

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

**DEBTORS' MOTION TO STRIKE PLEADINGS FILED BY
NON-PARTY CERTAIN MATCHING CLAIMANTS**

Aldrich Pump LLC ("Aldrich") and Murray Boiler LLC ("Murray"), as debtors and debtors in possession (together, the "Debtors"), hereby move the Court to strike *Non-Party Certain Matching Claimants' Opposition to the Debtors' Motion for Rehearing Concerning the Issue of Sampling on DCPF's Subpoena-Related Motions* [Docket No.² 63]; *Joinder to Motion of Third Party Asbestos Trusts' Motion for Adjournment and Related Relief* [Docket No. 64] filed on behalf of all Non-Party Certain Matching Claimants in AC&S Asbestos Settlement Trust *et al.* v. Aldrich

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 Unless otherwise specified, references to "Docket No." shall refer to the Miscellaneous Proceeding Case No. 22-00303.



Pump *et al.*, Case No. 23-300; *Joinder to Motion Third Party Motion for Adjournment on Behalf of Verus Trust* [Docket No. 65] filed on behalf of all Non-Party Certain Matching Claimants in AC&S Asbestos Settlement Trust *et al.* v. Aldrich Pump *et al.*, Case No. 23-300; *Joinder to Motion of Third-Party Asbestos Trusts' Motion for Adjournment and Related Relief* [Docket No. 66] filed on behalf of Certain Matching Claimants; *Joinder to Motion of Third-Party Motion for Adjournment on Behalf of Verus Trust* [Docket No. 67] filed on behalf of Certain Matching Claimants; and *Joinder to Non-Party Certain Matching Claimants' Opposition to the Debtors' Motion for Rehearing Concerning the Issue of Sampling on DCPF's Subpoena-Related Motions* [Docket No. 68] filed on behalf of all Non-Party Certain Matching Claimants in AC&S Asbestos Settlement Trust *et al.* v. Aldrich Pump *et al.*, Case No. 23-300 (collectively, the "Certain Matching Claimants' Pleadings").

In support of this Motion, the Debtors respectfully state as follows:

1. On February 6, 2023, the Court entered its *Order Denying Non-Party Certain Matching Claimants' Motion to Proceed Anonymously and Joinder of the Kazan McClain Matching Claimants to Non-Party Certain Matching Claimants' Reply in Support of Motion to Proceed Anonymously* [Docket No. 42] (the "Delaware Proceeding Order") in the proceeding transferred from the District of Delaware. The Delaware Proceeding Order provided that "[t]he requirement that any Movants identify themselves shall be stayed until the 31st day following entry of this Order to permit such Movants (if desired) to seek a stay pending appeal from the district court." Thursday, March 9, 2023, was the thirty-first day following the Court's entry of the Delaware Proceeding Order.

2. While the Non-Party Certain Matching Claimants filed their Notice of Appeal of the Delaware Proceeding Order on February 20, 2023, they did not file their *Motion for Stay*

Pending Appeal [District Ct. Case No. 23-00099, Docket No. 2] until March 8, 2023. The Debtors filed the *Debtors' Opposition to Motion for Stay Pending Appeal* [District Ct. Case No. 23-00099, Docket No. 3] on March 22, 2023. The District Court has not yet ruled on the *Motion for Stay Pending Appeal*.

3. On February 22, 2023, the Court entered its *Order Denying Motion to Proceed Anonymously* [MP 23-00300 Docket No. 21] (the "New Jersey Proceeding Order" and with the Delaware Proceeding Order, the "Orders Denying Anonymity") in the proceeding transferred from the District of New Jersey. Like the Delaware Proceeding Order, the New Jersey Proceeding Order provided that "[t]he requirement that any Movants identify themselves shall be stayed until the 31st day following entry of this Order to permit such Movants (if desired) to seek a stay pending appeal from the district court." Saturday, March 25, 2023, was the thirty-first day following entry of the New Jersey Proceeding Order, making Monday, March 27, 2023, the date when the Certain Matching Claimants should have identified themselves. While the Certain Matching Claimants filed their Notice of Appeal of the New Jersey Proceeding Order on March 7, 2023, they did not file their *Motion for Stay Pending Appeal* [District Ct. Docket No. 2] until March 24, 2023. Responses are due by April 7, 2023. The District Court has not ruled on the *Motion for Stay Pending Appeal*.

4. On March 23, 2023, various groups of Certain Matching Claimants filed the Certain Matching Claimants' Pleadings in opposition to the *Debtors' Motion for Rehearing Concerning the Issue of Sampling on DCPF's Subpoena-Related Motions* [Docket No. 54]. The Certain Non-Matching Claimants did so without identifying themselves despite the stay period's expiration under Orders Denying Anonymity, respectively, along with the Certain Non-Matching Claimants' failure to obtain a stay pending appeal for either.

5. Therefore, the Debtors respectfully request that the Court enforce the Orders Denying Anonymity by striking the Certain Matching Claimants' Pleadings for their failure to identify themselves in said pleadings. In short, without a stay granted by the District Court that would allow the Certain Matching Claimants to remain anonymous, the Certain Matching Claimants were required to identify themselves on the thirty-first day following the Orders Denying Anonymity, respectively. They failed to do so.

6. In fact, when continued anonymous participation occurred by self-styled matching claimants following similar orders in *In re DBMP*, 20-30080 to the Orders Denying Anonymity, this Court confirmed the import of the orders and consequences of failing to obtain a stay in District Court. More specifically:

First, the interpretation of the order requiring the Matching Claimants to identify themselves unless a stay was obtained, I do not agree with the interpretation of the Matching Claimants themselves. What I was doing at that point in time was saying I don't see the grounds either to rule substantively on the, on the motion in their favor nor to grant a stay, but out of an abundance of caution, realizing that once the information is out, then you can't get relief once it's, it's already gone, I would stay my ruling for, for 30 days so that a, a stay could be sought by the, from the District Court. I did not say, intend to say that if you filed the application for a stay at District Court, then it would be stayed until the District Court decided whether there was a stay. That's not in the order and that would be nonsensical under the circumstances. The bottom line is that I didn't see grounds for anonymity and I didn't see grounds that would warrant a stay pending appeal, but, just in case, I'll give you time to run to District Court and see if there's an obvious error made there that they want to stop that matter.

Feb. 9, 2023, *DBMP Trans.* at 91:15-25, 92:1-7, attached hereto as **Exhibit A**. The Court then barred the Certain Matching Claimants from further participation in the proceedings unless they

identify themselves except for an appeal of the Feb. 9, 2023, ruling.³ Feb. 9, 2023, DBMP Trans. at 92:11-14.

7. The Certain Matching Claimants have now moved for relief before this Court and joined relief sought by other parties without identifying themselves as required by the Orders Denying Anonymity, the Federal Rules of Civil Procedure, and applicable case law. In fact, the Certain Matching Claimants filed their pleadings without even requesting permission from this Court to proceed anonymously. The Court should strike the Certain Matching Claimants' Pleadings and deny their requests to intervene.

WHEREFORE, for the foregoing reasons, the Debtors respectfully request that the Court enter an order striking the Certain Matching Claimants' Pleadings, deny their request to intervene, and grant such other and further relief as it deems just and proper.

³ The Court also discussed the importance of knowing the identities of the Certain Matching Claimants:

I have concerns about it, particularly since we have such a large number of potential claimants here and what is essentially as a, a practical matter devolving in these cases into a, a contest of wills between the, the tort firms of America and the corporate community as to how divisional merger bankruptcies are to be pursued and whether it's proper to pursue in these cases. I have no idea who the Matching Claimants are at this juncture. It is possible -- don't overread this -- it is possible that the Matching Claimants are simply a representation of the tort firms themselves protecting their pecuniary interests. That's a possibility.

Feb. 9, 2023, DBMP Trans. at 92:15-25, 93:1.

Dated: March 27, 2023
Charlotte, North Carolina

Respectfully submitted,

/s/ Matthew L. Tomsic

C. Richard Rayburn, Jr. (NC 6357)
John R. Miller, Jr. (NC 28689)
Matthew L. Tomsic (NC 52431)
RAYBURN COOPER & DURHAM, P.A.
227 West Trade Street, Suite 1200
Charlotte, North Carolina 28202
Telephone: (704) 334-0891
Facsimile: (704) 377-1897
E-mail: rrayburn@rcdlaw.net
jmiller@rcdlaw.net
mtomsic@rcdlaw.net

-and-

Brad B. Erens (IL Bar No. 06206864)
Mark A. Cody (IL Bar No. 6236871)
Caitlin K. Cahow (IL Bar No. 6317676)
JONES DAY
110 North Wacker
Chicago, Illinois 60606
Telephone: (312) 782-3939
Facsimile: (312) 782-8585
E-mail: bberens@jonesday.com
macody@jonesday.com
ccahow@jonesday.com

ATTORNEYS FOR DEBTORS AND DEBTORS
IN POSSESSION

-and-

C. Michael Evert, Jr.
EVERT WEATHERSBY HOUFF
3455 Peachtree Road NE, Suite 1550
Atlanta, Georgia 30326
Telephone: (678) 651-1200
Facsimile: (678) 651-1201
E-mail: cmevert@ewhlaw.com
(Admitted pro hac vice)
SPECIAL ASBESTOS LITIGATION COUNSEL
FOR DEBTORS AND DEBTORS IN
POSSESSION

Exhibit A

Excerpt of February 9, 2023, DBMP Hearing Transcript

1 APPEARANCES (continued):

2 For Debtor/Defendant,
3 DBMP LLC:

Jones Day
BY: JEFFREY B. ELLMAN, ESQ.
1221 Peachtree Street, N.E., #400
Atlanta, GA 30361

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Jones Day
BY: JAMES M. JONES, ESQ.
250 Vesey Street
New York, NY 10281

6

7 For Plaintiff, ACC:

Robinson & Cole LLP
BY: DAVIS LEE WRIGHT, ESQ.
1201 N. Market Street, Suite 1406
Wilmington, DE 19801

8

9

10

Winston & Strawn LLP
BY: DAVID NEIER, ESQ.
CRISTINA CALVAR, ESQ.
200 Park Avenue
New York, NY 10166-4193

11

12

13

Caplin & Drysdale
BY: JAMES P. WEHNER, ESQ.
One Thomas Circle, N.W.,
Washington, DC 20005

14

15

Hamilton Stephens
BY: ROBERT A. COX, JR., ESQ.
525 North Tryon St., Suite 1400
Charlotte, NC 28202

16

17

NATHANIEL ROSE, ESQ.

18 For Plaintiff, Future
19 Claimants' Representative,
20 Sander L. Esserman:

Young Conaway
BY: SEAN GREECHER, ESQ.
SHARON ZIEG, ESQ.
1000 North King Street
Wilmington, DE 19801

21

22

Alexander Ricks PLLC
BY: FELTON E. PARRISH, ESQ.
1420 E. 7th Street, Suite 100
Charlotte, NC 28204

23

24

25

1 APPEARANCES (continued):

2 For Defendants, CertainTeed
3 LLC, et al.:

Goodwin Procter LLP
BY: HOWARD S. STEEL, ESQ.
STACY DASARO, ESQ.
620 Eighth Avenue
New York, NY 10018

5

Rayburn Cooper & Durham, P.A.
BY: JOHN R. MILLER, JR., ESQ.
227 West Trade Street, Suite 1200
Charlotte, NC 28202

6

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8 For Certain Matching
9 Claimants:

Waldrep Wall
BY: DIANA SANTOS JOHNSON, ESQ.
370 Knollwood Street, Suite 600
Winston-Salem, NC 27103

10

11 APPEARANCES (via telephone):

12

13 For Certain Matching
14 Claimants:

Hogan McDaniel
BY: DANIEL K. HOGAN, ESQ.
1311 Delaware Avenue
Wilmington, DE 19806

15

16 For Plaintiff, ACC:

Winston & Strawn LLP
BY: CARRIE HARDMAN, ESQ.
200 Park Avenue
New York, NY 10166-4193

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SANDER L. ESSERMAN
Future Claimants' Representative
2323 Bryan Street, Suite 2200
Dallas, TX 75201-2689

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1 order, and, and limit, ultimately, what is being produced to a
2 sample. The, the argument that we're, we have no basis that,
3 that there's no relief that we could be granted is inaccurate.
4 The Court could order that the materials that have been
5 produced could be clawed back, that a sample could be created
6 consistent with what was done in Aldrich Pump, and then from
7 our perspective, that -- that -- that is the, the proper
8 outcome.

9 Unless the Court has any questions for me, I'll rest
10 on my submissions, your Honor.

11 THE COURT: Okay. Thank you very much.

12 All right, folks. Let me see if I can get these in a
13 form that you can use.

14 First, the interpretation of the order requiring the
15 Matching Claimants to identify themselves unless a stay was
16 obtained, I do not agree with the interpretation of the
17 Matching Claimants themselves. What I was doing at that point
18 in time was saying I don't see the grounds either to rule
19 substantively on the, on the motion in their favor nor to grant
20 a stay, but out of an abundance of caution, realizing that once
21 the information is out, then you can't get relief once it's,
22 it's already gone, I would stay my ruling for, for 30 days so
23 that a, a stay could be sought by the, from the District Court.
24 I did not say, intend to say that if you filed the application
25 for a stay at District Court, then it would be stayed until the

1 District Court decided whether there was a stay. That's not in
2 the order and that would be nonsensical under the
3 circumstances. The bottom line is that I didn't see grounds
4 for anonymity and I didn't see grounds that would warrant a
5 stay pending appeal, but, just in case, I'll give you time to
6 run to District Court and see if there's an obvious error made
7 there that they want to stop that matter.

8 So bottom line is since that hasn't happened in that
9 time frame, they didn't see anything egregious.

10 I've listened today and I will, I'm not going to
11 strike the motion to amend, but, rather, I'm not going to allow
12 any more participation by the Matching Claimants unless they
13 identify themselves going forward, save and except for a, a
14 Notice of Appeal of this ruling. The bottom line is I don't
15 think it's proper. I have concerns about it, particularly
16 since we have such a large number of potential claimants here
17 and what is essentially as a, a practical matter devolving in
18 these cases into a, a contest of wills between the, the tort
19 firms of America and the corporate community as to how
20 divisional merger bankruptcies are to be pursued and whether
21 it's proper to pursue in these cases.

22 I have no idea who the Matching Claimants are at this
23 juncture. It is possible -- don't overread this -- it is
24 possible that the Matching Claimants are simply a
25 representation of the tort firms themselves protecting their

1 pecuniary interests. That's a possibility. What we have, I
2 was asking these questions in Aldrich of why do you care so
3 much about the estimation and, and someone acknowledged that
4 part of this was the fear that they were going to get tarred
5 with the, with the Garlock brush that, of making
6 nondisclosures.

7 So there, there are interests apart from the clients'
8 interests here. The general rule in Federal Court is that your
9 opponents need to know who you are. None of the exceptions to
10 that Rule apply here. I don't see any reason for a stay and
11 I'm going to have to enforce my earlier order.

12 So if you -- I'm leaving the motion to amend and the
13 briefing that's allowed. That can stay. Anything further,
14 unless the District Court chooses to grant you a stay pending
15 appeal, I'm going to have to at that point just decline to hear
16 you. All right. That's the first part.

17 As to the, the merits of the, the order, that could be
18 the end of it, but I'm going to go ahead and address these so
19 that we don't have to, if the District Court feels otherwise,
20 we don't have to have a remand to consider it further.

21 As to standing, again I don't see an undue burden on
22 the claimants. In fact, let me back up one step farther.

23 Did the Court understand the arguments that were made
24 in this case at the time they were made? As the record
25 reflects, we obviously had a good bit of interaction with

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Plaintiffs,

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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

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that Aldrich Pump LLC., et al., Debtors in the above-captioned cases, have filed the Debtors' Motion to Strike Pleadings Filed by Non-Party Certain Matching Claimants (the "Motion").

If a copy of the Motion is not included with this Notice, a copy may be viewed at the Court's website, www.ncwb.uscourts.gov under Debtor Aldrich Pump LLC's name and case number, you may obtain a copy of the Motion from the Debtors' claims and noticing agent at www.kccllc.net/aldrich, or you may request in writing a copy from the undersigned counsel to the Debtors.

YOUR RIGHTS MAY BE AFFECTED. YOU SHOULD READ THESE PAPERS CAREFULLY AND DISCUSS THEM WITH YOUR ATTORNEY, IF YOU HAVE ONE IN THESE BANKRUPTCY CASES. (IF YOU DO NOT HAVE AN ATTORNEY, YOU MAY WISH TO CONSULT ONE.)

IF YOU DO NOT WANT THE COURT TO GRANT THE RELIEF REQUESTED

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.

IN THE MOTION, OR IF YOU WANT THE COURT TO CONSIDER YOUR VIEWS ON THE MOTION, THEN ON OR BEFORE WEDNESDAY, MARCH 29, 2023 YOU MUST:

- (1) A. File with the Bankruptcy Court a written objection at:

Clerk, United States Bankruptcy Court
401 W. Trade Street
Charlotte, North Carolina 28202

- B. If you have your attorney file a written objection then the objection should be filed with the Bankruptcy Court by electronic means through the Court's website, www.ncwb.uscourts.gov under the jointly administered name and case number shown above.

- (2) Serve the objection pursuant to the procedures set forth in the Order Establishing Certain Notice, Case Management, and Administrative Procedures (Docket No. 123).

- (3) Attend the hearing scheduled for March 30, 2023, at 9:30 a.m. EDT or as soon thereafter as the matter can be heard in the Bankruptcy Courtroom 2B, 401 West Trade Street, Charlotte, North Carolina. You should attend this hearing if you file an objection.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought and may enter an Order granting the relief requested. No further notice of that hearing will be given.

This the 27th day of March, 2023.

RAYBURN COOPER & DURHAM, P.A.

/s/ Matthew L. Tomsic

Matthew L. Tomsic
N.C. State Bar No. 52431
1200 Carillon, 227 W. Trade Street
Charlotte, North Carolina 28202
Telephone: 704-334-0891

ATTORNEYS FOR DEBTORS