

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

<p>In re</p> <p>ALDRICH PUMP LLC, <i>et al.</i>¹</p> <p>Debtors.</p>	<p>Chapter 11</p> <p>Case No. 20-30608 (JCW)</p>
<p>ARMSTRONG WORLD INDUSTRIES, INC. ASBESTOS PERSONAL INJURY SETTLEMENT TRUST <i>et al.</i></p> <p>Plaintiffs,</p> <p>v.</p> <p>ALDRICH PUMP LLC, <i>et al.</i></p> <p>Defendants.</p>	<p>Miscellaneous Proceeding</p> <p>No. 22-00303 (JCW)</p> <p>(Transferred from District of Delaware)</p>

DELAWARE CLAIMS PROCESSING FACILITY’S MOTION TO STRIKE, OR IN THE ALTERNATIVE, MOTION TO CONTINUE HEARING ON DEBTORS’ MOTION FOR RECONSIDERATION

The Delaware Claims Processing Facility (“DCPF”) hereby moves the Court to strike the *Declaration of Charles H. Mullin, PH.D.* [D.I. 55] (the “Mullin Declaration”) submitted in support of the *Debtors’ Motion for Rehearing Concerning the Issue of Sampling on DCPF’s Subpoena-Related Motions* [D.I. 54] (the “Reconsideration Motion”) filed by Aldrich Pump LLC and Murray Boiler LLC (collectively, the “Debtors”) seeking a rehearing on the prior motion to quash filed by the DCPF. Alternatively, the DCPF moves the Court to continue the hearing on 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.



Reconsideration Motion to allow the DCPF sufficient time to depose Dr. Mullin. In support of this Motion, the DCPF respectfully states as follows:

BACKGROUND

1. On April 7, 2022, the Debtors filed their motion for authority to issue subpoenas to the DCPF and other personal injury trusts concerning 12,000 mesothelioma claimants (the “Trust Discovery Motion”).² The Court granted the Trust Discovery Motion on July 1, 2022.³

2. The Debtors served a subpoena on the DCPF on July 5, 2022 (the “Subpoena”).⁴ The DCPF timely filed a motion to quash the Subpoena in the United States District Court for the District of Delaware on July 25, 2022 (the “Motion to Quash”).⁵ The Delaware District Court transferred the Motion to Quash to this Court for hearing.⁶

3. In the Motion to Quash, the DCPF argued, among other things, that the Subpoena should be quashed because it failed to limit the information sought to a 10% sample of claims as required by the Delaware District Court in its prior ruling quashing a similar subpoena issued by Bestwall.⁷

4. On November 30, 2022, the Court held a hearing on the Motion to Quash. At the conclusion of that hearing, the Court issued its ruling that discovery from the DCPF should be limited to a 10 percent random sample of claims.⁸ When announcing its ruling, the Court stated

² *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].

³ *Order Granting 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. 1240].

⁴ Case No. 22-00303 [D.I. 54, ¶ 1].

⁵ *Delaware Claims Processing Facility, LLC’s (I) Motion To Quash Or Modify Subpoena And (II) Joinder*, Case No. 22-00303 [D.I. 4-2].

⁶ Case No. 22-00303 [D.I. 1].

⁷ *See In re Bestwall LLC*, Case No. 17-BK-31795 (LTB), 2021 WL 2209884 (D. Del. June 1, 2021).

⁸ *See* Nov. 30, 2022 Hr’g. Tr. at 76:12-77:10.

that when it approved the Trust Discovery Motion, it had assumed that any subsequent production would be limited to a 10% sample given the Delaware District Court's prior ruling in *Bestwall*.⁹

5. On March 9, 2023, nearly four months after the November 30 hearing on the Motion to Quash, the Debtors filed the Reconsideration Motion and submitted the Mullin Declaration in support.

6. The Mullin Declaration is largely just a rehash of arguments made by the Debtors in support of the Trust Discovery Motion and in opposition to the Motion to Quash. In addition, the Mullin Declaration contains unfounded speculation from Dr. Mullin regarding the burden that the Subpoena imposes on the DCPF.

ARGUMENT

7. The Court should strike the Mullin Declaration for two reasons. First, the Mullin Declaration does not provide any purported evidence that was not available prior to the original hearing on the Motion to Quash. Second, the Mullin Declaration contains numerous speculative statements about which the declarant lacks any personal knowledge.

8. A successful motion for reconsideration under Rule 59(e) requires either: (1) an intervening change in controlling law; (2) new evidence not available at trial; or (3) a clear error of law or the prevention of manifest injustice. *U.S. ex rel. Carter v. Halliburton Co.*, 866 F.3d 199, 210-211 (4th Cir. 2017); citing *Zinkand v. Brown*, 478 F.3d 634, 637 (4th Cir. 2007). Even if the Court's prior ruling is considered interlocutory, the same general standard applies. A motion for reconsideration of an interlocutory order under Rule 54(b) "closely resembles the standard applicable to motions to reconsider final orders pursuant to Rule 59(e), but it departs from such standard by accounting for potentially different evidence discovered during litigation as opposed

⁹ *Id.* at 76:17-21.

to the discovery of new evidence not available at trial.” *US. Tobacco Coop. Inc. v. Big South Wholesale*, 899 F.3d 236, 257 (4th Cir. 2018); quoting *Carlson v. Boston Sci. Corp.*, 856 F.3d 320, 325 (4th Cir. 2017).

9. Accordingly, the only evidence that can be considered in connection with the Reconsideration Motion is evidence that was unavailable at the time of the original hearing on November 30, 2022. The Debtor ignores the applicable standard entirely and makes no argument that the Mullin Declaration could not have been submitted prior to the original hearing. Nor can it. Dr. Mullins’ firm, Bates White, LLC, was retained as the Debtor’s asbestos expert consultants almost three years ago.¹⁰

10. Courts routinely strike declarations submitted in connection with motions for reconsideration when the declarations fail to provide evidence that was previously unavailable. *See Cellairis Franchise, Inc., v. Duarte*, No. 2:15-cv-00101-WCO, 2016 WL 858787, at *1 (N.D. Ga. Mar. 2, 2016) (striking a declaration attached to motion to reconsider because “[t]he court finds that the affidavit proffered by defendant consists entirely of previously available and/or inappropriate assertions”); *ThermoLife International, LLC v. Myogenix Corp.*, No. 13-CV-651-JLS (MDD), 2017 WL 4792426, at *2 (S.D. Cal. Oct. 24, 2017) (striking portions of a declaration in support of a motion for reconsideration that did not present new evidence); *Country Preferred Ins. Co. v. Hurlless*, No. C11-1349RSM, 2012 WL 4127727, at *1 (W.D. Wash. 2012) (striking declarations attached to a motion for reconsideration as irrelevant and noting they could not support the motion because they did not contain new evidence).

¹⁰ See *Ex Parte Order Authorizing the Debtors to Retain and Employ Bates White, LLC as Asbestos Consultants as of the Petition Date*, Case No. 20-30608 [D.I. 64] (June 18, 2020).

11. Furthermore, Dr. Mullin's assertions about the burden of production on the DCPF are pure speculation. *See* Mullin Declaration, ¶¶ 9, 21-25. Dr. Mullin is not an executive, employee, or consultant of the DCPF, nor has he ever been. Dr. Mullin has no knowledge of the specific internal procedures required for the DCPF to comply with the Subpoena and has no basis to testify regarding the burden that would be imposed on the DCPF if it was forced to comply with the Subpoena. Because Dr. Mullin lacks any basis to testify on that issue, the Mullin Declaration should be stricken. *Larouche v. Dept. of the Treasury*, No. CIV.A.91-1655 (RCL), 2000 WL 805214, at *13 (D.D.C. Mar. 31, 2000) (striking a declaration for lack of personal knowledge, irrelevance, and hearsay).

12. Dr. Mullin likewise speculates regarding the meaning of statements provided by his colleague Dr. Gallardo-Garcia in a declaration filed in a separate case. *See* Mullin Declaration, ¶¶ 11, 31-32. In addition to constituting improper speculation regarding statements made by another person, Dr. Mullin's statements regarding Dr. Gallardo-Garcia's prior testimony are nothing more than argument regarding the impact of that prior testimony on the issue before the court. This provides yet another basis to strike the Mullin Declaration. *See Gardner v. Grp. Health Plan*, No. 5:09-CV-00152, 2011 WL 1321403, at *3 (E.D.N.C. Apr. 4, 2011) (striking declaration that contained improper argument).

13. Alternatively, if the Court does not strike the Mullin Declaration, the DCPF requests that the hearing be continued until the April 27, 2023, omnibus hearing date to allow the DCPF sufficient time to depose Dr. Mullin with respect to the arguments contained in the Mullin Declaration. *See Blackwell Publ., Inc. v. Excel Research Group, LLC*, No. 07-12731, 2008 WL 506329, at *1 (E.D. Mich. Feb. 22, 2008) (stating that it was "axiomatic" that a party has the right to depose an affiant or declarant). Although the *Blackwell* decision arose in the context of a motion

for summary judgment, its reasoning is equally applicable here where a ruling on the Reconsideration Motion will resolve all issues with respect to the DCPF.

14. The Reconsideration Motion was filed only two weeks ago, and the hearing on the matter is currently set for next week, March 30, 2023. Thus, there has not been sufficient time for the DCPF to depose Dr. Mullin. For this reason, if the Court denies the DCPF's motion to strike the Mullin Declaration, the hearing on the Motion for Reconsideration should be continued to allow the DCPF sufficient time to depose Dr. Mullin.

CONCLUSION

WHEREFORE, for the reasons set forth above, the DCPF respectfully requests that the Court strike the Mullin Declaration or in the alternative, continue the hearing on the Reconsideration Motion until April 27, 2023.

[signature page follows]

Dated: March 23, 2022

ALEXANDER RICKS PLLC.

/s/ Felton E. Parrish

Felton E. Parrish (NC Bar No. 25448)
1420 E. 7th Street, Suite 100
Charlotte, NC 28204
Telephone: (704) 365-3656
Facsimile: (704) 365-3676
Email: felton.parrish@alexanderricks.com
miller.capps@alexanderricks.com

- and -

YOUNG CONAWAY STARGATT & TAYLOR, LLP

Edwin J. Harron (No. 3396) (admitted *pro hac vice*)
Kevin A. Guerke (No. 4096) (admitted *pro hac vice*)
Travis G. Buchanan (No. 5595)
Roxanne M. Eastes (No. 6654)
Rodney Square
1000 North King Street
Wilmington, Delaware 19801
Telephone: (302) 571-6600
Facsimile: (302) 571-1253
Email: eharron@ycst.com
kguerke@ycst.com
tbuchanan@ycst.com
reastes@ycst.com

Attorneys for Delaware Claims Processing Facility, LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of March, 2023, a true and correct copy of the foregoing was served electronically by the Court's CM/ECF system on those parties that have filed a notice of appearance in this case and have agreed to accept service via CM/ECF.

/s/ Felton E. Parrish

Felton E. Parrish

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re ALDRICH PUMP LLC, <i>et al.</i> ¹ Debtors.	Chapter 11 Case No. 20-30608 (JCW)
ARMSTRONG WORLD INDUSTRIES, INC. ASBESTOS PERSONAL INJURY SETTLEMENT TRUST <i>et al.</i> Plaintiffs, v. ALDRICH PUMP LLC, <i>et al.</i> Defendants.	Miscellaneous Proceeding No. 22-00303 (JCW) (Transferred from District of Delaware)

NOTICE OF HEARING

PLEASE TAKE NOTICE that on March 23, 2023, Delaware Claims Processing Facility, LLC (the “DCPF”) filed the *Motion to Strike, Or In The Alternative, Motion to Continue Hearing On Debtor’s Motion For Reconsideration* (the “Motion”). A copy of the Motion is provided with this Notice of Hearing.

Your rights may be affected by the Motion. You should read the Motion carefully and discuss it with your attorney. If you do not have an attorney, you may wish to consult with one.

PLEASE TAKE FURTHER NOTICE that a hearing will be held on the Motion before The Honorable J. Craig Whitley at the United States Bankruptcy Court, Charles Jonas Federal Building, JCW Courtroom 2B, 401 West Trade Street, Charlotte, North Carolina on **THURSDAY, MARCH 30, 2023 at 9:30 A.M. (ET).**

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.

PLEASE TAKE FURTHER NOTICE that the Court may grant the relief requested in the Motion at said hearing. No further notice will be given.

Date: March 23, 2023

Respectfully submitted,

/s/ Felton E. Parrish

Felton E. Parrish (NC Bar No. 25448)

ALEXANDER RICKS PLLC

1420 E. 7th Street, Suite 100

Charlotte, NC 28204

Phone: (704) 365-3656

Fax: (704) 365-3676

felton.parrish@alexanderricks.com

millier.capps@alexanderricks.com

-and-

Edwin J. Harron (Delaware Bar No. 3396)

Kevin A. Guerke (Delaware Bar No. 4096)

YOUNG CONAWAY STARGATT & TAYLOR, LLP

Rodney Square

1000 North King Street

Wilmington, Delaware 19801

Phone: (302) 571-6600

Fax: (302) 571-1253

eharron@ycst.com

kguerke@ycst.com

Counsel to Delaware Claims Processing Facility, LLC