the Bankruptcy Court has never considered the Trusts’ “unique” argument that the Bankruptcy Court “lacked jurisdiction to bind them by way of the order.” Trusts Opp. at 10–11. This is yet another red herring that has no bearing on whether transfer is appropriate under Rule 45(f).

First, the underlying jurisdictional arguments are meritless. Contrary to the Matching Claimants’ Charge, the Debtors are not attempting to “manufacture jurisdiction” in the Bankruptcy Court. Matching Claimants’ Opp. at 14. Rule 45(f) creates it, and allows for transfer from the compliance court (here, the instant court) to that issuing court (here, the Bankruptcy Court) under these precise circumstances. *See, e.g., Bayer*, 2016 WL 7239892, at *2; *see also* Advisory Note. The key issue *here* is whether this Court, as compliance court, has personal jurisdiction over the Trusts. *See Wultz v. Bank of China Ltd*, 304 F.R.D. 38, 43–44 (D.D.C. 2014) (“The only ‘jurisdictional’ change occasioned by the amendment of Rule 45 is that now the district where the subpoena was served, i.e. ‘the court where compliance is required,’ explicitly has the option of either resolving subpoena-related motions or transferring such motions to a more appropriate court for resolution—the court where the underlying litigation is pending.”). Once the grounds are established, the compliance court is authorized to transfer the Subpoena-related motions under Rule 45(f). And once this matter has been transferred to the Bankruptcy Court, the transferee court acquires all of the jurisdiction necessary to adjudicate the Motions to Quash. *See United States v. Mount Sinai Hosp.*, 169 F. Supp. 3d 538, 544 (S.D.N.Y. 2016) (upon transfer, the transferee court has the jurisdiction to decide the motion).

The Trusts’ jurisdictional argument fares no better. Counsel for the Trusts was given notice of the Debtors’ Bankruptcy Court Motion prior to the Subpoenas’ issuance. *See* Certificate of Service, *In re Aldrich Pump LLC*, No. 20-30608 (Apr. 18, 2022) [Dkt. 1125 Ex. D] at 4 (listing Michael A. Kaplan, Lowenstein Sandler). Just recently, the Third Circuit in *Bestwall* noted that that “prior notice” provides “appropriate protections for the Trusts’ due process rights” such that issue preclusion was appropriate:

The Trusts were given advance notice of the Rule 2004 Motion and had ample opportunity to present their arguments directly, rather than through the Facility. They knew that Bestwall sought subpoenas for their claimant data, and that those subpoenas might well be directed at them. The Trusts could have raised all their objections in the North Carolina Bankruptcy Court, just as they later did in the District Court.

In re Bestwall, 47 F.4th at 246.

Second, the risk of inconsistent rulings remains the same even if the issuing court has not already considered every argument—regardless of merit—raised in front of the compliance court. *See, e.g., In re Nonparty Subpoenas to PPG Indus., Inc.*, No. 2:20-mc-00296-RJC, 2020 WL 1445844, at *2, *4 (W.D. Pa. Mar. 25, 2020) (where issues of relevance, burden, and proportionality were before the compliance court and the issuing court had already ruled upon relevance but had not ruled on the issue of proportionality, “the risk of inconsistent rulings present[ed] exceptional circumstances warranting transfer to the issuing court”). The Bankruptcy Court has already heard arguments that the Subpoenas seek irrelevant

information, *see* Paddock’s Objection to Bankruptcy Court Motion ¶ 13, that the Subpoenas’ confidentiality and anonymization provisions are inadequate, *see id.* ¶ 17; *see also* Dec. 16, 2021 DBMP Trans. [D.I. 28 Ex. A], that the Subpoenas improperly seek sensitive claimant information, *see id.*, and that sampling is appropriate, *see* Aug. 11, 2022 DBMP Trans. [D.I. 20 Ex. M]. Indeed, the issues and arguments that the Bankruptcy Court has considered and ruled upon are extensive. That the Bankruptcy Court has not heard every possible argument does not reduce the risk of inconsistent rulings.

C. The Matching Claimants’ Remaining Arguments Are Meritless.

The Matching Claimants argue that there is no risk of inconsistent rulings between this Court and the Bankruptcy Court because a decision to quash would be under Rule 45, while the Bankruptcy Court’s prior decision to issue the Subpoenas was under Bankruptcy Rule 2004. That argument misses the mark for multiple reasons. First, the relevant question is whether the same issues are raised in both proceedings, not whether the previous determination was made in the same procedural posture. *See* Advisory Note (“[T]ransfer may be warranted ... when the court has already ruled on *issues* presented by the motion or the same *issues* are likely to arise in discover in many districts”) (emphasis added). *See also, e.g., In re Aldrich Pump LLC*, 2022 WL 4465202, at *5 (“The Issuing Court considered the same arguments when it previously overruled objections to issuance of the

subpoenas.”). Second, the other four courts dealing with motions directed to identical subpoenas will be making rulings under Rule 45, and there exists a significant possibility of inconsistent rulings before those courts should they rule on the merits, rather than granting transfer to the Bankruptcy Court.

Finally, the Matching Claimants cite the Ohio district court decision in *Hausauer*, but, unlike this case, that court found no risk of inconsistent decisions as the issues were “narrow,” “fact specific” and “not intertwined with, or otherwise related to” the issues before other courts. *See Hausauer v. Trustedsec, LLC*, No. 1:20-mc-101, 2020 WL 6826368, at *6 (N.D. Ohio Nov. 20, 2020). Here, unlike *Hausauer*, there is essentially identical litigation pending in four different districts: the subpoenas at issue in the other districts are identical, the objections are materially identical, and the subpoenas were all issued by the same Bankruptcy Court, who heard extensive objections and ruled on issues relevant to the Subpoenas.⁶

⁶ The Matching Claimants also note that the D.C. District Court recently granted a set of Matching Claimants’ Motion to Proceed Anonymously. *See* Matching Claimants Opp. at 15. That Order, however, was granted *ex parte* just three days after the motion was filed, and subject to “further consideration by the United States District Judge to whom [the] case is randomly assigned.” Memorandum and Order, *In re Aldrich Pump LLC*, No. 1:22-mc-00080-TJK-RMM (D.D.C. Aug. 25, 2022) [D.I. 3] at 1.

III. THE EXCEPTIONAL CIRCUMSTANCES OUTWEIGH ANY BURDEN ON THE OBJECTORS.

The exceptional circumstances outlined above outweigh the “interests of the nonparty served with the subpoena in obtaining local resolution of the motion.” *See* Advisory Note. The Oppositions completely fail to identify any burden that would be imposed upon them should these Subpoena-related motions be transferred, and the interests that they set forth are neither “local” nor convincing.

A. The Oppositions Fail to Identify any Burden that Would Be Imposed Upon Them by Transfer.

The Oppositions, at length, argue that their interests in local resolution outweigh the exceptional circumstances outlined above, as “[t]he prime concern should be avoiding burdens on local nonparties subject to subpoenas.” Advisory Note. But neither Verus nor the Trusts actually identify *any* burden that would be imposed upon them by transfer to the Bankruptcy Court. Indeed, the Trusts seem to admit there is none, stating that their “interests in resolving this motion in the compliance court are not based on any unwillingness to travel.” Trusts Opp. at 17. And the interest in protecting local persons from burdensome subpoenas is not nearly as strong as the Objectors suggest. Although the Federal Rules may have at one time favored territorial protection of non-parties over efficiency, “it appears now that Congress, through the Rules, has elevated the importance of efficiency and case management, Fed. R. Civ. P. 45(a)(2), (b)(2) (eliminating the intricate requirements

delineating which court may issue a subpoena and instead mandating that subpoenas be issued by the court where the action is pending and subsequently served anywhere in the United States).” *Wultz*, 304 F.R.D. at 44, 46 (finding that “the ‘interests of judicial economy and avoiding inconsistent results’” are exceptional circumstances that outweighed *de minimis* burden imposed by transfer).

The Matching Claimants posit that “[a]ny ties the Certain Matching Claimants have to the issuing court in North Carolina are tenuous, at best, and arguably non-existent.” Matching Claimants Opp. at 13. The Matching Claimants’ ties to New Jersey are equally tenuous, at best, and arguably non-existent. The Matching Claimants have not cited any evidence regarding their ties to New Jersey. There is no evidence that any New Jersey residents are among the Matching Claimants, nor that New Jersey residents outnumber North Carolina residents. Moreover, there is no evidence that litigation in the Bankruptcy Court would be any more burdensome on the Matching Claimants than litigation before this Court.

Instead of focusing on the burden imposed by litigating these Subpoena-related motions before the Bankruptcy Court, as Rule 45 and the Advisory Note require, the Objectors advance other “interests” they purportedly have in resolution of the motions in this Court. Both Verus and the Trusts note that “all of the data sought pursuant to the subpoenas is stored in New Jersey and subject to this Court’s jurisdiction.” Trusts Opp. at 15; Verus Opp. at 8. True. And that is why the Debtors

listed New Jersey as the place of compliance on the Subpoenas issued on Verus and the Trusts and served the Subpoenas on them in this District. *See* Subpoenas [D.I. 20 Exs. A–I]. But it is not true that this gives this Court a “vested interest in the Trusts’ and Verus’ operations and the claimants’ data security and privacy.” Trusts Opp. at 15. For example, in *Bell v. ATH Holding*, the subpoenaed party argued that the court should not transfer a motion to quash because the party was “at home here and [its] District . . . provide[s] a single forum resolving discovery disputes involving [it], in its role as recordkeeper for retirement plans[.]” 2018 WL 3429710, at *8. The *Bell* court made clear: it was not the court’s “role to serve as a clearinghouse for [the party’s] discovery disputes[.]” *Id.* Rather, the Rule 45(f) analysis “is a fact specific case by case analysis.” *Id.* The only question is whether the subpoena-related motion is best addressed in the compliance court or the issuing court. *See also, e.g., Wultz*, 304 F.R.D. at 44 (“Where perhaps once ‘Congress [through] the Rules [was] clearly ready to sacrifice some efficiency in return for territorial protections for nonparties,’ it appears now that Congress, through the Rules, has elevated the importance of efficiency and case management[.]”).

B. Verus Does Not Explain Why the Bankruptcy Court Is Not Competent to Rule on Issues Related to New Jersey Law.

In a similar vein, Verus concludes that “protected trade secret information provides an additional interest in Verus having its motion to quash resolved in this District.” Verus Opp. at 9–10. That protected trade secret information, according

to Verus, includes Matching Claimants’ medical and financial information, as well as Verus’ “proprietary web-based system.” *Id.* This argument is as misleading as it is incorrect.

First, Verus’ argument once again relies on misstating both the information sought and the confidentiality protections provided by the Subpoenas. Contrary to Verus’ repeated claims that the Subpoenas seek sensitive personal identifiable information (“PII”) of the Matching Claimants, such as date of birth, date of death, and SSN, the Subpoenas seek nothing of the sort. *See* Bankruptcy Court Order [D.I. 20 Rider to Exs. A–I]. As the Debtors have said repeatedly, they already possess that information by virtue of the fact that all of the Matching Claimants asserted and resolved asbestos-related personal injury claims against them. *See, e.g.*, Opposition Memorandum [D.I. 28] at 11, 24, 32, 37. Moreover, the Bankruptcy Court Order provides extensive protections for any data ultimately produced, including limitations governing the use, dissemination, and destruction of such data. *See* Bankruptcy Court Order [D.I. 20 Rider to Exs. A–I] ¶¶ 12–18. The anonymization provision, one of these many protections, is not “but a smokescreen.” Verus Opp. at 10. It ensures that in responding to the Subpoenas, Verus and the Trusts need not even risk exposing any Matching Claimant PII, but instead can produce the various non-confidential categories of information sought by the Subpoenas through the use of a claimant pseudonym.

Second, Verus reverts to its argument that because it has built an allegedly proprietary software platform where the data sought by the Subpoenas is stored, it is insulated from discovery. This is simply not the law. “The Federal Rules do not permit” Verus “to hide behind its peculiar computer system as an excuse for not producing” the information sought by the Subpoenas. *Static Control Components, Inc. v. Lexmark Int’l, Inc.*, No. Civ. A. 04-84-KSF, 2006 WL 897218, at *4 (E.D. Ky. Apr. 5, 2006) (ordering production of proprietary database under terms of protective order); *see also Coca-Cola Bottling Co. of Shreveport, Inc. v. Coca-Cola Co.*, 107 F.R.D. 288, 292 (D. Del. 1985) (“It is well established that trade secrets are not absolutely privileged from discovery in litigation.”). Even if Verus has shown that its software platform qualifies as a trade secret (which it has not), the Subpoenas do not seek any information about that software platform. The information the Subpoenas seek is merely stored within that platform, and this is information the Debtors have already shown is “relevant and necessary” to the Debtors’ estimation proceeding. *See* Opposition Memorandum [D.I. 28] at 33–35.

Verus goes one step further, and insinuates that when the Bankruptcy Court recognized that confidentiality interests can be outweighed by other interests, it went rogue and “admit[ted] that [it] will not protect the Matching Claimants’ confidential information.” Verus Opp. at 10. This is untrue. Having approved, after extensive litigation, more than two dozen similar subpoenas directed at claims processing

facilities and trusts in both this case and *DBMP*, the Bankruptcy Court found that: (1) the Subpoenas did not seek any PII and (2) the multiple confidentiality and use provisions contained in the Subpoenas were sufficient to protect any sensitive claimant data that may be produced. *See, e.g.*, Dec. 16, 2021 *DBMP* Trans. [D.I. 28 Ex. A] at at 134:13–14 (“[T]he fact that there’s no personal ... identifying information now satisfies the privacy concerns, at least from my perspective.”). Nevertheless, the Bankruptcy Court Order, which serves as the rider to the Subpoenas and which the Debtors are obligated to comply with, still contains a half-dozen separate provisions designed at limiting the use, and protecting the confidentiality of, any data that is disclosed in response to the Subpoenas. *See* Bankruptcy Court Order [D.I. 20 Rider to Exs. A–I] ¶¶ 12–18. There is no reason for this Court—other than the Oppositions’ inappropriate and unfounded claims of judicial misconduct by the Bankruptcy Court—to believe that the Bankruptcy Court will not thoroughly consider Verus’ confidentiality arguments, as it has already considered similar arguments made by other subpoena recipients.

CONCLUSION

For all these reasons, the Debtors respectfully request that this Court transfer these proceedings to the United States Bankruptcy Court for the Western District of North Carolina.

Dated: October 11, 2022

Respectfully submitted,

/s/ Paul R. DeFilippo

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(Applications *pro hac vice* pending)

*Attorneys for Aldrich Pump LLC and Murray
Boiler LLC*

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

IN RE:

ALDRICH PUMP LLC, et al.,

Debtor.

AC&S ASBESTOS SETTLEMENT TRUST,
COMBUSTION ENGINEERING 524(G)
ASBESTOS PI TRUST, GI HOLDINGS INC.
ASBESTOS PERSONAL INJURY
SETTLEMENT TRUST, GST SETTLEMENT
FACILITY, KAISER ALUMINUM &
CHEMICAL CORPORATION ASBESTOS
PERSONAL INJURY TRUST, QUIGLEY
COMPANY, INC. ASBESTOS PI TRUST, T H
AGRICULTURE & NUTRITION, L.L.C.
ASBESTOS PERSONAL TRUST, and
YARWAY ASBESTOS PERSONAL INJURY
TRUST,

Petitioners,

v.

ALDRICH PUMP LLC and MURRAY BOILER
LLC,

Respondents,

VERUS CLAIMS SERVICES, LLC,

Interested Party,

NON-PARTY CERTAIN MATCHING
CLAIMANTS,

Interested Party.

Chapter 11

Underlying Case No.: 20-30608
(JCW)
(United States Bankruptcy Court
for the Western District of North
Carolina)

Case No.: 22-05116 (MAS-TJB)

Honorable Michael A. Shipp

Honorable Tonianne J.
Bongiovanni

DECLARATION OF PAUL R. DeFILIPPO

I, Paul R. DeFilippo, hereby declare under penalty of perjury:

1. I am a partner of the law firm of Wollmuth Maher & Deutsch LLP; my office is located at 90 Washington Valley Road, Bedminster, New Jersey 07921. I am a member in good standing of the Bar of New Jersey. There are no pending disciplinary proceedings against me.

2. I submit this declaration in connection with *Aldrich Pump LLC and Murray Boiler LLC's Reply Brief in Support of their Motion to Transfer Subpoena-Related Motions to the Issuing Court, the United States Bankruptcy Court for the Western District of North Carolina*, filed contemporaneously herewith. I have personal knowledge of the matters set forth herein.

3. Attached hereto as **Exhibit A** is a true and correct copy of the *Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Bankruptcy Case (or Adversary Proceeding)* served on The Delaware Claims Processing Facility, dated July 5, 2022.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: October 11, 2022
Bedminster, New Jersey

/s/ Paul R. DeFilippo
Paul R. DeFilippo

EXHIBIT A

UNITED STATES BANKRUPTCY COURT

District of _____

In re _____
Debtor

Case No. _____

(Complete if issued in an adversary proceeding)

Chapter _____

Plaintiff

Adv. Proc. No. _____

v.

Defendant

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A BANKRUPTCY CASE (OR ADVERSARY PROCEEDING)

To: _____
(Name of person to whom the subpoena is directed)

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: The information ordered to be produced in the attached Order Authorizing the Debtors to Issue Subpoenas on Asbestos Trusts and Paddock Enterprises, LLC (Dkt. 1240) (the "Order"), entered in the above-captioned case, limited to individuals identified in the "Matching Key" described in paragraph 6 of the Order, identifying individuals whose mesothelioma claims the Debtors or their predecessors resolved through settlement or verdict between January 1, 2005 and June 18, 2020. The Matching Key will be provided by Bates White via secure electronic transmission following service of this subpoena upon identification of the appropriate recipient.

| | |
|---|----------------------------------|
| PLACE Bates White LLC c/o Kelly Farnan, | DATE AND TIME See dates in Order |
|---|----------------------------------|

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

| | |
|-------|---------------|
| PLACE | DATE AND TIME |
|-------|---------------|

The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: _____

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Morgan Hirst

Attorney's signature

The name, address, email address, and telephone number of the attorney representing (name of party) _____, who issues or requests this subpoena, are:

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for (*name of individual and title, if any*): _____
on (*date*) _____ .

I served the subpoena by delivering a copy to the named person as follows: _____
_____ on (*date*) _____ ; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ .

I declare under penalty of perjury that this information is true and correct.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information concerning attempted service, etc.:

Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)
(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)

(c) Place of compliance.

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises, at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

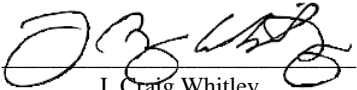
...
(g) Contempt. The court for the district where compliance is required — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

FILED & JUDGMENT ENTERED
Steven T. Salata

July 1 2022

Clerk, U.S. Bankruptcy Court
Western District of North Carolina




J. Craig Whitley
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

In re : Chapter 11
: :
ALDRICH PUMP LLC, *et al.*,¹ : Case No. 20-30608 (JCW)
: :
Debtors. : (Jointly Administered)

**ORDER GRANTING MOTION OF THE DEBTORS
FOR AN ORDER AUTHORIZING THE DEBTORS TO ISSUE
SUBPOENAS ON ASBESTOS TRUSTS AND PADDOCK ENTERPRISES, LLC**

This matter coming before the Court pursuant to the *Motion of the Debtors for an Order Authorizing the Debtors to Issue Subpoenas on Asbestos Trusts and Paddock Enterprises, LLC* [Dkt. 1111] (the “Motion”),² filed by Aldrich Pump LLC (“Aldrich”) and Murray Boiler LLC (“Murray”), as debtors and debtors-in-possession in the above-captioned cases (together, the “Debtors”). Based upon a review of the Motion, the objections to the Motion filed by Paddock [Dkt. 1161] and the ACC [Dkt. 1162], the reply in support of the Motion filed by the

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

² Capitalized terms not otherwise defined herein have the meanings given to them in the Motion.

Debtors [Dkt. 1182], the evidence presented, and the arguments of counsel at the hearing on this matter held on May 26, 2022 (the “May 26 Hearing”), the Court finds good cause for the relief granted herein and hereby ORDERS, ADJUDGES, AND DECREES as follows:

1. The Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409. Adequate notice of the Motion was given and it appears that no other notice need be given (except as set forth herein).

2. For the reasons stated on the record at the May 26 Hearing, which are incorporated herein by reference, the Motion is GRANTED on the terms and conditions set forth herein. All objections to the relief granted herein are OVERRULED, except to the extent stated by the Court on the record at the May 26 Hearing.

3. Upon entry of this Order, the Debtors are authorized to issue and serve subpoenas requesting the data described in paragraph 10 below on:

- a. the Manville Personal Injury Settlement Trust (“Manville Trust”);
- b. the Delaware Claims Processing Facility (“DCPF”) with respect to the following asbestos personal injury trusts whose claims are handled by DCPF (the “DCPF Trusts”):³
 - (i) Armstrong World Industries Asbestos Personal Injury Settlement Trust;
 - (ii) Babcock & Wilcox Company Asbestos Personal Injury Settlement Trust;
 - (iii) Celotex Asbestos Settlement Trust;
 - (iv) DII Industries, LLC Asbestos PI Trust (Halliburton, Harbison-Walker Subfunds);

³ The Debtors also may subpoena the DCPF Trusts to effectuate this Order.

- (v) Federal Mogul U.S. Asbestos Personal Injury Trust (T&N, FMP, Flexitallic, Ferodo);
 - (vi) Flintkote Asbestos Trust;
 - (vii) Owens Corning Fibreboard Asbestos Personal Injury Trust (FB and OC Subfunds);
 - (viii) Pittsburgh Corning Corporation Asbestos PI Trust;
 - (ix) United States Gypsum Asbestos Personal Injury Settlement Trust; and
 - (x) WRG Asbestos PI Trust;
- c. Verus Claims Services, LLC (“Verus”⁴ and, collectively with the Manville Trust and DCPF, the “Trust Producing Parties,” and each, individually, a “Trust Producing Party”) with respect to the following asbestos personal injury trusts whose claims are handled by Verus (the “Verus Trusts” and, collectively with the Manville Trust and the DCPF Trusts, the “Trusts”):⁵
- (i) ACandS Asbestos Settlement Trust;
 - (ii) Combustion Engineering 524(g) Asbestos PI Trust;
 - (iii) G-I Holdings Inc. Asbestos Personal Injury Settlement Trust;
 - (iv) GST Settlement Facility;
 - (v) Kaiser Aluminum & Chemical Corporation Asbestos Personal Injury Trust;
 - (vi) Quigley Company, Inc. Asbestos PI Trust;
 - (vii) T H Agriculture & Nutrition, L.L.C. Asbestos Personal Injury Trust; and
 - (viii) Yarway Asbestos Personal Injury Trust.

⁴ To the extent that another entity is responsible for managing or otherwise processing claims for the Verus Trusts (as defined herein), including, without limitation, Verus, LLC, the term “Verus” shall include such entity.

⁵ The Debtors also may subpoena the Verus Trusts to effectuate this Order.

4. On or after June 30, 2022, the Debtors are authorized to issue and serve a subpoena requesting the data described in paragraph 11 below on Paddock Enterprises, LLC (“Paddock”).

5. The subpoenas seek evidence that is relevant and necessary to specific purposes in connection with the estimation of the Debtors’ liability for current and future asbestos-related claims and the negotiation, formulation, and confirmation of a plan of reorganization in these cases, specifically: the determination of whether pre-petition settlements of mesothelioma claims provide a reliable basis for estimating the Debtors’ asbestos liability; the estimation of the Debtors’ asbestos liability; and the development and evaluation of trust distribution procedures for any plan of reorganization confirmed in these cases (collectively, such purposes, the “Permitted Purposes”).

6. Bates White, in its capacity as a Retained Expert (as defined herein) for the Debtors, shall create a “Matching Key”, which shall be a list (in electronic, text searchable format) of last names and Social Security numbers (“SSNs”), in separate fields, for claimants who asserted mesothelioma claims against the Debtors, Aldrich’s predecessor, the former Trane Technologies Company LLC, successor by merger to Ingersoll-Rand Company (a former New Jersey Corporation) (“Old IRNJ”), or Murray’s predecessor, the former Trane U.S. Inc. (“Old Trane”) that were resolved by settlement or verdict and for whom the Debtors possess SSNs, as well as the corresponding last names and SSNs of any injured party if different from the claimant (the “Claimants”), as well as a unique numerical pseudonym (the “Claimant Pseudonym”) assigned by Bates White and corresponding to each Claimant. On the same day the Debtors effect service of a subpoena authorized by this order (as applicable, the “Service Date”), Bates White shall provide the Matching Key to the Manville Trust, DCPF, Verus, and Paddock (each,

individually, a “Producing Party” and, collectively, the “Producing Parties”), as applicable. On the earliest Service Date following entry of this Order, Bates White shall also provide the Matching Key to Legal Analysis Systems, Inc. (“LAS”), and Ankura Consulting Group, LLC (“Ankura”), each in its capacity as a Retained Expert (as defined herein) for the ACC, and the FCR, respectively.

7. On or before the twenty-first (21st) day following the applicable Service Date,⁶ DCPF, the Manville Trust, and Verus shall identify the claimants in the Trusts’ databases, and Paddock shall identify the claimants in any claims database within Paddock’s possession, custody, or control whose purpose is or was to track asbestos personal injury claims asserted against Paddock or Owens-Illinois, Inc. (the “Paddock Database”), whose injured party datafields or related claimant datafields match any (a) nine-digit SSN and (b) last name associated with a Claimant and who did not file their Trust claims *pro se* or, in the case of Paddock, who are listed in the Paddock Database as having a claim that was not asserted *pro se* (the “Matching Claimants”). In performing this match, the Producing Parties shall disregard punctuation marks, prefixes (Mr., Miss, Ms., etc.), suffixes (Sr., Jr., III, IV, etc.), and any other words that do not constitute part of the name (“executor,” “deceased,” “dec,” etc.) but that may be contained in a last-name field, and shall also close spaces between parts of a name (e.g., “Van” or “De”) as necessary to ensure the most comprehensive initial match.

8. On or before the twenty-first (21st) day following the applicable Service Date, the Producing Parties shall also provide to counsel for the Debtors a list of the first and last names and SSNs of claimants in the Trusts’ databases or, in the case of Paddock, in the Paddock

⁶ If any deadline set forth in this Order falls on a Saturday, Sunday, or legal holiday, then such deadline shall be extended to the next day that is not a weekend or legal holiday.

Database, who match the nine-digit SSN of any Claimant but who (a) filed their Trust claims *pro se* or, in the case of Paddock, who appear in the Paddock Database as having asserted a claim *pro se*, (and identify such claimants on the list) or (b) in the view of the Producing Party do not match the last name associated with the Claimant (the “Meet and Confer List”). The Meet and Confer List shall be subject to the same confidentiality and use restrictions as Confidential Data (as defined herein). On or before the thirty-fifth (35th) day following the applicable Service Date, the Debtors and the Producing Parties shall meet and confer concerning whether any of the claimants on the Meet and Confer List should instead be classified as Matching Claimants. On or before the sixtieth (60th) day following the applicable Service Date, the Debtors (and the Debtors’ Retained Experts, as defined herein) shall permanently delete the Meet and Confer List and provide the Producing Parties with written confirmation of such deletion; provided, however, that such deletion deadline shall be extended for each day the meet and confer process between the Debtors, on the one hand, and the Producing Parties, on the other hand, continues after the sixtieth (60th) day following the applicable Service Date. In the event the Debtors and the Producing Parties cannot reach agreement regarding the status of any claimant on the Meet and Confer List, any of them may seek judicial resolution of such dispute.

9. Within seven (7) days of the identification of Matching Claimants in the Trusts’ databases (collectively the “Trust Matching Claimants,” and each, individually, a “Trust Matching Claimant”), whether pursuant to paragraph 7 or paragraph 8 above (and this paragraph 9, as applicable), the Trust Producing Parties shall notify the Trust Matching Claimants’ counsel of record that the relevant Trusts have received a subpoena from the Debtors. The notice from the Trust Producing Parties shall state that the data associated with the Trust Matching Claimants, as described in paragraph 10 below, will be produced if they do not file a motion to

quash the subpoena in the court of compliance for the Trust Producing Party by the later of the forty-ninth (49th) day following the applicable Service Date, or the fourteenth (14th) day following the provision of notice to their counsel of record by the Trust Producing Party. The Trust Producing Parties shall exercise reasonable efforts to provide actual notice to counsel of record in connection with the claim that is the subject of disclosure. If, despite their reasonable efforts, the Trust Producing Party is unable to provide actual notice to counsel of record for a Trust Matching Claimant, including without limitation because counsel of record is unreachable (for example, counsel of record has died, retired, or closed or dissolved his, her or its legal practice), they shall not be required to make a production of data relating to such Trust Matching Claimant (such Trust Matching Claimants being the "Unnoticeable Claimants"). The Trust Producing Parties shall provide the Debtors on or before the thirtieth (30th) day following the applicable Service Date with a list of such Unnoticeable Claimants identifying the counsel that filed the trust claim and counsel of record, if different, and the reasons such counsel of record is unreachable. Unnoticeable Claimants will be added to the Meet and Confer List to enable the Debtors and the Trust Producing Parties to discuss other means, if any, of providing notice to such Trust Matching Claimants. Any Trust Matching Claimant for whom the Debtors and the Trust Producing Party are able to agree on another means of providing notice will no longer be classified as Unnoticeable Claimants. As to all Trust Matching Claimants other than the Unnoticeable Claimants, if a motion to quash is filed by a Trust Matching Claimant in the court of compliance for the Trust Producing Party before the applicable deadlines set forth above in this paragraph 9, the Trust Producing Party will stay the production of any data relating to such Trust Matching Claimant until such motion is resolved. If a motion to quash is not filed by a Trust Matching Claimant in the court of compliance for the Trust Producing Party before the

applicable deadlines set forth above in this paragraph 9, the Trust Producing Party shall produce to the Debtors the data described in paragraph 10 below, relating to the Trust Matching Claimant (other than the Unnoticeable Claimants) on or before the seventh (7th) day after the date by which any motion to quash must be filed (as applicable, the “Trust Production Date”). As to all Matching Claimants identified in the Paddock Database (collectively, the “Paddock Matching Claimants” and each, individually, a “Paddock Matching Claimant”), Paddock shall produce to the Debtors the data described in paragraph 11 below, relating to the Paddock Matching Claimants: (a) for Paddock Matching Claimants identified pursuant to paragraph 7 of this Order, on or before the forty-ninth (49th) day following the Service Date applicable to Paddock; and (b) for any claimant on the Meet and Confer List that the Debtors and Paddock agree, after meeting and conferring, should be classified as a Paddock Matching Claimant pursuant to paragraph 8 of this Order, on or before the later of (i) the forty-ninth (49th) day following the Service Date applicable to Paddock and (ii) the seventh (7th) day following the agreement by the Debtors and Paddock that such claimant should be classified as a Paddock Matching Claimant (as applicable, the “Paddock Production Date”).

10. On or before the applicable Trust Production Date, DCPF, the Manville Trust, and Verus shall produce to Bates White (in electronic database format and, with respect to DCPF and Verus, separately for each Trust) the following information pertaining to each Trust Matching Claimant⁷ (to the extent the relevant Trust databases contain such information) (the “Trust Anonymized Matched Production”):

⁷ For the avoidance of doubt, the terms “Trust Matching Claimant” and “Paddock Matching Claimant” referenced in paragraphs 10 and 11 of this Order include, as applicable, any claimant on the Meet and Confer List that the parties agree, after meeting and conferring, should be classified as a Trust Matching Claimant or Paddock Matching Claimant.

- a. Claimant Pseudonym;
- b. Claimant's law firm (with email and address of contact person);
- c. Date claim filed against Trust;
- d. Date claim approved by Trust, if approved;
- e. Date claim paid by Trust, if paid;
- f. If not approved or paid, status of claim; and
- g. All exposure-related fields,⁸ including:
 - (i) Date(s) exposure(s) began;
 - (ii) Date(s) exposure(s) ended;
 - (iii) Manner of exposure;
 - (iv) Occupation and industry when exposed; and
 - (v) Products to which exposed.

11. On or before the applicable Paddock Production Date, Paddock shall produce to Bates White (in electronic database format) the following information pertaining to each Paddock Matching Claimant (to the extent the Paddock Database contains such information) (the "Paddock Anonymized Matched Production" and, together with the Trust Anonymized Matched Production, the "Anonymized Matched Productions"):

- a. Claimant Pseudonym;
- b. Claimant's law firm (with email and address of contact person);
- c. Date claim filed or otherwise asserted;
- d. Jurisdiction and state of filing (if applicable);

⁸ To the extent any names or SSNs appear in any exposure-related field, the Manville Trust, DCPF, and Verus may redact such names and SSNs prior to production of the Trust Anonymized Matched Production. In addition, prior to delivery of the Trust Anonymized Matched Production to the other Retained Experts, Bates White shall search for and permanently delete any such names and SSNs that may be inadvertently included in the Trust Anonymized Matched Production.

- e. Status of claim (e.g., settled, dismissed, plaintiff verdict, defense verdict, settled pending payment, open, etc.);
- f. Date claim resolved, if resolved;
- g. Date claim paid, if paid; and
- h. All exposure-related fields,⁹ including:
 - (i) Date(s) exposure(s) began;
 - (ii) Date(s) exposure(s) ended;
 - (iii) Manner of exposure;
 - (iv) Occupation and industry when exposed; and
 - (v) Products to which exposed.

12. The Anonymized Matched Productions shall be used as follows:

- a. Subject to and without in any way limiting the restrictions described in paragraph 13(d) below concerning access to the Matching Key (or information derived therefrom), Retained Experts and Authorized Representatives (each as defined below) of the Debtors, the ACC, the FCR, Trane Technologies Company LLC (“New Trane Technologies”) and Trane U.S., Inc. (“New Trane” and, together with the Debtors, New Trane Technologies, the ACC, and the FCR, the “Parties”), if otherwise entitled to such access pursuant to this Order, may obtain a copy of the Matching Key (or information derived therefrom) and the Anonymized Matched Productions.
- b. The Retained Experts (as defined in paragraph 13(d)) shall use the Matching Key only to (i) match and combine the Anonymized Matched Productions, on a

⁹ To the extent any names or SSNs appear in any exposure-related field, Paddock may redact such names and SSNs prior to production of the Paddock Anonymized Matched Production. In addition, prior to delivery of the Paddock Anonymized Matched Production to the other Retained Experts, Bates White shall search for and permanently delete any such names and SSNs that may be inadvertently included in the Paddock Anonymized Matched Production.

claimant-by-claimant basis, with data from the Debtors’ database or other sources;

(ii) provide sufficient identifying information from the Matching Key to an Authorized Representative to permit such Authorized Representative to match data from the Anonymized Matched Productions with and analyze individual claims (provided that such identifying information shall be limited to data corresponding to the specific individual claims in the Anonymized Matched Productions that are the subject of individual claims analysis, shall not contain data corresponding to claims that are not the subject of individual claims analysis, and shall not include data beyond that which is strictly necessary to effectuate the individual matches and analysis contemplated by this subdivision (ii)); (iii) verify the accuracy of any matching of data performed by another Authorized Representative; and (iv) defend challenges to the accuracy of any matching of data performed by an Authorized Representative, provided, however, that the Matching Key may be used in the manner described in (i), (ii), (iii), and (iv) only in connection with a Permitted Purpose. No Retained Expert or Authorized Representative shall use the Matching Key, or any portion or element thereof, for any other purpose, and shall not retain any other record of any kind linking the complete set of Claimant Pseudonyms in the Anonymized Matched Productions to the Matching Key.

c. To the extent a Retained Expert uses the Matching Key to match the Anonymized Matched Productions, on a claimant-by-claimant basis, to the Debtors’ database or other sources of information, such Retained Expert shall delete from any resulting database the names and SSNs of injured parties and any related claimants (any such database being an “Anonymized Database”).

13. The Matching Key (and any portion or extract thereof), the Anonymized Matched Productions, and any Anonymized Databases (together, the “Confidential Data”) shall be deemed “Confidential” pursuant to the *Agreed Protective Order Governing Confidential Information* [Dkt. 345] (the “Protective Order”). In addition to the protections in the Protective Order, the provisions in this Order (which will supersede the Protective Order in the event of any conflict) shall apply, including the following:

a. No Confidential Data shall be disseminated or disclosed, whether in written or electronic form, to any individual other than an individual (1) who has a clear need to know or access the data to perform work in connection with a Permitted Purpose and (2) who is (i) a lawyer, employee, agent, or representative of a law firm representing a Party in connection with these cases, (ii) a lawyer, paralegal, or legal support staff for a Party (and working in a legal role for the Party), or (iii) a Party’s Retained Expert (defined below) in these cases (collectively, the “Authorized Representatives”); provided, however, that the right of access to the Confidential Data hereby conferred on the foregoing persons shall be subject to the conditions precedent set forth in paragraph 13(b) immediately below.

b. Any person exercising a right of access to the Confidential Data shall thereby consent, and be deemed to consent, to be bound by this Order and shall thereby submit, and be deemed to submit, to the exclusive jurisdiction and venue of this Court for any dispute pertaining to the interpretation or enforcement of this Order. Without limitation of the generality of the foregoing sentence, as a condition of the right of access to the Confidential Data conferred by paragraph 13(a) above, each entity whose Authorized Representatives will receive access to the Confidential Data and any other

“Retained Expert”), and (iii) such other persons as the Parties and the Producing Parties may agree to in writing from time to time; provided, however, that a Retained Expert shall be permitted to access the Matching Key only in connection with a Permitted Purpose and only if the Retained Expert has a clear need for such access. Any Retained Expert granted access to the Matching Key shall store the Matching Key in a separate, password-protected folder on Retained Expert’s network, accessible only to individuals authorized to access the Matching Key under this paragraph 13(d), and the same data security requirement shall apply to any other person granted access to the Matching Key under this paragraph 13(d). Any electronic transmission of the Matching Key must be through a secure encrypted service, and not as an ordinary email attachment.

e. No claimant-specific data from or derived from any Confidential Data shall be (i) offered as evidence in these bankruptcy cases, (ii) placed on the public record, or (iii) filed with this Court, the District Court, or any reviewing court (including under seal), absent further order by this Court, made after notice of hearing of a motion (with notice to the Producing Parties and claimants provided to their attorneys at the addresses contained in the data produced by the Producing Parties) authorizing such use. Such motion shall be brought by the movant no later than 30 days before such offer or use. The restrictions of this paragraph 13(e) also shall apply to any de-identified data (i.e., data that does not contain claimant-specific details) from or derived from any Confidential Data that could reasonably be used, by cross-referencing publicly available information or otherwise, to determine or reveal a claimant’s identity.

f. If, in connection with a motion pursuant to paragraph 13(e), or any response to such motion, a Party proposes to place any Confidential Data under seal, that

without limitation, any Retained Experts, who received access to or who possess any Confidential Data or any excerpts thereof, including without limitation any person or entity that executed a joinder in the form annexed to this Order as Exhibit A.1 or Exhibit A.2, shall permanently delete such Confidential Data and any excerpts thereof, without in any way retaining, preserving, or copying the Confidential Data or any excerpts thereof; provided, however, that any such data stored on a Party's or Authorized Representative's back-up computer system for the purpose of system recovery or information recovery may be deleted after this period when the applicable back-up copies are deleted in the ordinary course of such Party's or Authorized Representative's operations.

16. Within 30 days after the Deletion Date, the Parties and any Authorized Representatives (and any of their associated entities), including, without limitation, any Retained Experts, who received access to or who possess any Confidential Data or any excerpts thereof, shall file a declaration made pursuant to 28 U.S.C. § 1746, affirming that he, she or it: (a) used any Confidential Data solely for the Permitted Purposes authorized by this Order; (b) did not share any Confidential Data with any other person or entity except as authorized by this Order or another court order; (c) complied with the restrictions of this Order concerning disclosure of claimant-specific data, including, without limitation, the provisions in paragraph 13(g); and (d) complied with the requirements in paragraph 15 concerning the deletion of any Confidential Data.

17. Subject to the requirements of paragraphs 12 and 13 above, nothing in this Order shall restrict any person's right to make lawful use of:

- a. any discrete data set or materials that came into the possession of such person lawfully and free of any confidentiality obligation;
- b. any exhibit or other document that is placed on the public record in these bankruptcy cases in conformity with this Order, or any data

or material that is or becomes publicly available other than by a breach of this Order; or

- c. any discrete data set or materials developed by or on behalf of such person independent of any Confidential Data.

18. For the avoidance of doubt, nothing in this Order shall prohibit any Party from seeking discovery in connection with a Permitted Purpose with respect to any particular Claimants, including where such Claimants are selected using knowledge gained from the discovery ordered herein, so long as such discovery requests do not disclose any information that is derived solely from or contained exclusively in the Anonymized Matched Productions.

19. The Debtors shall reimburse the Producing Parties for their reasonable and documented expenses in complying with this Order and the subpoenas. The Producing Parties shall have no liability in connection with their compliance with the subpoenas described in this Order.

20. This Court shall retain exclusive jurisdiction to interpret, modify, apply, and enforce this Order to the full extent permitted by law.

This Order has been signed electronically.
The Judge's signature and Court's seal appear
at the top of the Order.

United States Bankruptcy Court

**EXHIBIT A.1 TO ORDER GRANTING MOTION OF THE
DEBTORS FOR AN ORDER AUTHORIZING THE DEBTORS TO ISSUE
SUBPOENAS ON ASBESTOS TRUSTS AND PADDOCK ENTERPRISES, LLC**

**Re: *In re Aldrich Pump LLC, et al.*
Case No. 20-30608 (JCW)
United States Bankruptcy Court
for the Western District of North Carolina**

Instructions: This joinder must be executed by an authorized representative of any corporation, partnership, company, or firm required to execute a joinder pursuant to paragraph 13(b) of the above-referenced Order.

A C K N O W L E D G E M E N T

On behalf of my employer, _____ [write in name of employer] (“Employer”), I and Authorized Representatives of Employer may be given access to Confidential Data. The Confidential Data constitutes confidential and protected information in connection with the above-referenced *Order Granting Motion of the Debtors for an Order Authorizing the Debtors to Issue Subpoenas on Asbestos Trusts and Paddock Enterprises, LLC* (the “Order”), entered by the United States Bankruptcy Court for the Western District of North Carolina (the “Bankruptcy Court”) in the above-referenced chapter 11 cases. Capitalized terms used in this Acknowledgment but not otherwise defined herein shall have the meanings ascribed to them in the Order.

I have read the Order on behalf of Employer as part of performing its duties to _____ [name of the Party or other client for whom Employer is rendering services in connection with the bankruptcy case]. I understand the conditions and obligations of confidentiality, and use restrictions, that the Order makes applicable to the Confidential Data. By my signature below, Employer, for itself and all of its Authorized Representatives who receive access to any Confidential Data, hereby accepts and agrees to be bound by, and to abide by, those conditions, obligations, and restrictions. On Employer’s behalf, I represent that Employer has made, or will make the Order and this joinder known in advance to all of Employer’s Authorized Representatives who are to receive access to any Confidential Data, so that they will be on notice of Employer’s duties in connection therewith and their own responsibilities to ensure compliance with the Order.

Employer and its Authorized Representatives will not disclose any Confidential Data to any person not authorized by the Order, or further order of the Bankruptcy Court, to receive such information. They will not use any Confidential Data except in connection with a Permitted Purpose (as defined in the Order).

Pursuant to paragraph 15 of the Order, within 30 days after the effective date of a confirmed plan for the Debtors or the entry of a final order confirming such a plan, whichever is later (the “Deletion Date”), Employer will destroy any Confidential Data. Within 30 days after the Deletion Date, Employer will file a declaration in compliance with paragraph 16 of the Order.

Employer and I (in my individual capacity and my capacity as a representative of Employer) consent to the exclusive jurisdiction and venue of the Bankruptcy Court for any action to interpret, apply, and enforce the terms of the Order and this joinder.

I represent that I am duly authorized to execute this joinder on behalf of Employer.

By: _____
Print Name: _____
Title: _____
Employer: _____
Address: _____
Dated: _____
Relationship to Employer: _____

**EXHIBIT A.2 TO ORDER GRANTING MOTION OF THE
DEBTORS FOR AN ORDER AUTHORIZING THE DEBTORS TO ISSUE
SUBPOENAS ON ASBESTOS TRUSTS AND PADDOCK ENTERPRISES, LLC**

**Re: *In re Aldrich Pump LLC, et al.*
Case No. 20-30608 (JCW)
United States Bankruptcy Court
for the Western District of North Carolina**

Instructions: This joinder must be executed by any individual required to execute a joinder in his or her individual capacity pursuant to paragraph 13(b) of the above-referenced Order.

A C K N O W L E D G E M E N T

I may be given access to certain confidential and protected information in connection with the above-referenced *Order Granting Motion of the Debtors for an Order Authorizing the Debtors to Issue Subpoenas on Asbestos Trusts and Paddock Enterprises, LLC* (the “Order”), entered by the United States Bankruptcy Court for the Western District of North Carolina (the “Bankruptcy Court”) in the above-referenced chapter 11 cases.

I have read the Order. Capitalized terms used in this joinder but not otherwise defined herein shall have the meanings ascribed to them in the Order. I understand the conditions and obligations of confidentiality, and use restrictions, that the Order makes applicable to the Confidential Data and hereby accept and agree to be bound by, and to abide by, those conditions, obligations, and restrictions.

I will not disclose any Confidential Data to any person not authorized by the Order, or further order of the Bankruptcy Court, to receive such information. I will not use any Confidential Data except in connection with a Permitted Purpose (as defined in the Order).

Pursuant to paragraph 15 of the Order, within 30 days after the effective date of a confirmed plan for the Debtors or the entry of a final order confirming such a plan, whichever is later (the “Deletion Date”), I will destroy any Confidential Data. Within 30 days after the Deletion Date, I will file a declaration in compliance with paragraph 16 of the Order.

I consent to the exclusive jurisdiction and venue of the Bankruptcy Court for any action to interpret, apply, and enforce the terms of this Order and this joinder.

By: _____
Print Name: _____
Title: _____
Employer: _____
Address: _____
Dated: _____

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

IN RE:

ALDRICH PUMP LLC, et al.,

Debtor.

AC&S ASBESTOS SETTLEMENT TRUST,
COMBUSTION ENGINEERING 524(G)
ASBESTOS PI TRUST, GI HOLDINGS INC.
ASBESTOS PERSONAL INJURY
SETTLEMENT TRUST, GST SETTLEMENT
FACILITY, KAISER ALUMINUM &
CHEMICAL CORPORATION ASBESTOS
PERSONAL INJURY TRUST, QUIGLEY
COMPANY, INC. ASBESTOS PI TRUST, T H
AGRICULTURE & NUTRITION, L.L.C.
ASBESTOS PERSONAL TRUST, and
YARWAY ASBESTOS PERSONAL INJURY
TRUST,

Petitioners,

v.

ALDRICH PUMP LLC and MURRAY BOILER
LLC,

Respondents,

VERUS CLAIMS SERVICES, LLC,

Interested Party,

NON-PARTY CERTAIN MATCHING
CLAIMANTS,

Interested Party.

Chapter 11

Underlying Case No.: 20-30608
(JCW)
(United States Bankruptcy Court
for the Western District of North
Carolina)

Case No.: 22-05116 (MAS-TJB)

Honorable Michael A. Shipp

Honorable Tonianne J.
Bongiovanni

CERTIFICATE OF SERVICE

I, **PAUL R. DeFILIPPO**, of full age, certify as follows:

1. I am an attorney-at-law of the State of New Jersey and partner with the law firm of Wollmuth Maher & Deutsch LLP, counsel to Aldrich Pump LLC and Murray Boiler LLC (“Respondents”).

2. On October 11, 2022, I caused a true and correct copy of the following to be electronically filed via the Court’s CM/ECF system:

(a) Aldrich Pump LLC and Murray Boiler LLC’s Reply Brief in Support of their Motion to Transfer Subpoena-Related Motions to the Issuing Court, the United States Bankruptcy Court for the Western District of North Carolina; and

(b) The Declaration of Paul R. DeFilippo and Exhibit A thereto.

I certify that the foregoing statements made by me are true and correct. I am aware that if any of the foregoing statements are willfully false, I may be subject to punishment.

Dated: October 11, 2022

Respectfully submitted,

/s/ Paul R. DeFilippo

Paul R. DeFilippo

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*Co-Counsel for Aldrich Pump LLC and
Murray Boiler LLC*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

IN RE:) Misc. No. 22-cv-05116-MAS-TJB
)
ALDRICH PUMP LLC, et al.,) Underlying Case: 20-BK-30608-JCW
) (U.S. Bankr. W.D.N.C.)
Debtors.)

**NON-PARTY CERTAIN MATCHING CLAIMANTS'
REPLY IN SUPPORT OF THE MOTION TO PROCEED ANONYMOUSLY**

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Dated: October 11, 2022

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INTRODUCTION

Movants, (the “Certain Matching Claimants”), as non-parties, by and through the undersigned counsel, hereby submit this reply (the “Reply”) in support of their *Motion to Proceed Anonymously* [D.I. 14] (the “Motion to Proceed Anonymously”)¹ and in reply to *Aldrich Pump LLC and Murray Boiler LLC’s Brief in Opposition to Non-Party Certain Matching Claimants’ Motion to Proceed Anonymously* [D.I. 27] (the “Opposition”). Matters newly raised the Opposition are addressed below.

PRELIMINARY STATEMENT

Movants, the Certain Matching Claimants, are thousands of unique mesothelioma victims, and in some cases, their respective successors in interest. Their highly confidential information is contained in many thousands of unique claim files sought by Aldrich pursuant to the Subpoenas directed to the Trusts and Verus.

This Court must utilize a balancing test to evaluate the Certain Matching Claimants fear of harm caused by the disclosure of their identity as litigants in pursuing a motion to quash against the public’s interest in an open litigation process. That balance weighs in favor of the Certain Matching Claimants where, as here, the Certain Matching Claimants are not litigants pursuing current claims, but

¹ Capitalized terms not defined herein shall have the meaning ascribed to them in the Motion to Proceed Anonymously.

participants in this case solely to protect their identities and personal information as prior settling claimants from public disclosure. Protecting settlement information is a routine feature of litigation because it fosters such settlements and protects *all* involved parties, and Aldrich has not provided an adequate justification for breaching it on a wholesale basis, especially where its potential disclosure threatens to make the Certain Matching Claimants targets of identity theft or fraud claims.

ARGUMENT

I. The Identity of the Matching Claimants

Incredibly, Aldrich summarily complains in its Brief in Opposition to the Motion to Proceed Anonymously that the Movants’ “refusal to identify themselves undermines Aldrich’s ability to respond to the Motions to Quash and to assess compliance with the Subpoenas that are the subject of this proceeding.” (Opposition p.1). Aldrich makes this argument despite having directed the Subpoenas not at the Certain Matching Claimants, but indirectly at Verus and the Trusts which have aggregated the Certain Matching Claimants claim files. Furthermore, Aldrich fails to provide any credible explanation as to how having the identity of thousands of unique mesothelioma victims will somehow bolster their resistance to the Motion to Quash.

Aldrich readily admits that they “know the identity of claimants who filed and resolved claims against them. For the most part, however, they do not know which

of those claimants are Matching Claimants, or, in other words, also sought recovery for mesothelioma claims against the Trusts.” (Opposition, p.3). Predictably, Aldrich opposed the Motion to Proceed Anonymously as Aldrich realizes that if the Motion to Proceed Anonymously is denied, they will then know the identities of all of the individual Certain Matching Claimants who have filed the related Motion to Quash.² In other words, if the Motion to Proceed Anonymously is denied, Aldrich will have discovered the very information they have sought in opposing the Motion to Quash and they will have ostensibly predetermined the outcome of the Motion to Quash in their favor. The Court should not countenance this type of gamesmanship.

Significantly, as evidenced by submissions in the case *sub-judice* and in related proceedings before the District Court of Delaware, Aldrich’s “knowledge of the identity of the Matching Claimants” is inaccurate. In the *Paul DeFilippo* declaration, [D.I. 25], Aldrich attaches excerpts from a subset of mesothelioma complaints filed by individuals represented by law firms to Certain Matching Claimants. Aldrich represents that Movants “publicly disclosed their names, injury, and other information regarding their claims for recovery for asbestos-related disease.” (*Aldrich Opposition to Motion to Proceed Anonymously* [D.I. 27, pp. 11-12]. However, based on a review of the complaints by counsel for other matching claimants in Delaware, certain of the

² Aldrich believes that they already know the identity of the Certain Matching Claimants as demonstrated by the subset of complaints by individuals represented by law firms to certain Matching Claimants attached as Exhibit B to the *Declaration of Paul R. DeFilippo* (D.I. 27-1).

complaints, purportedly evidencing the public dissemination of Matching Claimant identities in reality list individuals who names *do not appear* on the Matching Key lists supplied by Bates White. In the Delaware proceeding, two of the eight identified of complaints were not on the Matching Key list. Assuming a comparable rate of error throughout the Matching Key, twenty-five percent (25%) of the matched claimants are potentially inaccurate. At such rate, over 2,500 individuals will have their identities and PII improperly and unnecessarily disclosed to Aldrich. *In re Aldrich Pump LLC*, No. 22-00308 (D. Del) [D.I. 27]. Notably, seven of the eight complaints excerpted and attached in the Delaware proceedings have been attached to the Declaration submitted by Mr. DeFilippo.

II. The Subpoenas Order

Pursuant to the Subpoenas Order, Aldrich forwarded the Matching Key identifying the Matching Claimants to Verus. In turn, Verus compared the information in the Matching Key to its historical records of persons who had made claims against the Trusts. If Verus had records that a claimant identified in the Matching Key had asserted a claim against the Trusts, Verus notified the Trust Claimants' counsel of record that the relevant Trust received a subpoena from Aldrich.³ The notice from Trust stated that the data associated with the Trust Claimants would be produced if they did not file a motion to quash the subpoena in

³ The bankruptcy court permitted service upon the law firms representing Certain Matching Claimants to be deemed service upon the Certain Matching Claimants themselves.

the court of compliance for the Trust by the later of the forty-ninth (49th) day following the applicable Service Date, or the fourteenth (14th) day following the provision of notice to their counsel of record by the Trust. *Id.*, ¶9.

Aldrich contends that the Certain Matching Claimants must appear in this action under their actual names and that the Subpoena Order does not prohibit Certain Matching Claimants from identifying themselves. There are three (3) significant reasons why the Movants must proceed anonymously. First, the Certain Matching Claimants are not parties or creditors in the Aldrich bankruptcy case and had no notice of the proceedings leading up to the Subpoena Order. As a result, the Certain Matching Claimants have no independent knowledge about the underlying bankruptcy proceedings, particularly hearings in unrelated cases such as *DBMP* (Opposition, pp.6-7).⁴

Despite Aldrich's statements to the contrary, there can be no argument that the Certain Matching Claimants *ignored* the Bankruptcy Court's own words. Certain Matching Claimants were not parties to the underlying unrelated bankruptcy proceedings and had no reason to pay attention to the same. The Aldrich Subpoenas Motion which sought claimant data was not served on the Certain Matching Claimants and axiomatically, they could not have received proper notice of the

⁴ The issue preclusion arguments present in *In re Bestwall* are inapplicable in this instance, as neither Verus nor the Trusts appeared in the bankruptcy proceedings to argue against the Aldrich Subpoena Motion.

motion because their identities were not determined until after the entry of the Subpoenas Order (along with its definition of Matching Claimants). The Certain Matching Claimants likewise were not parties or creditors in the Aldrich bankruptcy case, and they were not involved in the underlying bankruptcy proceedings. Accordingly, the Certain Matching Claimants are forced to ascertain the meaning of the Subpoenas Order and the provisions relating to the prohibition against *naming the claimants in the public record* having never been a party to the same. *See*, Subpoena Order, ¶13 (e).

Second, the personal data of the Certain Matching Claimants—including their identity—is *precisely the information that Aldrich is not entitled to, and which the Motion to Quash seeks to prevent*. Providing the names of the Certain Matching Claimants to Aldrich would render the relief sought in the Motion to Quash completely meaningless.

Third, the Certain Matching Claimants direct the court to recent determination in *In Re Aldrich Pump, LLC et al.*, No. 1:22-mc-00080 (D. DC, Memorandum and Order, August 25, 2022) (**Exhibit A**). This proceeding involves many of the same Certain Matching Claimants asserting their right to proceed anonymously to quash the same subpoena and Aldrich Subpoena Order served by Aldrich on the Manville Trust and its Virginia-based administrator, Claims Resolution Management Corporation. There, the court was “persuaded that movants have met the burden of showing that their privacy interests outweigh the public’s presumptive and

substantial interest in knowing the details of judicial litigation. The public’s interest in knowing movants’ addresses and identities is *de minimis* compared to the significant privacy interests of the movants, whose sole purpose in pursuing this litigation is to prevent such information from falling into Aldrich’s possession.” *Id.* at 4. The court’s order was made conditional upon movants providing a sampling of names *ex parte* and under seal within 10 days of the order. *Id.* at 7.

This court should make a comparable ruling and permit the Certain Matching Claimants to proceed anonymously. The Certain Matching Claimants have satisfied the burden of showing that their privacy interests outweigh the public interest in knowing the details of this litigation, particularly where the entire basis of the underlying litigation is to discover their identity.

III. Even in the Absence of the Subpoenas Order, Certain Matching Claimants have a Right to Proceed Anonymously

Despite Aldrich’s protestations to the contrary, courts have traditionally allowed litigants to proceed anonymously when necessary to protect privacy and reputational interests. *See, e.g., Doe v. Provident Life and Ace Ins. Co.*, 176 F.R.D. 464, 467 (E.D. Pa. 1997) (“... there exists private and public interests that favor the use of pseudonyms in litigation. For example, litigants may have a strong interest in protecting their privacy or avoiding physical harm.”); *Doe v. Von Eschenbach*, No. 06-2131 (RMC), 2007 WL 1848013, at *1-2 (D.D.C. June 27, 2007) (“Pseudonymous litigation has been permitted where the issues are ‘matters of a sensitive and highly personal nature...’”); *Doe v. Frank*, 951 F.2d 320, 323 (11th Cir.

1992) (“A judge, therefore, should carefully review all the circumstances of a given case and then decide whether the customary practice of disclosing the plaintiff’s identity should yield to the plaintiff’s privacy concerns.”)

In *Doe v. Megless*, 654 F.3d 404 (3d Cir. 2011), the United States Court of Appeals for the Third Circuit held that plaintiffs seeking to proceed under a pseudonym must show a reasonable fear of severe harm and established a balancing test to determine whether a plaintiff’s reasonable fear outweighs the public’s interest in an open litigation process.” *Id.* at 408-410.

Here, the public’s interest in knowing Movants’ identities is *de minimis* compared to the significant privacy interests of the Movants, whose sole purpose in pursuing this litigation is to prevent such information from being disclosed to Aldrich. The Certain Matching Claimants are not creditors in Aldrich’s bankruptcy proceedings, and they are not tort litigants. Their data relates to long resolved claims and is not ordinary asbestos litigant data. In these circumstances, the Certain Matching Claimants’ privacy and reputational interests substantially outweigh the public’s interest in disclosure of the identities of litigants, particularly when the accuracy of the Matching Key is in doubt, *see, supra* Argument I.

Requiring Movants to disclose identifying information that could permit Aldrich, or others, to obtain other personal information about them poses a risk of harm to Movants, given that the data could be used in a manner detrimental to their

privacy interests, particularly if it is misappropriated or inadvertently disclosed. Further, the court should recognize that requiring the Certain Matching Claimants to proceed under their actual names would frustrate the entire purpose of the related Motion to Quash.

The Certain Matching Claimants have purposefully avoided disclosing their claims for mesothelioma to any persons beyond their immediate family, close friends, attorneys retained for counsel, and the Trusts to which they submitted claims. Other than these limited and necessary disclosures, the Certain Matching Claimants have made a conscious effort to protect their personal medical information, and they have certainly not disclosed their claims in the aggregate format requested here.

The confidentiality provisions of the Trusts' TDPs make clear that the Trusts are not information clearinghouses or "public libraries" for entities seeking confidential claimant information for their own commercial purposes. *Bestwall*, 2021 U.S. Dist. LEXIS 102452, at *9. Rather, each Trust is required to take reasonable and necessary steps to protect the confidentiality of the information submitted to it by the Trust Claimants when that information is sought by third parties for purposes other than determining whether the claims submitted to the Trust in question are valid and payable. *Id.*

Allowing the public to connect each one of the Certain Matching Claimants with both Aldrich and with each of the Trusts will result in a complete and utter evisceration of their privacy and unnecessarily expose them to identity theft. Aldrich repeatedly scoffs at the Movants' substantial concerns about identity theft (Opposition, p.9-10). The Court must recognize that most mesothelioma victims are elderly widows and widowers, due to the historic nature of exposure to asbestos and the latency period of the disease. As such, they are particularly likely to be victims of identity theft. Nevertheless, Aldrich entirely fails to address the magnitude of the public dissemination of the identity many thousands of unique mesothelioma victims. The sheer scale of Aldrich's proposed data dump into the public record is entirely ignored in their Opposition, but the harm to the Certain Matching Claimants is real and substantial. Aldrich has no answer to this concern and simply ignores it. There is an atypically weak, if any, public interest in knowing the identity of the Certain Matching Claimants in this instance. The Certain Matching Claimants' reasons for seeking to proceed under a pseudonym are legitimate, compelling, and outweigh any public interest in access to the identities of litigants articulated by Aldrich, particularly when the accuracy of the Matching Key is substantially in doubt.

The Certain Matching Claimants have demonstrated a concrete need for secrecy and have identified the consequences that would likely befall them if forced

to proceed in its own name. The Motion to Proceed Anonymously was filed in good faith based upon efforts to prevent the reputational consequences stemming from the public dissemination of over ten thousand claims filed with the Trusts. There is no prejudice whatsoever to Aldrich being precluded from knowing the identity of the movants at this juncture. Conversely, a lack of anonymity would spell irreversible prejudice to the Certain Matching Claimants, who seek to preserve the confidentiality of their information. Collectively, the circumstances of the Certain Matching Claimants dictate that the customary practice of disclosing the plaintiff's identity should yield to the Certain Matching Claimants' privacy concerns.

CONCLUSION

For the foregoing reasons, the Certain Matching Claimants pray that the Court grant the Motion to Proceed Anonymously and should the Court so desire, counsel is prepared to provide the Court with the names of a sampling of the Certain Matching Claimants *ex parte* and under seal, within a reasonable time.

Dated: October 11, 2022

STARK & STARK, PC

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EXHIBIT A

FILED

AUG 25 2022

Clerk, U.S. District & Bankruptcy
Court for the District of Columbia

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

IN RE:

ALDRICH PUMP, LLC, et al.,

Debtor.

Case: 1:22-mc-00080
Assigned To : Kelly, Timothy J.
Assign. Date : 8/25/2022
Description: Misc.

Misc. Action No. ____

Chief Judge Beryl A. Howell

MEMORANDUM AND ORDER

Movants, who are “thousands of asbestos victims,” have moved to proceed under pseudonym in this action seeking to quash a subpoena issued by Aldrich, LLC, a company in bankruptcy proceedings in the Western District of North Carolina, to the “Manville Personal Injury Settlement Trust” (the “Manville Trust”) and “its Virginia-based administrator Claims Resolution Management Corporation.” Movants the Manville Trust Matching Claimants’ Motion to Proceed Anonymously (“MTMC Mot.”) at 1. Movants are nonparties to the subpoena, but seek to quash Aldrich from “improperly seek[ing]” their “personal identifying information—names, Social Security numbers, etc.,” as “asbestos victims who have long-settled their claims against Aldrich.” *Id.* They move to proceed under pseudonym in this suit to prevent Aldrich from learning their identities and other personal data, which is “precisely the information that [it] is not entitled to” and the reason for the suit. *Id.* at 2. For the reasons set forth below, movants’ motion is granted, subject to any further consideration by the United States District Judge to whom this case is randomly assigned.¹

¹ See LCvR 40.7(f) (providing that the Chief Judge shall “hear and determine . . . motion[s] to seal the complaint and motion[s] to file a pseudonymous complaint”); see also LCvR 5.1(h)(1) (“Absent statutory authority, no case or document may be sealed without an order from the Court.”).

I. BACKGROUND

As part of its bankruptcy proceedings in the Western District of North Carolina, Aldrich has subpoenaed the Manville Trust “for electronically stored data concerning approximately 9,000 mesothelioma claimants who settled with Aldrich prior to its bankruptcy,” including movants here. *Id.* at 1. This data includes “the claimant’s last name and Social Security Number” as well as those of “family members or an estate representative if the claimant is deceased.” *Id.* at 2. Movants challenge this subpoena under Federal Rule of Civil Procedure 45, on the grounds that the subpoena “is overbroad, and fails to adequately protect the claimants’ data.” Manville Trust Matching Claimants’ Mot. Quash or Modify Subpoena, or Alternatively for Protective Order (“MTMC Mot. Quash”) at 18. They seek to proceed under pseudonym because their “personal data . . . including their identity . . . is precisely the information that Aldrich is not entitled to, and which the Motion to Quash seeks to prevent,” such that requiring movants to provide “the names of all claimants to Aldrich in the Motion to Quash would render the Motion a complete nullity.” MTMC Mot. at 1–2. ²

II. LEGAL STANDARD

Generally, a complaint must state the names of the parties and address of the plaintiff. FED. R. CIV. P. 10(a) (“The title of the complaint must name all the parties.”); LCvR 5.1(c)(1) (“The first filing by or on behalf of a party shall have in the caption the name and full residence address of the party,” and “[f]ailure to provide the address information within 30 days of filing may result in the dismissal of the case against the defendant.”). The Federal and Local Rules thus promote a “presumption in favor of disclosure [of litigants’ identities], which stems from

² Movants also assert that their motion should be granted because “naming the claimants in the public record” would violate an order issued in the bankruptcy proceedings before the Western District of North Carolina, MTMC Mot. at 1, but the extent to which, if at all, this Court may be bound by any protective orders issued by the court overseeing the Aldrich bankruptcy proceedings in a separate jurisdiction, need not be addressed.

the ‘general public interest in the openness of governmental processes,’ . . . and, more specifically, from the tradition of open judicial proceedings.” *In re Sealed Case*, 931 F.3d 92, 96 (D.C. Cir. 2019) (internal citations omitted) (quoting *Wash. Legal Found. v. U.S. Sentencing Comm’n*, 89 F.3d 897, 899 (D.C. Cir. 1996)). That “presumption of openness in judicial proceedings is a bedrock principle of our judicial system.” *In re Sealed Case*, 971 F.3d 324, 325 (D.C. Cir. 2020) (citing *Courthouse News Serv. v. Planet*, 947 F.3d 581, 589 (9th Cir. 2020)). Accordingly, courts “generally require ‘parties to a lawsuit to openly identify themselves to protect the public’s legitimate interest in knowing all of the facts involved, including the identities of the parties.’” *Id.* at 326 (internal quotation marks and alterations omitted) (quoting *United States v. Microsoft Corp.*, 56 F.3d 1448, 1463 (D.C. Cir. 1995) (per curiam)).

Despite the presumption in favor of disclosure, the Federal Rules of Civil Procedure describe circumstances in which filings may be redacted and where access to public filings may be limited. FED. R. CIV. P. 5.2. Minors, for example, must be referred to using only their initials. FED. R. CIV. P. 5.2(a)(3). The court may also, for good cause, “require redaction of additional information.” FED. R. CIV. P. 5.2(e)(1).

Courts have also, in special circumstances, permitted a party to proceed anonymously. A party seeking to do so, however, “bears the weighty burden of both demonstrating a concrete need for such secrecy, and identifying the consequences that would likely befall it if forced to proceed in its own name.” *In re Sealed Case*, 971 F.3d at 326. Once that showing has been made, “the court must then ‘balance the litigant’s legitimate interest in anonymity against countervailing interests in full disclosure.’” *Id.* (quoting *In re Sealed Case*, 931 F.3d at 96). When weighing those concerns, five factors, initially drawn from *James v. Jacobson*, 6 F.3d 233,

238 (4th Cir. 1993), serve as “guideposts from which a court ought to begin its analysis.” *In re Sealed Case*, 931 F.3d at 97. These five factors are:

(1) whether the justification asserted by the requesting party is merely to avoid the annoyance and criticism that may attend any litigation or is to preserve privacy in a matter of [a] sensitive and highly personal nature; (2) whether identification poses a risk of retaliatory physical or mental harm to the requesting party or[,] even more critically, to innocent non-parties; (3) the ages of the persons whose privacy interests are sought to be protected; (4) whether the action is against a governmental or private party; and relatedly, (5) the risk of unfairness to the opposing party from allowing an action against it to proceed anonymously.

Id. (citing *James*, 6 F.3d at 238).

At the same time, a court must not simply “engage in a wooden exercise of ticking the five boxes.” *Id.* Rather, “district courts should take into account other factors relevant to the particular case under consideration.” *Id.* (quoting *Sealed Plaintiff v. Sealed Defendant*, 537 F.3d 185, 189–90 (2d Cir. 2008)). In exercising discretion “to grant the ‘rare dispensation’ of anonymity . . . the court has ‘a judicial duty to inquire into the circumstances of particular cases to determine whether the dispensation is warranted’ . . . tak[ing] into account the risk of unfairness to the opposing party, as well the customary and constitutionally-embedded presumption of openness in judicial proceedings.” *Microsoft Corp.*, 56 F.3d at 1464 (quoting *James*, 6 F.3d at 238 (other internal citations and quotation marks omitted)).

III. DISCUSSION

At this early stage of the litigation, this Court is persuaded that movants have met the burden of showing that their privacy interests outweigh the public’s presumptive and substantial interest in knowing the details of judicial litigation. The public’s interest in knowing movants’ addresses and identities is *de minimis* compared to the significant privacy interests of the movants, whose sole purpose in pursuing this litigation is to prevent such information from falling into Aldrich’s possession. MTMC Mot. at 1–2.

First, as the description of movants' claim makes clear, they do not seek to proceed under pseudonym and limit disclosure of their residential addresses "merely to avoid . . . annoyance and criticism." *See In re Sealed Case*, 931 F.3d at 97. Instead, as movants explain, "the entire purpose of this Action is a Motion to Quash" and they "seek only the protection of their sensitive personal and private data." MTMC Mot. at 4 (emphasis in original). Requiring them to disclose their identities at this juncture would defeat that purpose.

Second, and relatedly, requiring movants to disclose identifying information that could permit Aldrich, or others, to obtain other personal information about them poses a risk of harm to movants, given that the data "could be used in a manner detrimental to the privacy interests of movants, particularly if it is misappropriated or inadvertently disclosed." *Id.* While the "risk of retaliatory physical or mental harm" to movants, *In re Sealed Case*, 931 F.3d at 97 (quoting *James*, 6 F.3d at 238), is perhaps less extreme than in other situations where this Court has permitted pseudonymity, this factor still weighs in favor of granting movants' motion, especially taken together with the reality that requiring movants to proceed under their real names would frustrate the sole purpose of the litigation.

The third *James* factor requires a court to consider the ages of the parties involved. *See In re Sealed Case*, 931 F.3d at 97 (quoting *James*, 6 F.3d at 238). Generally, this factor weighs in favor of pseudonymity only when the interests of minor children are involved, but here, movants argue persuasively that their *advanced* age, given that "[m]ost mesothelioma victims are elderly widows and widowers, simply due to the historic nature of exposure to asbestos and the latency period of the disease," weighs in favor of shielding their public information from the litigation, as "they are particularly likely to be victims of identity theft." MTMC Mot. at 5.

The fourth *James* factor, also weighs in movants' favor, given the suit challenges the actions of a non-governmental company, Aldrich. *See In re Sealed Case*, 971 F.3d at 329 (“[T]here is a heightened public interest when an individual or entity files a suit against the government.”) Here, movants seek to vindicate only their own rights, and anonymity appears to be necessary to provide them the opportunity to do so.

Fifth, and finally, Aldrich would suffer no “risk of unfairness” if movants’ motion were granted. *See In re Sealed Case*, 931 F.3d at 97 (quoting *James*, 6 F.3d at 238). As movants explain, if they “prevail on their Motion to Quash, Aldrich will not be entitled to [their] identity,” and if they are unsuccessful, “Aldrich will receive the information which the court has deemed it entitled to.” MTMC Mot. at 7. The company does not need movants’ personal information in order to defend its subpoena at this juncture, and permitting the company to have this information would defeat the purpose of the litigation. *See id.* at 1–2.

In sum, weighed against the minimal apparent interest in disclosure, movants’ significant and “legitimate interest in anonymity” and in maintaining the privacy of their personal information are more than sufficient to overcome “countervailing interests in full disclosure.” *In re Sealed Case*, 931 F3d at 97.

IV. CONCLUSION AND ORDER

For the foregoing reasons, it is hereby

ORDERED that the movants’ Motion to Proceed Anonymously is **GRANTED**, subject to any further consideration by the United States District Judge to whom this case is randomly assigned; it is further

ORDERED that movants may proceed with the case using the collective pseudonym “the Manville Trust Matching Claimants;” and it is further

ORDERED that movants must file, *ex parte* and under seal, within ten days of this Order, a declaration containing the real names and residential addresses of at least a representative sample of the claimants.

SO ORDERED.

Date: August 25, 2022



Handwritten signature of Beryl A. Howell in black ink.

BERYL A. HOWELL
Chief Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

IN RE:) Misc. No. 22-cv-05116-MAS-TJB
)
ALDRICH PUMP LLC, et al.,) Underlying Case: 20-BK-30608-JCW
) (U.S. Bankr. W.D.N.C.)
Debtors.)

**NON-PARTY CERTAIN MATCHING CLAIMANTS'
REPLY IN SUPPORT OF (I) MOTION TO QUASH OR MODIFY
SUBPOENAS AND (II) JOINDERS**

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Dated: October 11, 2022

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INTRODUCTION

Certain Matching Claimants¹, as non-parties, by and through the undersigned counsel,² hereby submit this reply (the “Reply”) in support of *Certain Matching Claimants’ Motion to Quash or Modify Subpoenas and (II) Joinders* [D.I. 13] (the “Motion to Quash”), and in reply to *Aldrich Pump LLC and Murray Boiler LLC’s Memorandum of Law in Opposition to Third-Party Trusts’ Motion to Quash Subpoenas and In support of Stay; (II) Verus Claim Services, LLC’S Motion to Quash Subpoena and to Stay; and (III) Non-Party Certain Matching Claimants’ Joinders and Motion to Quash* [D.I. 28] (the “Opposition”). Matters newly raised in Aldrich’s Opposition are addressed below.

PRELIMINARY STATEMENT

The Subpoenas at the heart of this controversy are procedurally and substantively flawed pursuant to Federal Rule of Civil Procedure 45 and should be quashed. The Subpoenas target a wealth of confidential, sensitive, personal identifying information belonging to the Certain Matching Claimants, thousands of unique mesothelioma victims, and in some cases, their respective successors in interest, who have resolved their historical claims through settlement or verdict. Their highly confidential information is contained in many thousands of unique claims files sought by Aldrich pursuant to the Subpoenas directed to the Trusts and

¹ Capitalized terms not defined herein shall have the meaning ascribed to them in the Motion to Quash.

² A list of the Certain Matching Claimants’ counsel of record as notified by Verus pursuant to the Order Authorizing Subpoenas, ¶ 9, is attached as **Exhibit A** to the Certification of Timothy Duggan, Esq. filed in support of Motion to Quash [D.I. 13-2].

Verus.³

Neither the Aldrich Subpoenas Motion nor the Subpoenas offer any statutory basis for the extensive discovery sought. Notwithstanding Aldrich's characterizations, the Subpoenas *do seek* Certain Matching Claimants' PII and protected claimant data. The Subpoenas also fail to address the required random 10% sample condition outlined in *Bestwall*. Even the bankruptcy court has acknowledged that a random 10% sample would provide Aldrich with precisely the information they argue is needed.

Aldrich's purported anonymization scheme is flawed in both conception and in execution. Aldrich contends it needs the Trust Claimants' data to "match" with Aldrich's claimant data. However, the Aldrich Subpoenas, if approved, will enable Aldrich to reverse engineer the identity of individual Certain Matching Claimants as Aldrich admits they already know all of the Certain Matching Claimants' PII.⁴ Finally, it must be noted that Aldrich's knowledge of the identity of the Matching Claimants, and the construction of the Matching Key is demonstrably flawed and will result in the inadvertent disclosure of PII of individuals who are not Matching Claimants.

³ The Aldrich Subpoena Motion also sought authority to subpoena: (i) Manville Personal Injury Settlement Trust (the "Manville Trust"), a Virginia entity; (ii) Delaware Claims Processing Facility ("DCPF") with respect to 8 asbestos personal injury trusts for which it processes claims in Delaware; and (iii) Paddock Enterprises, LLC. *See, In re Aldrich Pump LLC*, No. 20-30608, Bankr. W.D.N.C., D.I. 1111, *Motion of the Debtors for an Order Authorizing the Debtors to Issue Subpoenas on Asbestos Trusts and Paddock Enterprises, LLC*, at 1.

⁴ Aldrich contends that they know the identity of claimants who filed and resolved claims against them. *See, Aldrich Pump LLC and Murray Boiler LLC's Brief in Opposition to Non-Party Certain Matching Claimants' Motion to Proceed Anonymously* [D.I. 27] (p. 3).

ARGUMENT

I. This is The Proper Court to Adjudicate The Motion to Quash

The Subpoenas that Aldrich requested from the bankruptcy court specifically provide that Verus is required to notify counsel for Trust claimants on the Matching Key that the Trusts have received a subpoena and that their data will be produced unless they file a motion to quash. If counsel for the Trust claimants do not file a motion to quash in the court of compliance, Verus must produce to Bates White the confidential data for each Trust claimant on the Matching Key. (Subpoenas, ¶ 9). These provisions of the Aldrich Subpoena Order were specifically crafted by Aldrich and clearly contemplate that motions to quash would be filed in a court of compliance. Aldrich would have this court believe that these provisions are meaningless and of no import. In reality, these provisions demonstrate that the bankruptcy court anticipated that Trust Claimants would pursue motions to quash and approved a procedure to afford them that opportunity in this court.

The district court where subpoena compliance is required “must quash or modify” a subpoena that [1] requires disclosure of privileged or other protected matter,⁵ or [2] subjects a person to undue burden. FED. R. CIV. P. 45(d)(3)(A)(iii)–(iv). A person affected by a subpoena, whether a nonparty or party, can move to quash or modify, or for a Rule 26(c) protective order. Under Rule 45, a court can

⁵ The Rule does allow for situations where a privilege is waived or an exception exists, FED. R. CIV. P. 45(d)(3)(A)(iii), but there are no waivers or privilege exceptions here.

quash a subpoena that seeks highly personal or confidential personal information. *Wilshire v. Love*, 2015 WL 1482251 (S.D. W. Va. 2015) (quashing subpoena requesting records that may contain “high personal, highly sensitive, or embarrassing information.”). Any person with a right or privilege in subpoenaed information can challenge the subpoena. *Singletary v. Sterling Transport Co., Inc.*, 289 F.R.D. 237, 239 (E.D. Va. 2012), quoting *U.S. v. Idema*, 118 F. App’x 740, 744 (4th Cir. 2005).

Federal courts recognize a personal right in records “likely to contain highly personal and confidential information” like Social Security numbers, legally confidential medical records, and family member information. *Singletary*, 289 F.R.D. at 240; accord *Barrington v. Mortgage ID, Inc.*, 2007 WL 4370647, at *2 (S.D. Fla. 2007).

The district courts in this circuit as well as those in other circuits have held that any person with a right or privilege in subpoenaed information can challenge the invasive subpoena. *Thomas v. Marina Assocs.*, 202 F.R.D. 433, 434 (E.D. Pa. 2001) (quotation marks omitted) (collecting cases). Numerous courts have held that a nonparty may move to quash a subpoena under Rule 45(d)(3)(A)(iii) upon a showing that there is a protectable privacy interest. See, *Brown v. Braddick*, 595 F.2d 961, 967 (5th Cir. 1979)..

II. Significant PII Concerns

Aldrich primarily argues that information sought by the Subpoenas is not

confidential and in any event, is sufficiently protected. However, as made clear by *Bestwall*, Rule 45(d)(3)(A)(iii) requires baseline protections with which subpoenas seeking confidential and sensitive trust claimant data must comply. The Subpoenas must limit the production of trust claimant data “to a random sample of no more than 10% [of] the mesothelioma victims at issue,” and must authorize Verus, or a neutral third party, to “anonymize the Trust Claimants’ data before producing it.” June 17, 2021 Order (*Bestwall*, D.I. 33). The Certain Matching Claimants’ data is protected under Rule 45(d)(3)(A)(iii). The Certain Matching Claimants are not creditors in Aldrich’s bankruptcy proceedings, and they are not tort litigants. Their data relates to long resolved claims and is not ordinary asbestos litigant data. The Certain Matching Claimants are historical victims of asbestos-related diseases who long ago submitted protected claim information to the Trusts knowing that, pursuant to the Trusts’ TDPs, their PII will (i) remain confidential, (ii) be treated as made in the course of settlement discussions between the claimant and the Trust, and (iii) be protected by all applicable privileges, including those applicable to settlement discussions. The expectation of privacy of thousands of Certain Matching Claimants’ renders the requested data protected under Rule 45(d)(3)(A)(iii).

Aldrich admits that they know the identity of claimants who filed and resolved claims against them. “For the most part, however, they do not know which of that universe of claimants are “Matching Claimants,” those claimants who also sought recovery for the same personal injury claims against the Trusts or the Trusts’ underlying companies, nor do the Debtors know the further subset of those claimants

who actually recovered from the Trusts.” See, *Aldrich Pump LLC and Murray Boiler LLC’s Brief in Opposition to Non-Party Certain Matching Claimants’ Motion to Proceed Anonymously* [D.I. 27] (Opposition, p. 3).⁶ Predictably, Aldrich opposed the Motion to Proceed Anonymously as it realizes that if that motion is denied, Aldrich will then know the identities of all of the individual Certain Matching Claimants, regardless of the outcome of the Motion to Quash.⁷

Significantly, as evidenced by filings in related proceedings before the District Court of Delaware, Aldrich’s “knowledge of the identity of the Matching Claimants” is inaccurate. In the *Paul DeFilippo* declaration, [D.I. 25], Aldrich attaches excerpts from a subset of mesothelioma complaints filed by individuals represented by law firms to Certain Matching Claimants. Aldrich represents that Movants “publicly disclosed their names, injury, and other information regarding their claims for recovery for asbestos-related disease.” (*Aldrich Opposition to Motion to Proceed Anonymously* [D.I. 27, pp. 11-12]. However, based on a review of the complaints by counsel for other matching claimants in Delaware, certain of the complaints, purportedly evidencing the public dissemination of Matching Claimant identities in reality list individuals who names *do not appear* on the Matching Key

⁶ Aldrich contends that they “are *only seeking to discern whether* there are Matching Claimants that claimed exposure and recovered against the Debtors and the Trusts.” (Opposition, p.2, emphasis added). But a review of the data sought by the Subpoenas belies this statement.

⁷ Aldrich believes that they already know the identity of the Certain Matching Claimants as demonstrated by the subset of complaints by individuals represented by law firms to certain Matching Claimants attached as Exhibit B to the *Declaration of Kelly Farnan* [D.I. 25].

lists supplied by Bates White. In the Delaware proceeding, two of the eight identified complaints were not on the Matching Key list. Assuming a comparable rate of error throughout the Matching Key based upon the list provided to the Delaware District Court, twenty-five percent (25%) of the matched claimants are potentially inaccurate. At this rate, over 2,500 individuals will have their identities and PII improperly and unnecessarily disclosed to Aldrich. *In re Aldrich Pump LLC*, No. 22-00308 (D. Del) [D.I. 27]. Notably, seven of the eight complaints excerpted and attached in the Delaware proceedings have been attached to the Declaration submitted by Mr. DeFilippo.

Aldrich further insists that the Subpoenas do not seek any confidential information or request any PII with respect to the Certain Matching Claimants. Yet the Subpoenas, in concert with the Matching Key, clearly request PII. The definition of PII is broad, encompassing “information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual.” 2 C.F.R. §200.79; *Popa v. Harriet Carter Gifts, Inc.*, 426 F. Supp. 3d 108, 112 n.1 (W.D. Pa. Dec. 6, 2019) (same); Rules and Policies — Protecting PII — Privacy Act, GEN. SERVS. ADMIN, <https://www.gsa.gov/reference/gsa-privacy-program/rules-and-policies-protecting-pii-privacy-act> (last visited October 9, 2022) (“The definition of PII is not anchored to any single category of information or technology ... [even] non-PII can become PII whenever additional information ... when

combined with other available information, could be used to identify an individual.”). For Aldrich to argue that the information it seeks about the Matching Claimant by virtue of the Subpoenas is not PII is folly.

III. Sampling and Anonymization Concerns

The Subpoenas contain no sampling requirement as required by *Bestwall* or as mandated by Rule 45. Rather, they seek the confidential data of more than 12,000 Trust claimants who resolved mesothelioma claims against Aldrich. Despite Aldrich’s contentions, sampling is necessary to protect the Certain Matching Claimants’ data and is sufficient for Aldrich’s estimation proceeding. Sampling is a widely utilized litigation technique. Consistent with *Bestwall*, the Subpoenas should be quashed or modified simply for failing to incorporate a random 10% sample. *Bestwall*, 2021 U.S. Dist. LEXIS 102452, at *19 (June 1, 2021); June 17, 2021 Order (Bestwall D.I. 33) (requiring “random sample of no more than 10% [of] the mesothelioma victims at issue.”).

Aldrich’s Subpoenas also inappropriately incorporate a negligible “anonymization” scheme that permits Aldrich’s consultant Bates White to aggregate the Certain Matching Claimant data post-production with data from Aldrich’s database and other sources into a single, consolidated clearinghouse while holding a matching key that de-anonymizes the data. The purported anonymization is a facade, affording absolutely no protection to the Certain Matching Claimants. This is especially true given the Aldrich Subpoena Order’s numerous mandates that all information be produced to Debtor’s consultant “in electronic database format.” *See*,

Subpoenas, ¶10. The mass production of such aggregated, non-anonymized data to Bates White, an organization with a pecuniary interest in data related to asbestos liability, weighs in favor of an extremely particularized showing of need. Aldrich has not made that showing. Aldrich refuses to acknowledge that there is a significant risk that Certain Matching Claimants' data could be used to the detriment of individual claimants on subjects unrelated to Aldrich's estimation proceeding. This danger is further heightened by Aldrich having the same counsel and expert (Bates White) with other debtors seeking identical information.

CONCLUSION

For the foregoing reasons, Certain Matching Claimants respectfully requests that this Court enter an order, substantially in the form of the order attached to the Motion to Quash, granting the Certain Matching Claimants' Motion to Quash or modify the Subpoenas, and such other and further relief as the Court deems just and proper.

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Dated: October 11, 2022

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

IN RE:

ALDRICH PUMP LLC, et al.,

Debtors.

AC&S ASBESTOS SETTLEMENT
TRUST, et al.,

Petitioners,

VERUS CLAIMS SERVICES, LLC

Interested Party,

NON-PARTY CERTAIN MATCHING
CLAIMANTS,

Interested Party,

v.

ALDRICH PUMP LLC and MURRAY
BOILER LLC,

Respondents.

Underlying Case No. 20-30608
(JCW)
(U.S. Bankruptcy Court for the
Western District of North Carolina)

Case No.: 22-05116

Hon. Tonianne J. Bongiovanni
Motion Day: November 7, 2022

**THIRD-PARTY ASBESTOS TRUSTS' REPLY MEMORANDUM OF LAW
IN FURTHER SUPPORT OF THEIR MOTION TO QUASH SUBPOENAS**

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The eight third-party asbestos settlement trusts identified below¹ (collectively, the “**Trusts**”), by and through their undersigned counsel, respectfully submit this reply memorandum of law in further support of their motion to quash subpoenas (the “**Subpoenas**”) issued by Respondents Aldrich Pump LLC and Murray Boiler LLC (the “**Debtors**”).

PRELIMINARY STATEMENT

In their opposition brief (“**Oppo. Br.**”) (Dkt. No. 28), the Debtors fail to overcome the substantive and procedural defects upon which the Trusts’ motion to quash is based, and instead implore this Court to simply “agree with the other [c]ourts” that have allowed the Debtors to obtain discovery pursuant to similarly overbroad, unduly burdensome, and procedurally improper subpoenas. The Debtors’ desire to have their subpoenas rubberstamped rather than substantively reviewed is transparent, and their attempt to peddle their defective subpoenas in various jurisdictions throughout the country should not be rewarded.

As an initial matter, this Court should reject the Debtors’ invitation to blindly follow the Third Circuit’s recent ruling in *Bestwall*. The Debtors’ reliance on that

¹ The eight trusts are: (i) ACandS Asbestos Settlement Trust; (ii) Combustion Engineering 524(g) Asbestos PI Trust; (iii) G-I Holdings Inc. Asbestos Personal Injury Settlement Trust; (iv) GST Settlement Facility; (v) Kaiser Aluminum & Chemical Corporation Asbestos Personal Injury Trust; (vi) Quigley Company, Inc. Asbestos PI Trust; (vii) T H Agriculture & Nutrition, L.L.C. Asbestos Personal Injury Trust; and (viii) Yarway Asbestos Personal Injury Trust.

decision is misguided and requires willful ignorance of the crucial factual and procedural differences between *Bestwall* and this matter. Indeed, the *Bestwall* decision was rendered based on the doctrine of collateral estoppel, which is irrelevant here because *none* of the non-parties – the Trusts, Verus Claims Services LLC (“Verus”), or the matching claimants – appeared in the North Carolina Bankruptcy Court to challenge the Subpoenas, while the opposite was true in *Bestwall*. The Trusts’ first and only opportunity to challenge the Subpoenas has been made through the filing of this motion and that challenge, pursuant to the Federal Rules of Civil Procedure, should be subject to this Court’s independent and fulsome review.

To that end, there are two principal grounds upon which this Court may, and should, quash the Subpoenas.

First, the Subpoenas are jurisdictionally improper because the information sought is contained not in the Subpoenas themselves but in an order issued by the Western District of North Carolina Bankruptcy Court (the “North Carolina Bankruptcy Court”) (the “Order”). The Debtors concede, as they must, that the North Carolina Bankruptcy Court did not have jurisdiction over the Trusts when it issued the Order requiring the Trusts to respond to the Subpoenas.

Second, the Subpoenas are substantively overbroad, unduly burdensome, and disproportional to the needs of the underlying case, in violation of Rules 26 and 45.

The Debtors fail to meaningfully dispute the Subpoenas' substantive defects, arguing instead, for example, that the information sought is not confidential. Contrary to the Debtors' assertions, however, the information sought under the Subpoenas (i) has no concrete relevance to the Debtors' calculation of their current and future asbestos liabilities; (ii) will create an undue burden on the Trusts and their claims processing agent, Verus; and (iii) is unquestionably highly confidential and will not be adequately protected because the Subpoenas lack meaningful anonymization and sampling requirements. For all of these reasons, the Subpoenas must be quashed.

ARGUMENT

I. THE THIRD CIRCUIT'S *BESTWALL* DECISION IS NOT DISPOSITIVE AND IS FACTUALLY DISTINCT.

In their moving brief, the Trusts requested a stay of this motion pending the Third Circuit's review of the District of Delaware's *Bestwall* decision. That decision had the *potential*, but was not guaranteed, to determine whether asbestos trusts and their claims processing facilities may be subject to broad-sweeping subpoenas that compel production of highly confidential personal information. Shortly after the Trusts filed this motion, however, the Third Circuit issued its ruling, which was based entirely on the doctrine of collateral estoppel, and accordingly, cannot, and does not, apply to this motion. *See In re Bestwall LLC*, 47 F. 4th 233, 238 (3d Cir. 2022).

In *Bestwall*, the trusts did not appear in the issuing court that authorized subpoenas, but their claims processing facility did; it challenged the subpoenas in the issuing court on many of the same grounds that were later asserted by the facility and the trusts in their motions to quash in the District of Delaware (on appeal in *Bestwall*). *Id.* at 240, 245. The Third Circuit determined that the trusts were in privity with the facility, as their interests were “squarely aligned” and there was “an understanding that the [f]acility was acting in a representative capacity with respect to the claimant data” when it appeared in the issuing court. *Id.* at 245 (“It is therefore entirely fair to conclude that the [f]acility participated in the bankruptcy proceedings as a representative of the Trusts.”) The court found this fact determinative: it held that the trusts had “a full and fair opportunity to litigate in the [issuing court] the very issues they later raised in the [compliance court].” *Id.* at 246. As a result, the Third Circuit reversed and remanded the District Court’s decision, finding that “[w]here, as here, the movant or its privy has already litigated the relevant issues elsewhere, collateral estoppel is a legitimate consequence.” *Id.* (noting, however, that the district court was the “proper venue for a motion to quash”).

The facts here differ significantly. In contrast to *Bestwall*, *none* of the parties to this motion appeared in the North Carolina Bankruptcy Court, and therefore had no opportunity to, and did not, litigate these issues in the issuing court. The Debtors’ reliance on *Bestwall* throughout the Oppo. Br. for the proposition that the Third

Circuit ordered compliance with similar subpoenas as written, without regard to sampling or anonymization (*see, e.g.*, *Oppo Br.* at 9 n.9, 23, 25, 25 n.15, 33), is misplaced and overstated. The Third Circuit did not even consider the substance of the subpoenas; rather, it reversed and remanded solely on the basis of collateral estoppel, which the Debtors have not asserted – and cannot assert – here. As a result, *Bestwall* is distinguishable, not binding on this Court, and is not dispositive of this motion.

II. THE DEBTORS CONCEDE THAT THE NORTH CAROLINA BANKRUPTCY COURT LACKED JURISDICTION OVER THE TRUSTS.

The Debtors sidestep the critical fact that the North Carolina Bankruptcy Court lacked jurisdiction to issue the Order and bind non-North Carolina corporate citizens to its terms. The Debtors cannot, however, escape the fact that, for any subpoena to be enforceable, it must comply with the basic due process rights promised by the Federal Rules of Civil Procedure. Indeed, contrary to the Debtors’ assertions that “[t]he Subpoenas are no different than any other subpoena issued with or without a court’s blessing” (*Oppo Br.* at 30), these Subpoenas are extraordinary because they purport to impose broad-sweeping and unduly burdensome requirements for compliance with the subpoena under the auspice of an already entered court order. (*See* Dkt. No. 1 (“**Mov. Br.**”) at 18.) The Debtors concede that they “are not suggesting that the [North Carolina] Bankruptcy Court established

jurisdiction over . . . the Trusts to bind them to its Order” (Oppo. Br. at 29–30), but that is exactly how the Debtors are trying to use the Order. The Order goes significantly further than “proscrib[ing] [*sic.*] what information the Debtors could request” (Oppo. Br. at 30), and significantly exceeds the scope of Rule 45 by: purporting to make findings as to the relevance of the information sought, requiring the Trusts to provide notice to affected claimants through a specific process, prescribing what the content of those notices must include, setting a specific schedule under which information must be exchanged between the Trusts and the Debtors, dictating how the subpoenaed confidential information may and may not be used, requiring the Trusts to meet and confer with the Debtors regarding the Subpoenas, and inappropriately vesting the issuing court with “exclusive jurisdiction” – which it never established – to “enforce this Order.” (Mov. Br. at 25; Aug. 19, 2022 Certification of Lynda Bennett, Esq. in Support of the Trusts’ Motion to Quash (Dkt. No. 1-2), Ex. K ¶¶ 5, 7, 8, 9, 12, 20.)

In contrast, typical subpoenas issued “by attorneys without judicial oversight or involvement” (Oppo. Br. at 30) certainly do not purport to instruct the subpoenaed party as to whom it must notify or how it must do so, nor do such subpoenas purport to have the authority to require a meet and confer between the issuing and subpoenaed parties, among the many other over-reaching purported requirements of the Order. Indeed, the extraordinary requirements contained in the Order evince that

it is not simply a list of information appended to the Subpoenas, as the Debtors would have this Court believe; rather, it is a jurisdictionally and procedurally improper overreach by the North Carolina Bankruptcy Court, which, the Debtors concede (as they must), has no authority to compel the Trusts' compliance with the Order or its terms. This Court should quash the Subpoenas on this basis alone.

III. THE SUBPOENAS VIOLATE RULES 26(B)(1) AND 45(D)(3).

“When dealing with a discovery subpoena, the [compliance] court has the inherent authority to quash or modify that subpoena.” *Gilmore v. Jones*, No. 21-13184, 2022 WL 267422, at *2 (D.N.J. Jan. 28, 2022) (Shipp, D.J.). “Rule 26(c)(1) provides that a court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.” *Id.* “Rule 45 *mandates* that a court in the district where compliance occurs quash or modify a subpoena” if it “requires disclosure of privileged or other protected matter,” or “subjects a person to undue burden,” among other issues. *Id.* (emphasis added). As detailed below, the Trusts have met their burden as the moving party to establish that even if the Subpoenas were procedurally valid – which they are not – they are substantively defective because they violate Rules 26(b)(1) and 45(d)(3) in multiple respects.

A subpoena is unduly burdensome when compliance with it would be “unreasonable or oppressive.” *In re Lazaridis*, 865 F. Supp. 2d 521, 524 (D.N.J.

2011) (citation omitted). Among other factors this Court has previously utilized to determine whether a subpoena is unreasonable are: “the party’s need for the production,” “the relevance of the material,” “the breadth” and “time period covered by the request” and “the burden imposed on the subpoenaed party.” *Id.* Here, none of these factors weigh in favor of requiring compliance with the Subpoenas.

A. The Subpoenaed Information’s Relevance is Purely Speculative.

“While the scope of discovery is broadly construed, it is not without its limits and may be circumscribed,” *In re Novo Nordisk Sec. Litig.*, 530 F. Supp. 3d 495, 501 (D.N.J. 2021), especially as to non-parties, which “are afforded greater protection from discovery than a normal party.” *Chazanow v. Sussex Bank*, No. 11-1094, 2014 WL 2965697, at *3 (D.N.J. July 1, 2014) (“The standards for nonparty discovery require a stronger showing of relevance than for simple party discovery.”) (citation omitted). The Debtors must establish that the information requested by the Subpoenas is relevant to the underlying case before the burden shifts to the Trusts to show “why discovery should nevertheless be denied.” *Novo Nordisk*, 530 F. Supp. at 501.

The Debtors argue that the information sought under the Subpoenas is relevant for no reason other than that three bankruptcy judges – not compliance court judges – have found purportedly similar subpoenas relevant in entirely separate proceedings. (*See* Oppo. Br. at 15.) The Debtors insinuate that because those courts

were “steeped in the factual background and details of the cases before them,” they were better suited than a compliance court to determine whether subpoenas on non-parties comply with Rule 45. (*Id.*) It is not the role of a bankruptcy court, however, to analyze whether and to what extent a subpoenaed third party will be burdened or oppressed; that responsibility lies solely with the compliance court, pursuant to Rule 45(d)(1). This Court should not be swayed by the Debtors’ attempt to bootstrap the Subpoenas in this case to unrelated subpoenas in other matters. Instead, the Subpoenas’ relevance must be analyzed and justified here, in this United States District Court, as to these specific Trusts and this specific underlying case.

Next, the Debtors argue that the information sought is relevant because it “will help show whether or not” “claimants who asserted and resolved claims against the Debtors also asserted and/or recovered on claims against the Trusts, and will” purportedly “allow the Debtors to determine whether those claimants’ assertions and recoveries against the Trusts or their Underlying Companies were appropriately disclosed to the Debtors while in the tort system.” (Oppo. Br. at 17.) The Debtors’ reasoning does not hold up under the barest scrutiny and does not come close to clearing that substantial relevance bar that applies to the production of the highly confidential and personal data sought.

When the Debtors settled various claims against their underlying companies, they certainly knew that there were many other asbestos defendants named in the

same complaints seeking relief for the same claimed injuries. Indeed, it is the very nature of mass tort cases that specific exposure will always be somewhat uncertain. That is, defendants in mass tort cases – like those underlying the Debtors’ bankruptcies – all settle claims without knowing with certainty whether a given claimant was exposed to their own product or another defendant’s product, and without knowing whether a given claimant also settled with other defendants. Settlement decisions are driven by liability risk assessments, not scientific certainty about exposure dates or prior payments made by an asbestos trust pursuant to its own unique trust distribution procedures. The Debtors’ theory is speculative and unproven, and as a result, they have not established an “actual need” for the information sought. *See, e.g., Lazaridis*, 865 F. Supp. at 528; *Ford Motor Co. v. Edgewood Props., Inc.*, No. 06-1278, 2011 WL 601312, at *3 (D.N.J. Feb. 15, 2011) (agreeing “that [plaintiff] is entitled to discovery from third parties as it relates to [defendant’s] damages . . . , [but plaintiff] has not met its burden of [establishing] why [requested] documents and correspondence . . . are relevant”).

B. The Subpoenas Lack Proportionality and are Overly Broad.

If “the subpoenaing party [can] show that the documents requested are relevant, the objecting party must demonstrate why discovery should nevertheless be denied.” *Novo Nordisk*, 530 F. Supp. at 501. As detailed above, the Debtors have *not* shown that the information sought is relevant, but even if it were, the Subpoenas

are still defective because they lack proportionality and are overly broad. Fed. R. Civ. P. 26(b)(1); 45(d)(3)(A)(iv). *See, e.g., Ford*, 2011 WL 601312, at *3 (finding “that the sweeping scope of the [] Subpoena is overly broad because it requires production of documents and correspondence relating to financial agreements that do not pertain to the” properties at issue); *Korotki v. Cooper Levenson, April, Niedelman & Wagenheim, P.A.*, No. 20-11050, 2022 WL 2191519, at *5 (D.N.J. June 17, 2022) (“[T]he Court can readily conclude that the Subpoenas are overbroad as drafted. The demands are vast . . . and would wield an undue burden on the Petitioner. . . .”).

Here, the Debtors’ “need for the production” is not established, and the “breadth of the request” is unreasonable. *Lazaridis*, 865 F. Supp. 2d at 524. Indeed, as noted in the Trusts’ Mov. Br. (at 25), the Subpoenas far exceed the scope of Rule 45 because they require the Trusts and Verus to perform extensive analyses of data provided by the Debtors, provide notice to affected claimants through a specific process, prescribe what the content of notices must include, and even require the Trusts to meet and confer with the Debtors. The Debtors attempt to downplay the complexity of this undertaking by contending that it should entail “an entirely automated process,” (Oppo. Br. at 19), but Verus has certified that the exact opposite is true. (*See* Mov. Br. at 14.) Indeed, to respond to the Subpoenas, the Trusts and/or Verus will be required to divert resources away from their sole purpose – processing

the claims of asbestos disease sufferers – to conduct a manual review of every relevant text field in claimant files to ensure that any names or Social Security Numbers (“SSNs”) contained in the files are redacted, just so that the Debtors may receive what they *speculate* would be “more complete” information about claimants seeking payments from them. (*See id.*) Measured against that unsupported connection to the Debtors’ underlying bankruptcy cases, the burden that the Subpoenas would impose on the Trusts is disproportional to the needs of the case. Accordingly, the Subpoenas must be quashed.² *See* Fed. R. Civ. P. 26(b)(1); 45(d)(3)(A)(iii)–(iv).

C. The Subpoenas Seek Highly Confidential Information without Adequate Protections.

In a transparent and misguided attempt to circumvent Rule 45(d)(3)(A)(iii)’s prohibition against the disclosure of “protected matter,” the Debtors argue that none of the information they seek is actually confidential, and that the Trusts and/or Verus have misrepresented the information sought by the Subpoenas. (Oppo. Br. at 31.) Both allegations are false: the information sought is highly confidential, and the

² At the very least, the Subpoenas should be narrowed to a reasonable sample size of claimant data to adequately balance the Debtors’ purported need for information from non-parties against the substantial burden that the Trusts will incur to comply. The *Bestwall* District Court recognized that such an approach was reasonable and fair to all parties. *See In re Bestwall LLC*, No. 21-141, 2021 WL 2209884, at *7 (D. Del. Jun. 1, 2021), *rev’d on other grounds*, 47 F. 4th 233 (3d Cir. 2022).

requested information that the Trusts flagged as particularly troubling (names, SSNs, and addresses (*see* Mov. Br. at 13) is frequently contained in claimants’ narrative responses, which the Subpoenas request by way of their “[a]ll exposure-related fields” category. Moreover, the Subpoenas do not contain adequate anonymization or protective measures to safeguard claimant information once transmitted to the Debtors.

1. The Information Sought is Highly Confidential.

First, the Subpoenas plainly seek personally identifying information that is protected under Rule 45(d)(3)(A)(iii). The Debtors argue that the Subpoenas seek only “discrete facts related to claims submitted” (Oppo. Br. at 32), but those facts must be drawn from claimants’ confidential narrative responses, which frequently contain the very sensitive information the Trusts have identified, along with information about the dates of a claimant’s exposure and manner of exposure, both of which implicate confidential medical information. (*See* Mov. Br. at 13–14.) The Debtors claim that this information is not confidential, but the definition of “personally identifying information” is broad. It encompasses “information that can be used to distinguish or trace an individual’s identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual.” 2 C.F.R. § 200.79. The Debtors intend to use the subpoenaed

information to *identify specific individuals* using their matching key. Accordingly, the data clearly qualifies as confidential, personally identifying information.

2. The Order Fails to Include Meaningful Anonymization or Other Protective Mechanisms.

Second, the claimant information sought by the Subpoenas is entitled to protection under Rule 45(d)(3)(A)(iii) because it is submitted to the Trusts by victims of asbestos-related diseases who have a reasonable expectation that, pursuant to each Trust's Trust Distribution Procedures, the information will (i) remain confidential, (ii) be treated as made in the course of settlement discussions, and (iii) be protected by all applicable privileges. (Mov. Br. at 8.) The Trusts have invested significant time and resources into the protection of that data. (*See id.*) Contrary to those expectations, the Subpoenas require the Trusts to aggregate into a single database information regarding thousands of claims that is normally maintained separately for each of the Trusts, which presents significant data security concerns. (*Id.* at 14.)

Moreover, the Subpoenas do not include any meaningful anonymization process, and would instead allow the Debtors' expert to aggregate claimant data post-production with information from the Debtors' database and other sources (including the databases of the other parties to which Debtors issued subpoenas in the underlying matter) into a single information clearinghouse with a matching key that de-anonymizes all of the data. (*Id.* at 26.) As Verus explained in its opposition

to the Debtors’ motion to transfer (Dkt. No. 5 at 10–11), once de-anonymized, claimant data *cannot* be re-anonymized; there is no way to ensure that once a claimant’s data is linked to their last name and SSN (already contained in the matching key), it will ever be unlinked. The Debtors fail to meaningfully address this critical issue, arguing only that the Debtors “need[] to be able to match [Trust data with a specific claimant].” (Oppo. Br. at 38 (second alteration in original).) This is insufficient, particularly in light of the fact that the Debtors’ “need” for this confidential information has not been established. Accordingly, the Subpoenas must be quashed because they require disclosure of information protected by Rule 45(d)(3)(A)(iii) without meaningful safeguards.

CONCLUSION

For the foregoing reasons, the Trusts’ motion to quash the Subpoenas should be granted.

Respectfully submitted,

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Dated: October 11, 2022

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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

In re

ALDRICH PUMP LLC, et al.,

Debtors

Case No.: 22-cv-5116-MAS-TJB

Underlying Case No.: 20-30608 (JCW)
(United States Bankruptcy Court for the
Western District of North Carolina)

Return Date: November 7, 2022

ORAL ARGUMENT REQUESTED

**VERUS CLAIM SERVICES, LLC'S REPLY MEMORANDUM OF LAW
IN FURTHER SUPPORT OF ITS MOTION TO QUASH**

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PRELIMINARY STATEMENT

Non-party Verus Claims Services, LLC (“Verus”), respectfully submits this reply memorandum of law in further support of its motion to quash (ECF Doc. No. 5) the subpoena (the “Subpoena”) served upon Verus by Debtors Aldrich Pump, LLC and Murray Boiler, LLC (collectively, the “Debtors”).

Debtors’ opposition only proves that Debtors’ claimed need for the requested information is not legitimate. Debtors misleadingly rely on the decisions of other courts that have no bearing on this case, and also mischaracterize the Subpoena itself.

Debtors emphasize the “extensive protections” in the Subpoenas. But these protections do not actually exist. Debtors readily admit that the requested data will be “de-anonymized,” and that anonymous data is actually worthless for their purposes. The opposition also betrays the very real risk that Debtors’ expert will use the data to reverse engineer Verus’s operations.

The Subpoena is also overbroad as Debtors have no “actual need” for the requested information. If the Subpoena were necessary for claims estimation, sampling would be acceptable and appropriate. In reality, Debtors are seeking a do-over of prior settlements, which has nothing to do with the stated purpose.

Last, the Subpoena imposes an undue burden on Verus because Verus cannot produce the requested information without an enormous disruption of its operations or without incurring a risk to its trade secrets. The Subpoena should be quashed.

BACKGROUND AND PROCEDURAL HISTORY

Verus hereby incorporates by reference the Factual Background and Procedural History set forth in the August 19, 2022 memorandum of law submitted by the Trusts in support of their motion to quash (ECF Doc. No. 1-1). All capitalized terms not otherwise defined herein have the same meaning as in Verus’s and the Trusts’ prior memoranda of law. Subsequent to the filing of Verus’s motion, the Third Circuit issued its decision in *In re Bestwall*. Additionally, various other courts issued decisions in matters involving other subpoenas. However, as described below, these decisions have no bearing on the motions before this Court.

ARGUMENT

I. DEBTORS MISCHARACTERIZE THE RECORD AND THE SUBPOENA ITSELF.

Debtors’ opposition (ECF Doc. No. 28, the “Opp. Br.”) is striking in its overstatement. Debtors rely on the mistaken arguments: (1) that this Court must parrot the findings of other courts that have no bearing on Verus’s motion and (2) that a seventeen-page, twenty-paragraph order is a routine subpoena. Neither is true.

A. None of the other cases cited by Debtors has any binding or preclusive effect because Verus was not party to any of those actions and its concerns were not litigated.

The keystone of Debtors’ opposition has nothing to do with this motion to quash. Rather, the focus is on other applications in other cases by other non-parties based on other concerns. Debtors prefer that those decisions – in which Verus did

not participate and Verus's concerns were not litigated – simply be extended to bind Verus as well.

They argue, for example, that “multiple bankruptcy courts, reviewing nearly identical subpoenas, have found the requested discovery to be highly relevant to the Debtors’ cases, have authorized the Subpoenas’ issuance, and overruled identical objections” (Opp. Br., 3) and that “three different bankruptcy judges across four different cases have found that the same type of information sought by the Subpoenas was relevant.” *Id.* at 15. A subsequent tribunal is forbidden to conduct its own analysis. Instead, the Court should just “agree with the other Courts.” *Id.* at 3.

But these “multiple bankruptcy courts” did not decide as much as Debtors suggest. Debtors ignore the distinctions between the different cases, but these decisions are not binding or even relevant to Verus’s motion. Verus never appeared before any of those courts. Debtors even admit that the Bankruptcy Court in North Carolina did not have jurisdiction over Verus. *Id.* at 10 (“The Debtors are not suggesting that the Bankruptcy Court established jurisdiction over Verus...”). Verus never opposed Debtors’ Bankruptcy Court Motion. It certainly never “fully litigated” any of the issues raised in this motion. Nor were any of the concerns unique to Verus (or any “identical objections”) overruled in the Bankruptcy Court.

Next, Debtors argue that “the Third Circuit has ordered that the subpoenas be enforced, as originally drafted, without any sampling requirement or anonymization

procedures.” *Id.* at 23 (citing *In re Bestwall*, 47 F. 4th 233 (3d Cir. 2022)). However, this is a gross mischaracterization of *Bestwall*. There was no finding that those subpoenas were proper. Rather, the case was decided exclusively on procedural grounds not applicable here. The Court of Appeals did not opine whether the decision below was meritorious; it found only that the same issues could not be relitigated by the same parties in a second proceeding. *Bestwall*, 47 F. 4th at *13.

In the case at hand, in contrast, the Bankruptcy Court has not already ruled on any of the issues unique to Verus (which again, was not involved in those proceedings). There is no preclusive effect to bind Verus. The fact that the Bankruptcy Court ruled on the objections of some other party is a red herring.

B. The “Subpoena” is not a subpoena at all.

The term “Subpoena” is a misnomer for Debtors’ requests because their extensive demands are far beyond anything contemplated by Rule 45.

Debtors claim that “[t]he Subpoenas are no different than any other subpoena.” *Opp. Br.*, 30. As Debtors tell it, the Bankruptcy Court “[a]id[ed] out what information the Debtors were permitted to request ... and identif[ed] the restrictions that were placed on the Debtors in doing so.” *Id.* Debtors even add that the Subpoena is particularly benign because “the court carefully proscribed what information the Debtors could request and provided significant limitations on the Debtors’ use of that information.” *Id.*

But this just is not so. The Bankruptcy Court did not “carefully proscribe what information Debtors could request.” Rather, the Order and the Subpoena – both of which were drafted by Debtors – simply lists everything that Debtors want. In reality, the Subpoena is “proscribed” only by the outer boundaries of Debtors’ desire.

And there certainly are no “significant limitations on the Debtors’ use” of the information. The Subpoena expressly permits Bates White broadly to “provide sufficient identifying information from the Matching Key to an Authorized Representative” in order to “analyze individual claims.” *See* Subpoena (Exhibit B. to Anselmi Decl. (ECF Doc. No. 5-3)), at 12(a)-(b). The Subpoena provides virtually no limitation on how Debtors, Bates White, or their “Authorized Representative” may use this data that they are able to de-anonymize at any time. Instead, the Order defines “Permitted Purposes” very broadly, including: “the determination of whether pre-petition settlements ... provide a reliable basis for estimating the Debtors’ asbestos liability; the estimation of the Debtors’ asbestos liability; and the development and evaluation of trust distribution procedures...” *See id.* at ¶ 5.

The Subpoena also imposes a compliance regime far beyond what is required by an ordinary Rule 45 subpoena. The Subpoena contains seventeen pages of instructions concerning when, how, and in what form Verus must make its response. *See* Subpoena. Specified actions are purportedly required on the twenty-first, thirty-fifth, forty-ninth, and sixtieth days following service. *Id.* at ¶¶ 7-9.

II. THE “EXTENSIVE PROTECTIONS” IN THE SUBPOENA ARE ILLUSORY.

Another superficial premise of Debtors’ opposition is that the Court should tolerate any amount of overreach because the Subpoena includes “extensive protections.” Opp. Br., 23, 36, 39. According to Debtors, these superficial references to “protections” *ipso facto* eliminate any cause for concern. They even argue that, in light of these “protections,” sampling “is unnecessary.” *Id.* at 24-25.

In reality, these sham “protections” are neither extensive nor protective. They do nothing to eliminate the concerns raised by Verus, and the other movants. Debtors are entitled to no deference merely for invoking the abstract idea of “protections.”

A. Debtors intend for the requested data to be anonymized temporarily and de-anonymized permanently, not the other way around.

Debtors contend that they “have a mechanism to anonymize all data before it is even produced.” *Id.* at 24. They claim that the claimant data is kept “separate” from the Matching Key. *Id.* at 37. They further claim that Bates White “routinely maintains similar information and has implemented extensive security measures that should eliminate any of Movants’ speculative concerns.” *Id.* at 39. No explanation is offered as to what those “security measures” are or how they could be sufficient.

Debtors’ contention that they are not assembling a “clearinghouse” because the information will be used by an unspecified, unnumbered group of parties, counsel, and experts and not by the public at large (*id.* at 39) is similarly thin. The

concerns of disclosing sensitive information are the same regardless of to whom the disclosure is made. Debtors also argue, circuitously, that the Subpoena was “tailored to match subpoenas approved by the Bankruptcy Court in *DBMP*, which post-dated the District Court’s decision in *Bestwall*.” *Id.* at 23. Debtors then note that the *DBMP* court overruled the objections made in that case, so it is not clear how exactly that decision resulted in any “tailoring” of the subpoenas.

Ultimately, Debtors confess that anonymization is nothing but a smokescreen: “without a Matching Key that temporarily *de-anonymizes* the data, Trust Discovery is useless.” *See id.* at 38 (emphasis added). This is because “the debtor needs to be able to match [Trust data with a specific claimant] or otherwise, this is unusable to it for its purposes.” *Id.* In other words, Debtors can have anonymous data, or they can useful data, but they cannot possibly have both – so the anonymization must go.

Debtors’ abstract “protections” lack any real-world value whatsoever. Debtors have not offered any explanation as to how the data, once “de-anonymized,” can ever be *re-anonymized*. They have not explained it because it cannot be done. Once the data is “de-anonymized” it is “de-anonymized” forever. The “Matching Key” prepared by Bates White already contains the Matching Claimants’ last names and SSNs. *See* Subpoena, ¶ 6. Once this information is linked to the corresponding data for each claimant, there is no meaningful way for it ever to be de-linked. *See* Reply Declaration of Mark T. Eveland (the “Eveland Reply Decl.”), ¶¶ 18-19.

B. Debtors’ opposition brief only confirms the threat of reverse engineering by Bates White.

In its motion to quash, Verus explained the risk that if a competitor or third party – such as Bates White – were provided with the data requested in the Subpoena, they could potentially “reverse engineer” the data to recreate Verus’s proprietary algorithms. *See* Verus’s Moving Brief (ECF Doc. No. 5-1, the “Moving Br.”), 24. Debtors, as usual, provide only a conclusory response to this concern.

Debtors argue that the information they seek “is strictly limited” and does not include “the valuation of any trust claims.” *Opp. Br.*, 34-35. They add, “Without any information related to the valuation of any trust claims, Bates White ‘could not “reverse engineer” any algorithms proprietary to Verus.’” *Id.* Critically, Verus never identified reverse engineering of *claim valuation* as the risk of disclosure. Rather, Verus noted that its proprietary algorithms give it a competitive advantage with respect to claims administration, processing, and communications. *Moving Br.*, 23. Yet, Debtors uncannily appear to understand that the more valuable malicious use of the requested data would be for the purposes of claims valuation. The opposition thus only underscores the risk of reverse engineering rather than diminishing it.

Debtors argue that Bates White “does not compete with Verus” because it “does not provide third-party claims administration services [or] process trust claims.” *Opp. Br.*, 34. It is true that Bates White does not process trust claims. However, Bates White works for other asbestos defendants and trusts (such as

Debtors here). Therefore, its interests and the interests of its clients are directly adverse to the interests of Verus. Eveland Reply Decl., ¶¶ 20-21.

III. THE SUBPOENA IS UNREASONABLY AND OPPRESSIVELY OVERBROAD.

A. The Subpoena bears no reasonable relation to its stated purpose.

Debtors’ claim that the Subpoena seeks information in order to “estimate the Debtors’ aggregate liability for asbestos claims against them” for the purposes of “negotiation, formulation, and confirmation of a plan of reorganization in” the Bankruptcy Action. Opp. Br., 10.

Asbestos claimants typically sue many defendants because it is in the nature of their work – *e.g.*, as a union steamfitter – to be exposed to numerous companies’ products over the course of their careers. In their Informational Brief in the Bankruptcy Action, the Debtors note:

From 2001 to 2002, the number of mesothelioma claims asserted against each of the Debtors doubled in the span of one 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.

Informational Brief (*In re Aldrich Pump, LLC et al.*, No. 20-30608 (Bankr. W.D.N.C.), ECF Doc. No. 5), 5. (emphasis added). Thus, when a claimant makes claims against multiple defendants for the same asbestos disease, that is not surprising – it is “typical.” For decades, Debtors settled these claims anyway. Knowing of the other alleged exposures did not affect their willingness to settle.

Practically speaking, the causation of an asbestos plaintiff's disease often cannot be allocated among the various potential exposure sources. Defendants settle claims without knowing what other defendants have paid or what their own "fair share" might be. That information was irrelevant then and is irrelevant now.

Debtors state that, instead, pre-bankruptcy settlements were made to save defense costs.¹ But Debtors face the same defense costs regardless of the number of co-defendants and regardless of how much other defendants have paid that claimant.

Therefore, determining whether some claimants asserted claims against both the Debtors and the Trusts is completely unrelated to the stated purpose of claims estimation. Debtors have no legitimate or actual need for the information sought. *In re Lazaridis*, 865 F. Supp. 2d 521, 528 (D.N.J. 2011).

B. The Subpoena is unreasonably overbroad in the absence of a provision for statistical sampling.

The estimation of potential liability – especially in the context of asbestos-related mass torts – is an actuarial task. It requires only sufficient data from which Debtors can underwrite its risk with reasonably accuracy. Debtors have not articulated any reason that the estimation task requires data from every single

¹ Indeed, Debtors identify this as the "critical factor" in resolving claims. Claims were routinely settled "in the mid-five figures, a small fraction of the multi-million dollar award that a plaintiff might receive ... and also a small fraction of the likely legal fees the Debtors would incur to take a case through trial." *Id.* at 7.

Matching Claimant and not a sample instead. In fact, Debtors again acknowledge that estimation can be achieved through sampling. Opp. Br., 25 n.15, 28.

Debtors argue instead that “because of the protections provided ... and the fact that no PII will be produced ... sampling is unnecessary.” Opp. Br., 24-25. However, this is no basis to avoid sampling because the cited “protections” actually offer no protection at all. The assertion that the Subpoena does not seek PII is likewise not credible on its face. The Subpoena demands “all exposure-related” data without limitation. *See* Subpoena, ¶ 10(g). Debtors also admit that this information will be used specifically to match “Trust data with a specific claimant” and that “otherwise, [the data] is unusable to it for its purposes.” Opp. Br., 38.

Debtors then argue that “the costs associated with sampling outweigh any marginal benefit.” *Id.* at 4. They contend that the number of claimants at issue does not matter because “the burden of electronically extracting data from a database and using an automated program is not significantly impacted by the number of claimants whose data is extracted.” *Id.* at 26-27. Debtors also contend that, in prior cases, data has been produced relatively quickly. *See id.* at 27. Last, Debtors claim that any burden borne by Verus is negligible because Debtors will reimburse Verus for its compliance costs. *Id.* at 21, 28.

This argument has two fatal flaws. First, the burden to Verus consists of more than just the economic costs associated with compliance. As described below, the

Subpoena seeks disclosure of Verus’s protected trade secret information. Even assuming, *arguendo*, that sampling would not reduce the time or effort necessary for compliance (which is not true in any event), sampling would dramatically reduce the commercial and competitive risks posed by exposure of Verus’s trade secrets.

Further, as described below and despite Debtors’ baseless conjecture to the contrary, compliance with the Subpoena will have very real economic costs to Verus. The fact that Verus’s compliance with the Subpoena will in fact be costly (and will cost more the more claimants for whom information is sought) eliminates Debtors’ concerns that sampling will be too costly to be worthwhile. Because, as Debtors note, they will be paying the costs of compliance anyway, there is no reason why they should be paying Verus’s costs for providing information for more than twelve thousand claimants (sixty thousand claim files) instead of paying for Bates White to design an appropriate sample for a far smaller set of claimants.

IV. THE SUBPOENA WILL IMPOSE AN UNDUE BURDEN UPON VERUS.

A. This Subpoena would cause a severe disruption of Verus’s operations – far beyond the costs acknowledged by Debtors.

Debtors and their expert opine that “retrieving the factual and discrete data fields ‘should involve a relatively straightforward, automated search and extraction of data.’” *Id.* at 26. Despite having no relevant knowledge, Debtors presume that compliance requires only that “Verus extract certain data fields from within the

database it admits it possesses (which should be an entirely automated process) and place that data in an excel or database file for production.” *Id.* at 19.

This is not true. Verus cannot simply “export” the data without a labor-intensive review and redaction process. Eveland Reply Decl., ¶¶ 3-4. Claimants submit, *inter alia*, private and personal, medical, family, and financial information. *Id.* at ¶ 5. Claim files also include comments and notes from claim processors and counsel – all within the broad request for “all exposure-related” data. *Id.* at ¶¶ 6-7.

Exporting this “exposure-related” data for the approximately 12,000 claimants (and 63,000 claim files) at issue requires a time-consuming review. Because the requested data is voluminous and contains sensitive information, it cannot be exported without being reviewed to ensure that: (1) responsive information is included; and (2) confidential information is not. *Id.* at ¶¶ 8-10.

Most of this review must be conducted by a human data analyst. *Id.* at ¶ 11. Estimating the necessary time and costs is difficult because the time to review any particular claim is highly variable and there is an enormous number of claimants at issue. *Id.* at ¶ 12. Verus cannot allocate the resources needed for this task without severely disrupting the performance of its duties. The same critical employees who would have to devote their time and attention exclusively to this task for several days are also critical to day-to-day operations. *Id.* at ¶¶ 13-15, 17. Staffing and executing this review is also problematic in the current tight labor market. *Id.* at ¶ 16.

B. The Subpoena imposes an undue burden upon Verus because it seeks material that does not belong to Verus and that should have been sought from other custodians instead.

As previously noted in Verus’s moving papers, the requested information does not even belong to Verus. The information and documents submitted by the claimants are the property of the trusts themselves. Thus, it is unreasonable and oppressive for Debtors to seek this information from Verus instead of directing the Subpoena directly to counsel for the various claimants.

V. THE SUBPOENA SHOULD BE QUASHED BECAUSE IT SEEKS DISCLOSURE OF TRADE SECRETS AND OTHER PROTECTED INFORMATION.

Finally, the Subpoena should be quashed under Rule 45(d)(3)(b) because it requires “disclosing a trade secret or other confidential research, development, or commercial information.” As explained in its moving brief, Verus expended substantial effort and money in developing its proprietary software, databases, algorithms, and claims processing procedures. This information, which is extremely valuable and vital to Verus’s business, is protected by New Jersey law. *See* N.J.S.A. §§ 56:15-1 et seq. Courts often recognize the protectability of such information.²

² *See, e.g., Alifax Holding SpA v. Alcor Sci. Inc.*, 404 F. Supp. 3d 552, 567 (D.R.I. 2019) (upholding jury finding that the plaintiff’s proprietary algorithm used in laboratory analysis was a trade secret); *PTT, Ltd. Liab. Co. v. Gimmie Games*, No. 13-7161, 2014 U.S. Dist. LEXIS 158058, at *14 (D.N.J. Nov. 6, 2014) (finding that complaint “sufficiently alleges the existence of [plaintiff’s slot machine gameplay] algorithms as a trade secret.”); *Watts v. Metro. Life Ins. Co.*, No. 09-829, 2010 U.S. Dist. LEXIS 107201, at *9 (S.D. Cal. Oct. 7, 2010) (granting motion to seal with respect to exhibit that consisted of insurer’s “claim management guidelines, [which]

Disclosure of the information requested by Debtors will therefore “work a clearly defined and serious injury to” Verus.

CONCLUSION

For the reasons set forth above, Verus respectfully submits that Debtors’ Subpoena should be quashed in its entirety. In the alternative, the Subpoena should be modified to: (1) require production for no more than a statistically significant sample (*e.g.*, ten percent) of claimants and (2) allow Verus to perform anonymization prior to production to Debtors or Bates White.

Respectfully Submitted,

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Dated: October 11, 2022

contain[ed] trade secret information regarding Defendants’ claim administration process which could be used by business competitors to circumvent the considerable time and resources necessary to develop such guidelines.”); *Stafford v. Rite Aid Corp.*, No. 17-1340, 2019 U.S. Dist. LEXIS 137609, at *3 (S.D. Cal. Aug. 14, 2019) (applying *Watts* in similar context); *Altavion, Inc. v. Konica Minolta Sys. Lab., Inc.*, 171 Cal. Rptr. 3d 714, 738 (Cal. Ct. App. 2014) (observing that while plaintiff’s “general idea” for document self-authentication technology was not a protectable trade secret, the “algorithms and source code that execute [that technology] ... is unquestionably protectable by trade secret law.”).

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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

In re

ALDRICH PUMP LLC, et al.,

Debtors.

Case No.: 22-cv-5116

Underlying Case No.: 20-30608 (JCW)
(United States Bankruptcy Court for
the Western District of North Carolina)

**REPLY DECLARATION
OF MARK T. EVELAND**

MARK T. EVELAND, of full age hereby declares under penalty of perjury pursuant to 28 U.S.C. § 1746:

1. I am the president of Verus Claims Services, LLC (“Verus”). I submit this declaration in reply to the Debtors’ brief and the supporting declaration of Charles. H. Mullin, Ph.D. in opposition to the motions to quash filed by Verus (ECF Doc. No. 5) and the Trusts (ECF Doc. No. 1). I make this declaration based on my own personal knowledge, and the facts stated herein are true and correct to the best of my knowledge, information and belief.

2. Debtors' Subpoena seeks information regarding approximately twelve thousand (12,000) claimants who may have submitted asbestos-related personal injury claims to one or more of the Trusts.

3. In their brief and in the supporting declaration of Dr. Mullin, Debtors contend that compliance with the Subpoena will require Verus to only "extract certain data fields from within the database it admits it possesses (which should be an entirely automated process) and place that data in an excel or database file for production." This is not the case.

4. As a result of how information is submitted to the Trusts and how that information is maintained by Verus, compliance would necessarily require a labor-intensive review and redaction process for each claim record.

5. As I explained in my prior declaration, when a claimant asserts a claim against a Trust, that person is required to provide data and documentation sufficient to support the claim. This information routinely includes private and personal, medical, family and financial information of the claimants and third parties such as their spouses, dependents, other family members, co-workers and personal representatives.

6. Verus's claim files include this confidential information, and also contain the claim processors' claim notes and comments, as well as privileged communications with the Trusts and their counsel. Verus's comments, notes and

annotations are added to the information supplied by the claimant. Claim records can have numerous such annotations in multiple data fields.

7. While the Debtors' subpoena specifies certain data fields to be produced, it casts a broad net for "all exposure-related" data without limitations.

8. There is no practical way for Verus to ensure that all of its work-product, notes, thought-process, comments, evaluations and determinations in processing claims have been extracted from each and every data field across all eight Trust databases. In order to minimize this risk, a time-consuming review is required.

9. Claimants' exposure histories are often quite extensive, consisting of multiple exposure records spanning decades in the workforce. Each of the Trusts at issue require claimants to provide only sufficient evidence of exposure to prove the minimum requirements for compensation according to the exposure requirements of that Trust's Trust Distribution Procedures; thus, comprehensive exposure histories are not required and a specific claimant may submit a different subset of exposure data to each Trust.

10. For example, the Debtors' supposedly anonymized "Matching Key" of approximately 12,000 claimants corresponds to over 63,000 unique claims filed with the Trusts. The exposure records related to these over 63,000 unique claims number approximately 200,000 – the rough equivalent of over 3,300 pages of densely printed tabular information just for the exposure data. Because the requested claim data is

voluminous and may contain sensitive information, data cannot be exported without being reviewed first to ensure that: (1) information responsive to the Subpoena is included; and (2) confidential information is not being disclosed. I understand that this process is roughly similar to attorney review of document productions to ensure that responsive documents are captured but that any privileged material is withheld.

11. This review, for the most part, cannot be automated. Although simple tasks like the identification of Social Security Numbers (“SSNs”) within claim files could possibly be automated, the narrative information submitted by the claimants must be reviewed by a human data analyst. Complying with the Subpoena will therefore be labor-intensive and expensive.

12. Estimating the costs of this process is difficult because the time necessary to review any particular claim is highly variable and highly dependent on what information the corresponding claimant included in their submissions. This highly variable per-claimant cost must then be multiplied by the enormous number of claimants for whom the Debtors seek information (more than twelve thousand). The exercise of comparing the debtor’s Matching Key to the databases that Verus maintains on behalf of the eight trusts which are subject to the subpoena has already required approximately 80 hours of labor and cost the Trusts over \$15,000. The total labor for identifying claimant records and extracting, reviewing and redacting data

for other recent third-party subpoenas has ranged from 350 hours to over 975 hours, at a cost to the Trusts ranging from approximately \$51,000 to over \$162,000.

13. Additionally, Verus cannot allocate the resources needed to respond to the Subpoena without severely disrupting the performance of its duties required under its contracts with the various Trusts.

14. Verus employs one data analyst and three statisticians who are familiar with the data at issue here and have the skills necessary to extract the data as the first step in responding to this subpoena. These critical employees would have to devote their time and attention exclusively to responding to the Subpoena for a period of several days. These same resources are critical to the day-to-day operations of the trusts for which Verus works, having responsibility for providing updated analyses of operational issues, liability forecasts, and anticipated cash flows that are necessary for the trusts to make key decisions regarding payment of claims.

15. While some of the data analysis tasks required to respond to this subpoena could be assisted by Verus's software engineers, they too would have to turn their attention to the Subpoena instead of their normal work. Since these individuals do not specialize in database work and are primarily engaged in developing software unrelated to the trust databases, they are not familiar with the structure of the data requested in this subpoena. As such, if engaged in production of this data, their work would have to be closely reviewed by someone with

knowledge and experience of the data, thus adding to the expense of the process. This disruption would also put at risk key deadlines for data collection, analysis and production in unrelated litigation projects for which Verus is routinely engaged by other clients.

16. Also, as a very real practical matter, the labor market for the skilled labor required for requested production is unprecedentedly tight. It is unrealistic to think that Verus could demand significantly more effort or time from its employees (even if overtime is paid) in order to meet current contractual obligations without risking staff resignations.

17. Besides the obvious delays in claims processing and payment, it is anticipated that the time expended to respond to the Subpoena will cause Verus delays in: (i) improving its software applications; (ii) performing needed system maintenance and re-design; (iii) generating audits and reports; (iv) implementing policies and performing data analysis which will result in significant delays in processing, making offers on, and paying compensable claims for certain Trusts; (v) invoice production; (vi) monthly new code releases; (vii) administrative work; (viii) responding to claimant inquiries; and (ix) responding to internal requests for assistance.

18. Debtors' brief and the Subpoena itself also demonstrate how the "anonymization" procedures that Debtors refer to are of no practical value.

19. The Matching Key already contains the SSN and surname for each claimant, which are connected to a “numerical pseudonym.” Responding to the Subpoena with then requested information for each pseudonym will necessarily allow Debtors to link each pseudonym to the corresponding SSN and surname, thereby destroying any anonymity. Once the information is linked to the corresponding claimant, there is no meaningful way to ensure that it can ever be re-anonymized.

20. I am aware that Debtors have argued that disclosure of the requested information to Bates White poses no risk to Verus because Bates White does not compete with Verus. While it is true that Bates White does not process trust claims, it does work for numerous asbestos defendants and insurance carriers. Therefore, its interests and the interests of its clients are potentially adverse to those of Verus’ trust clients, to which Verus bears contractual and other obligations.

21. Therefore, separate from the economic costs of compliance, using a statistical sample would dramatically reduce the commercial and competitive risks posed by the requested disclosure.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: October 11, 2022

By: 

Mark T. Eveland