

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

ARMSTRONG WORLD INDUSTRIES,
INC. ASBESTOS PERSONAL INJURY
SETTLEMENT TRUST *et al.*

Plaintiffs,

v.

ALDRICH PUMP LLC, *et al.*

Defendants.

Miscellaneous Proceeding

No. 22-00303 (JCW)

(Transferred from District of Delaware)

In re

ALDRICH PUMP LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 20-30608

**THE OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS’
OBJECTION TO THE DEBTORS’ MOTION FOR REHEARING CONCERNING THE
ISSUE OF SAMPLING ON DCPF’S SUBPOENA-RELATED MOTIONS**

The Official Committee of Asbestos Personal Injury Claimants (the “Committee”), by and through its undersigned counsel, hereby objects (the “Objection”) to the *Debtors’ Motion for Rehearing Concerning the Issue of Sampling on DCPF’s Subpoena-Related Motions* [Dkt. No. 54] (the “Rehearing Motion”) filed by Aldrich Pump LLC and Murray Boiler LLC (together, the “Debtors”). In support of the Objection, the Committee states as follows:



PRELIMINARY STATEMENT

The Debtors ask that this Court reconsider its decision to limit their request for data regarding thousands of claimants to a representative sample. They do not articulate any standard for reconsideration, nor do they meet any such standard. Rather, they simply disagree with the ruling, complaining that the Court credited certain arguments made by the parties opposing the discovery that the Court had previously weighed differently in a different case.

In fact, this Court has already heard these arguments, and decided, in this case, to limit discovery to a sample. The Court explained its reasoning regarding the wisdom of a sample at the time it gave its ruling and made clear that it understood the situation differently than it had before. No valid reason for reconsideration exists here.

BACKGROUND

1. On April 7, 2022, the Debtors sought this Court’s authorization to issue subpoenas to nineteen trusts established to pay asbestos claims as a result of the reorganization of debtors with asbestos-related liabilities,¹ and one debtor with significant asbestos-related liabilities that was then in bankruptcy, Paddock Enterprises, LLC (“Paddock”). *See Motion of the Debtors for an Order Authorizing the Debtors to Issue Subpoenas on Asbestos Trusts and Paddock Enterprises, LLC* [Dkt. No. 1111] (“Motion to Issue Subpoenas”). The Debtors’ subpoenas (the “Subpoenas”) requested that the trusts and Paddock produce data concerning approximately 12,000 individuals whose mesothelioma claims the Debtors had resolved pre-petition (the “Matching Claimants”).

¹ These trusts are the following: (i) the Manville Personal Injury Settlement Trust; (ii) ten asbestos personal injury trusts for which the Delaware Claims Processing Facility (“DCPF”) processes claims; and (iii) eight asbestos personal injury trusts for which Verus Claims Services, LLC processes claims.

2. The Committee objected to the Motion to Issue Subpoenas. *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* [Dkt. 1162]. In its objection, the Committee pointed out that the Subpoenas sought an unprecedented amount of discovery; an amount that is simply not “proportional to the needs of the case” as required by Rule 26(b)(1). *Id.* at 3. The Debtors failed to provide an adequate justification for requiring this enormous amount of information. *Id.* at 2. Moreover, the Committee pointed out, there is ample reason to expect that additional discovery demands and productions are forthcoming. *Id.* at 3.

3. Further, the Committee asked that this Court consider the “the serious concerns claimants would have regarding the accumulation” of the claimant data sought—not only in this case, but in *DBMP*² and *Bestwall*,³ where the debtors have retained the same professionals as the Debtors—“in a single database or the potential disclosures that could occur from any security breach.” *Id.* at 3.

4. At the hearing on the Motion to Issue Subpoenas, the Committee urged this Court to consider limiting the Debtors’ requested discovery to a representative sample. Rehearing Motion ¶ 15 (quoting May 26, 2022 Hr’g Tr. at 39:19-40:20).

5. This Court was familiar with efforts to obtain claimant information from asbestos trusts in another case over which this Court is presiding (*DBMP*), and in another case pending in this bankruptcy court (*Bestwall*).

² *In re DBMP LLC*, No. 20-30080 (Bankr. W.D.N.C.).

³ *In re Bestwall LLC*, No. 17-31785 (Bankr. W.D.N.C.).

6. In *DBMP*, this Court authorized the debtor to serve subpoenas to the Manville Personal Injury Settlement Trust and ten (10) trusts handled by the DCPF. *See Order Granting Debtor's Motion for Bankruptcy Rule 2004 Examination of Asbestos Trusts and Governing Confidentiality of Information Provided in Response* ¶ 3, *In re DBMP LLC*, No. 20-30080 (Bankr. W.D.N.C. Feb. 17, 2022) [Dkt. No. 1340], attached as Exhibit D to the Trust Discovery Motion.

7. In *Bestwall*, the bankruptcy court also authorized the debtor to serve subpoenas to the Manville Personal Injury Settlement Trust and ten (10) trusts handled by the DCPF. *See Order Granting Debtor's Motion for Bankruptcy Rule 2004 Examination of Asbestos Trusts and Governing Confidentiality of Information Provided in Response, In re Bestwall LLC*, No. 17-31795 (Bankr. W.D.N.C. Mar. 24, 2021) [Dkt. No. 1672].

8. The trusts targeted in *DBMP* and *Bestwall* objected to the debtors' discovery efforts and sought to limit the debtors to a 10% sample. The fact that those efforts were ultimately unsuccessful in *DBMP* and *Bestwall* does not dictate the outcome of this matter, however. This Court has made clear that it is "not at all assured that anything I do in *DBMP* is going to be done here." Nov. 30, 2022 Hr'g Tr. at 16:6-7. *See also id.* at 32:19-21 ("And lest anyone be concerned that they'll be roped in by what I decide in *DBMP*, obviously there's some differences on, on the cases . . .").

9. In this case, the Debtors sought discovery from eight additional trusts and Paddock. *See Motion to Issue Subpoenas.*

10. The Court authorized the Debtors to issue the Subpoenas on July 1, 2022. *Order Granting Motion of the Debtors for an Order Authorizing the Debtors to Issue Subpoenas on Asbestos Trusts and Paddock Enterprises, LLC* [Dkt. No. 1240].

11. Upon receipt of the Subpoenas, certain trusts, DCPF, and the Matching Claimants filed motions to quash the Subpoenas (the “Motions to Quash”).⁴

12. In their Motions to Quash, the movants objected to the burden that the Subpoenas would impose on the trusts. DCPF Motion to Quash at Ex. C ¶ 25 (Decl. of Richard Winner) (describing the burden upon the trusts posed by compliance with the Bestwall subpoena). The trusts also objected to the Subpoenas to the extent they called for personally identifying information. DCPF Trusts’ Motion to Quash at 10 n. 6 (noting that the Debtors seek “exposure-related fields” that may contain personally identifiable information). The trusts asserted that this Court should impose a sample, pointing out that sampling is necessary to protect the trusts’ claimant data and is appropriate for Aldrich’s estimation proceeding. DCPF Trusts’ Motion to Quash at 12-16. Sampling allows the Debtors to gather the evidence they need while protecting against unnecessary disclosures of sensitive information and limiting the burden upon the trusts. *Id.* at 15 (“Aldrich seeks the Trust Claimants’ data to investigate its theory that there was an alleged pattern of false claims submissions . . . Sampling will not modify the substance or quality of the data Aldrich receives. It only decreases the volume. Aldrich would be able to discern the exact same patterns from a sample as it would from data for the entire claimant population.”).

13. This Court held a hearing on the Motions to Quash on November 30, 2022. During that hearing, this Court issued an oral ruling (the “November 30 Ruling”) granting the Motions to

⁴ See Delaware Claims Processing Facility, LLC's (I) Motion to Quash or Modify Subpoena and (II) Joinder, *Armstrong World Indus., Inc. Asbestos Pers. Inj. Settlement Tr. v. Aldrich Pump LLC*, No. 22-303 (Bankr. W.D.N.C.) [Dkt. 4-2] (Oct. 3, 2022) (“DCPF Motion to Quash”); Third-Party Asbestos Trusts’ Motion to Quash or Modify Subpoenas, *Armstrong World Indus., Inc. Asbestos Pers. Inj. Settlement Tr. v. Aldrich Pump LLC*, No. 22-303 (Bankr. W.D.N.C.) [Dkt. 3-1] (Oct. 3, 2022) (“DCPF Trusts’ Motion to Quash”); Non-Party Certain Matching Claimants’ (I) Motion to Quash or Modify Subpoenas and (II) Joinders, *Armstrong World Indus., Inc. Asbestos Pers. Inj. Settlement Tr. v. Aldrich Pump LLC*, No. 22-303 (Bankr. W.D.N.C.) [Dkt. 5-3] (Oct. 3, 2022); *Kazan McClain Matching Claimants’ Motion to Quash and Joinders in Third Party Asbestos Trusts’ and Delaware Claims Processing Facility, LLC’s Motions to Quash or Modify Subpoenas, Armstrong World Indus., Inc. Asbestos Pers. Inj. Settlement Tr. v. Aldrich Pump LLC*, No. 22-303 (Bankr. W.D.N.C.) [Dkt. 5-5] (Oct. 3, 2022). Certain other Subpoena recipients filed motions to quash in other courts.

Quash in part, limiting the claimant data to be produced pursuant to the Subpoenas to a 10% random sample of the 12,000 claimants. *See* Hr’g Tr. Nov. 30, 2022 at 76:17 (“I’m adopting the 10 percent sampling.”).

14. In support of its ruling, this Court reasoned that the first time it had considered the issuance of subpoenas to the trusts, in *DBMP*, it assumed “Judge Connolly had done it previously and we were not going to be the compliance court, that that would likely be implemented, anyway.” *Id.* at 76:18-21. Moreover, this Court explained, in “the *DBMP* case, it sounded like that it was going to be six of one or half dozen of another as to whether you took a sample or whether you took all of it, and there might be, actually, more problems in agreeing on a random sample than there would be in just taking all the data.” *Id.* at 76:22-77:1. Here, however, this Court recognized that “we’re going to see some of this information in narrative form and that you might have information that is, in fact, PII, I want to reduce the harm there as much as possible.” *Id.* at 77:2-5. Moreover, the Court expressed its concern that “all of this is ballooning up and we’re getting more and more demands for a great deal of data and I want to make sure that we are mindful of costs in these cases and of the privacy concerns and that we’re not getting any more than we need.” *Id.* at 77:13-18.

15. At the February 14, 2023 hearing in this case, the Debtors informed the Court that they would be filing a motion seeking the reconsideration of the Court’s November 30 Ruling. Feb. 14, 2023 Hr’g Tr. at 23:24-25:6.

ARGUMENT

16. In the Motion for Rehearing, the Debtors ask that this Court overturn the “outlier” November 30 Ruling, deny the Motions to Quash in their entirety, and require the recipients of the Subpoenas to turn over all responsive claimant information, consistent with *Bestwall* and *DBMP*.

Motion for Rehearing ¶¶ 58-59 (“The Debtors here simply ask for access to the same information the debtors in those other cases now have access to.”).

17. This case is not *DBMP* or *Bestwall*, however. The discovery rulings in these different cases, with different debtors, different claimants, and different requests, need not be uniform. Here, this Court found that the Debtors’ desire for more information must be balanced against the impact on the case, potential for abuse, and risks of disclosure of sensitive information. The solution, this Court correctly held, to ensure that the discovery allowed is proportional and that the Debtors do not “get any more than they need,” is to allow a sample.

18. The Debtors have failed to establish that there is a proper basis for revisiting the November 30 Ruling.

I. The Debtors Have Not Established a Valid Basis for this Court to Change its Decision to Limit the Subpoenas in this Case

19. The Debtors do not even articulate the legal standard for the relief they seek, much less meet that standard.

20. In cases similar to the one at bar, courts within the Fourth Circuit have applied a “three-circumstance” test, under which a prior order will not be revisited “unless: (1) a subsequent trial produces substantially different evidence, (2) controlling authority has since made a contrary decision of law applicable to the issue, or (3) the prior decision was clearly erroneous and would work manifest injustice.” *U.S. v. Duke Energy Corp.*, No. 00-1262, 2014 WL 4659479, at *3 (M.D.N.C. Sept. 17, 2014). *See, e.g., In re Shore*, No 17-50459, 2020 WL 3125280, at *4-5 (M.D.N.C. May 19, 2020).

21. Such circumstances “rarely arise,” however, “and the motion to reconsider should be equally rare.” *Above the Belt, Inc. v. Mel Bohannan Roofing, Inc.*, No. 83-0202, 99 F.R.D. 99, 101 (E.D. Va. 1983). For example, a motion to reconsider a court’s previous opinion should be

denied where the movant “simply reargued its previous argument” and asked the “Court to rethink what the Court had already thought through.” *Id.*

22. None of the scenarios that typically warrant reconsideration is present here. No new evidence has been produced.⁵ There has been no change in the law. The discovery decisions in *DBMP* and *Bestwall* are not controlling and had already been made at the time of the November 30 Ruling. The Debtors fail to show that the November 30 Ruling was clearly erroneous. The Debtors are simply requesting this Court “rethink what it had already thought through”—an improper basis for a motion to reconsider.

23. This Court already weighed the scope, privacy and burden concerns against the Debtors’ right to gather the information at the November 30 hearing, and concluded that a sample was appropriate. *See* November 30 Ruling.

24. The Debtors take exception to the Court’s alleged reliance on a “new argument” raised by DCPF at the November 30 hearing; namely, that there might be personally identifying information in the exposure fields, and because the Subpoenas require the redaction of confidential information, this burden would be reduced if the Debtors were limited to a sample. The Debtors contend that this Court was mistaken in calling this a new argument, because the point had been previously raised by the trusts, and rejected by this Court—properly so, the Debtors contend—in *DBMP*. Rehearing Motion at ¶¶ 5-7.

25. But the Court explained how the situation was different from that in *DBMP*. The Court told the parties the trusts had “gotten through [to the Court] on the sampling issue.” Nov.

⁵ The Declaration of Charles H. Mullin, Ph.D. attached as an Exhibit to the Rehearing Motion is mostly argument, not fact, and in any event does not contain any new information or positions unavailable at the time of the original motion. The Committee objects to both the attempted effort to supplement the record, and to various allegations contained in paragraphs 14-19 that are presented as fact, but instead constitute opinion testimony beyond the expertise of the declarant.

30, 2022 Hr'g Tr. at 76:13-16. The Court acknowledged the trusts' arguments as to "what exactly might be disclosed," and expressed its concern with the "disclosure of these non-parties' information." *Id.* at 76:15-16. The Court pointed to the fact that some of the information may be disclosed in "narrative form and that you might have information that is, in fact, PII," and expressed its desire to "reduce the harm there as much as possible." *Id.* at 77:2-5.

26. After considering the parties' arguments at the November 30 hearing, the Court decided to take a different approach this time in favor of a sample. *Id.* at 76:13-16. That the Debtors disagree with the November 30 Ruling is not a cognizable basis for reconsideration.

II. This Court's Finding That the Debtors' Subpoenas Were not Proportional to the Needs of the Case, and Therefore a Sample is Appropriate, Was Proper and Should not be Disturbed

27. Federal Rule of Civil Procedure 26(b)(2)(C) "cautions that all permissible discovery must be measured against the yardstick of proportionality." *Victor Stanley, Inc. v. Creative Pipe, Inc.*, 269 F.R.D. 497, 523 (D. Md. 2010). Under the rule, the court "must" limit the frequency or extent of discovery if, *inter alia*, the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues. Fed. R. Civ. P. 26(b)(2)(C)(iii).

28. The Debtors' Subpoenas call for materials from 19 trusts and an unrelated debtor—nine more entities than were targeted in *DBMP* and *Bestwall*—regarding 12,000 claimants who resolved their claims against the Debtors prepetition.

29. As this Court recognized, "all of this is ballooning up and we're getting more and more demands for a great deal of data and I want to make sure that we are mindful of costs in these cases and of the privacy concerns *and that we're not getting any more than we need.*" Nov. 30,

2022 Hr'g Tr. at 77:13-18 (emphasis added). The solution, this Court decided, was to limit the Debtors to a representative sample of the enormous amount of data requested.

30. Disproportionate discovery has consequences for this case and the estimation proceeding, increasing its length and cost without any attendant benefit. This Court was correct to limit discovery in the November 30 Ruling and should not reconsider the question on the showing made by the Debtors here.

31. Moreover, turning away from a sample-based approach has consequences for the balance of discovery in this estimation proceeding. While the Debtors now want to expand their own discovery from targets they have selected beyond a sample, they will no doubt insist when the Committee seeks discovery, for example of the Debtors' claim files, that sampling is necessary. Fairness would demand that, if the Debtors' discovery is not limited to a sample, sampling would not be imposed on the Committee. In short, reconsidering the November 30 Ruling would likely result in far more extensive, time consuming, and expensive discovery beyond the specific discovery the Debtors address here.

CONCLUSION

For the foregoing reasons, the Rehearing Motion should be denied. Accordingly, the Committee respectfully requests that the Court enter an order: (i) sustaining this Objection; (ii) denying the Rehearing Motion; and (iii) granting any other relief that is just and appropriate.

Dated: March 23, 2023
Charlotte, North Carolina

HAMILTON STEPHENS STEELE
+ MARTIN, PLLC

/s/ Glenn C. Thompson

Glenn C. Thompson (Bar No. 37221)
525 North Tryon Street, Suite 1400
Charlotte, North Carolina 28202
Telephone: (704) 344-1117
Facsimile: (704) 344-1483
gthompson@lawhssm.com

*Local Counsel for the Official Committee of
Asbestos Personal Injury Claimants*

Natalie D. Ramsey (admitted *pro hac vice*)
Davis Lee Wright (admitted *pro hac vice*)
Robinson & Cole, LLP
1201 N. Market Street, Suite 1406
Wilmington, DE 19801
Tel: (302) 516-1700
Fax: (302) 516-1699
nramsey@rc.com
dwright@rc.com

-and-

Kevin C. Maclay, Esq. (admitted *pro hac vice*)
Todd E. Phillips, Esq. (admitted *pro hac vice*)
Caplin & Drysdale, Chartered
One Thomas Circle, NW, Suite 1100
Washington, D.C. 20005
Tel: (202) 862-5000
Fax: (202) 429-3301
kmaclay@capdale.com
tphillips@capdale.com
kdavis@capdale.com

*Co-Counsel to the Official Committee of
Asbestos Personal Injury Claimants*