

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

DECLARATION OF MORGAN R. HIRST

I, Morgan R. Hirst, hereby declare under penalty of perjury:

1. I am a partner of the law firm of Jones Day; my office is located at 110 North Wacker Drive, Suite 4800, Chicago, Illinois 60606. I am a member in good standing of the Bar of the State of Illinois. There are no disciplinary proceedings pending against me.

2. I submit this declaration in connection with *Debtors' Reply in Support of Their Motion for Rehearing Concerning the Issue of Sampling on DCPF's Subpoena-Related Motions*, 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 excerpts from 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.



transcript of the February 14, 2023 hearing in In re Aldrich Pump LLC, No. 20-30608 (JCW) (Bankr. W.D.N.C.), Armstrong World Industries, Inc. Asbestos Personal Injury Settlement Trust v. Aldrich Pump LLC, Misc. No. 22-00303 (JCW) (Bankr. W.D.N.C.), and AC&S Asbestos Settlement Trust v. Aldrich Pump LLC, Misc. No. 23-00300 (JCW) (Bankr. W.D.N.C.).

4. Attached hereto as **Exhibit B** is a true and correct copy of excerpts from the transcript of the January 6, 2023 hearing in In re Paddock Enterprises LLC, No. 20-10028 (LSS) (Bankr. D. Del.).

5. Attached hereto as **Exhibit C** is a true and correct copy of excerpts from the transcript of the February 9, 2023 hearing in In re DBMP LLC, No. 20-30080 (JCW) (Bankr. W.D.N.C.) and The Armstrong World Industries, Inc. Asbestos Personal Injury Settlement Trust v. DBMP LLC, Misc. No. 22-00302 (JCW) (Bankr. W.D.N.C.).

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: March 27, 2023
Chicago, IL

Respectfully submitted,

/s/ Morgan R. Hirst

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EXHIBIT A

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UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

IN RE: : Case No. 20-30608 (JCW)
(Jointly Administered)
ALDRICH PUMP LLC, ET AL., :
Debtors, : Chapter 11
 : Charlotte, North Carolina
 : Tuesday, February 14, 2023
 : 1:00 p.m.

: :

ARMSTRONG WORLD INDUSTRIES, : Miscellaneous Pleading
INC. ASBESTOS PERSONAL INJURY : No. 22-00303 (JCW)
SETTLEMENT TRUST, et al., : (Transferred from District
 of Delaware)
Plaintiffs, :

v. :

ALDRICH PUMP LLC, et al., :
Defendants, :

: :

AC&S ASBESTOS SETTLEMENT : Miscellaneous Pleading
TRUST, et al., : No. 23-00300 (JCW)
 : (Transferred from District
Petitioners, : New Jersey)

v. :

ALDRICH PUMP LLC, et al., :
Respondents, :

VERUS CLAIM SERVICES, LLC, :
Interested Party, :

NON-PARTY CERTAIN MATCHING :
CLAIMANTS, :
Interested Party. :

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

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Audio Operator:	COURT PERSONNEL
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1 explain it.

2 I would like an opportunity to very quickly talk about
3 the LTL decision, your Honor, because that came up in DBMP.
4 And we can do it now or we can do it later, whenever's
5 appropriate for the Court.

6 THE COURT: Let's hold off on that.

7 MR. GUY: Thank you, your Honor.

8 THE COURT: Let's stick to the cases I actually have.

9 And along the same lines -- I'm sure most of you know
10 it, but if not -- the Fourth Circuit ruled today in Kaiser
11 Gypsum, so.

12 All right. Mr. Evert.

13 MR. EVERT: Thank you, your Honor.

14 I, I guess I will beg the Court's deference and, and
15 digress for one minute and thank Ms. Ramsey for, as I
16 understand, these are, these are Valentine's Day, I don't know,
17 stress balls, which I think we, I think we could all probably
18 use. And I don't know if you got yours, but I do want to say
19 the debtors have no objection to the ACC providing --

20 THE COURT: I think I'm fine.

21 MR. EVERT: -- one to, to the Court, but very nice.

22 So yes, your Honor, we, we've been engaged in
23 extensive dialogue with the, with the ACC in regard to the
24 FCR's motion for sampling of the claims files and a methodology
25 for that. Based on an exchange we had last Friday afternoon,

1 we, late on this past Friday, we appear to be in agreement on a
2 sampling methodology. And when I, when I say that what we're
3 really talking about is we've reached agreement on the, on the
4 number of claims that will be sampled, on the time period
5 covered by the sample of the claims files, and the four strata
6 that will be used from which to draw the random stratified
7 sample, and the parameters of sampling of the so-called high-
8 value claims which, obviously, is where a lot of the dollars
9 are aggregated. So they're sampled at a higher rate than other
10 strata. We haven't yet discussed exactly how the ran, and the
11 strata where random sampling occurs, exactly how that's going
12 to occur, but that shouldn't be a big barrier. That's, that's
13 a randomization process that I think we'll be able to work out.

14 Where we are still sticking is when the, when we got
15 the communication from the ACC on Friday they proposed a
16 condition that we had not previously discussed in the
17 negotiations that doesn't go to the methodology, but goes to
18 another issue and I don't, I don't think it's appropriate. I'm
19 not -- I don't -- I don't want to try to get the Court in the
20 middle of our negotiations. I don't want to --

21 THE COURT: Okay.

22 MR. EVERT: But the, the point, it's a material term
23 that we've got to, we've got to understand and evaluate. So
24 the ball's in our court to get back to them on that.

25 But, but I will say, your Honor, that, I mean, the

1 discussions have been very productive. The parties have worked
2 very well together. Maybe, maybe, which has not been a, a
3 hallmark of this particular case. So maybe that's a, a reason
4 for some optimism and, and we'll try to work through this last
5 issue, but we'll, we'll continue to do that.

6 So that's really, from the debtors' perspective,
7 that's where we are.

8 THE COURT: Ms. Ramsey.

9 MS. RAMSEY: Thank you, your Honor. Natalie Ramsey
10 for the Committee.

11 I agree with Mr. Evert's presentation and have nothing
12 to add today.

13 THE COURT: Okay.

14 Anyone else?

15 MR. GUY: Your Honor, so technically, the motion has
16 been continued. We've been involved in these discussions not
17 taking a lead, but monitoring it. We're very much appreciative
18 that Ms. Ramsey and Evert have been able to get 99 percent of
19 the way there, but I would ask that we just sort of keep it
20 open until we're a hundred percent there.

21 THE COURT: Okay.

22 So that March 30th date, you want it?

23 MR. GUY: Yes, your Honor.

24 THE COURT: Everyone good there?

25 MR. GUY: And the -- and your Honor --

1 Is there no one else at your firm who could handle
2 the, the argument or Mr. Parrish, either one?

3 MR. GUERKE: I don't think so, your Honor, but I'd be,
4 be happy to look into it.

5 THE COURT: Okay.

6 Well, the, the problems we run into, folks, in these
7 cases are that there's so many of you and so many attorneys
8 working on the files that if we start picking out and changing
9 hearing dates based on one person, well, there'll be no end of
10 it. I'll just refer you since I mentioned the Kaiser case of
11 all the efforts that were made by the parties to schedule a
12 hearing with the Fourth Circuit and how many conflicts were,
13 were noted there. I just don't think on a retail level doing
14 these cases month to month that I can do anything, but say
15 we've got local counsel for a reason and it's not just to, to
16 earn a *pro hac vice* fee for the, for the District Court's
17 coffers. It's basically so that if there is a need to stand
18 in.

19 So I would suggest that you -- you've got plenty of
20 time to prepare. If there's going to be a rehearing motion --
21 and that's sort of what I think it is since I announced a
22 ruling, but nothing written has been entered. So I, I would
23 view it as a rehearing motion -- let's go ahead and do that on
24 the 30th and just send who you can, all right? Okay.

25 MR. GUERKE: Understood. Thank you, your Honor.

EXHIBIT B

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: . Chapter 11
. Case No. 20-10028 (LSS)
PADDOCK ENTERPRISES, LLC, .
. .
. Courtroom 2
. 824 Market Street
Debtor. . Wilmington, Delaware 19801
. .
. Friday, January 6, 2023
. 9:58 a.m.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE LAURIE SELBER SILVERSTEIN
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MOTIONS:

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Agenda

Item 1: Supplemental Brief and Motion for Stay of Discovery of the Owens-Illinois Asbestos Personal Injury Trust, the Owens-Illinois Asbestos Trust Advisory Committee, and the Court-Appointed Future Claimants' Representative in Response to the Court's Letter Ruling [Docket No. 1657 - filed November 28, 2022]

Court's Ruling: 113

Transcriptionist's Certificate 118

1 a huge volume of information and they thought three months to
2 complete the work.

3 And the reason they gave them three months is
4 because they didn't want this material just hanging around in
5 files for a decade. I mean, like for example, the Bestwall
6 case has been going on since 2017, I think.

7 THE COURT: A long time.

8 MR. PHILLIPS: I mean, if they get this
9 information, what if that case goes on for ten years? Do we
10 really want this vulnerable elderlies' information sitting in
11 files and on -- I don't know, on whatever data sources that
12 could be -- I don't know where it would go, but I know that
13 the longer it's there, the more of an opportunity there is
14 for mischief.

15 So the three months, I think the reason they did
16 that -- and I was -- you know, I was involved in those
17 cases -- I think the three months was that it was to protect
18 the privacy of these people's information. Three months, if
19 it's there longer, the longer it's there, the more dangerous
20 it is.

21 So that's why I would suggest that we have a very
22 finite limit. We think three months is appropriate because
23 that's what they did in Honeywell. An indefinite until the
24 end of the case is completely inappropriate, in our view,
25 because that -- I mean, what if the end of the case is in ten

1 years? I mean, some of the asbestos bankruptcies, as you are
2 well aware, lasted 15 years. I don't think it's appropriate
3 for this claimant data to be sitting in North Carolina
4 debtors' files for 15 years, that to me is inconsistent with
5 protecting and appreciation the security interests of that
6 data.

7 THE COURT: How is that different than it sitting
8 in Paddock's files for the next 20 years?

9 MR. PHILLIPS: I don't -- Paddock is in the
10 process of transferring it all to the trust.

11 THE COURT: Okay, or this trust's for the next 20
12 years?

13 MR. PHILLIPS: Well, the Trust has a different --
14 I mean, I don't want to malign the North Carolina debtors,
15 but the trusts have a very different incentive to protect
16 that data.

17 THE COURT: But I don't know that it does or it
18 doesn't. I mean, that's -- it seems to me that -- and maybe
19 a finite time is appropriate, but it seems to me that we deal
20 with this Court, the court across the street, many courts
21 deal with sensitive information -- it's not privileged, but
22 it's sensitive -- in discovery situations all the time.

23 MR. PHILLIPS: I appreciate that.

24 THE COURT: And I do think this information is
25 sensitive and that is -- it has to be protected, but we deal

1 with it all the time and we deal with it through protective
2 orders. We assume the good faith, quite frankly, of the
3 people who are -- who have access to that information and, if
4 we can't depend on the good faith of the people who have
5 access to the information, then that just throws the whole
6 scheme out.

7 MR. PHILLIPS: I appreciate that, Your Honor.
8 Having worked with the trusts for a number of years, I know
9 that they have very -- they have specific protocols and
10 security in place for their doc -- like, they actually -- I
11 know that they have protections in place, I'm just not
12 comfortable. I don't know what Bates White -- I just don't
13 know what they do to protect their data.

14 So it's hard for me to say that it's going to be
15 safe sitting in their files for a number of years, but I
16 appreciate what you're saying that relying on the good faith,
17 but I will say that the longer it sits, the more of a chance
18 there is for hacks and for data breaches and that kind of
19 thing.

20 THE COURT: It clearly is. The more it sits
21 anywhere, there is a chance that anybody can be hacked, but
22 just as your firm may get confidential information and
23 discovery in cases that you're working on and your employees
24 get to look at it and whoever gets to look at it, you know,
25 we trust that your firm is going to handle it appropriately

1 and understand their obligations, and I'm a little hesitant
2 to suggest that that's not going to happen here.

3 MR. PHILLIPS: If you are uncomfortable with the
4 three months period, I would -- I would suggest that Your
5 Honor create a longer period, if possible, that is still
6 shorter than until the end of the case.

7 THE COURT: Well, I'll ask the other side --

8 MR. PHILLIPS: Okay.

9 THE COURT: -- about some kind of restriction on
10 time.

11 MR. PHILLIPS: But I do think the three-month
12 period gives them enough time and I think it would -- it
13 would allow this material -- it would at least give some
14 comfort to the idea that this material may be protected.

15 Okay, neutral third --

16 THE COURT: But let me -- I'm looking at this
17 again. Claim data must be destroyed three months after
18 production. So that's all that has to be destroyed from
19 all -- from everything?

20 MR. PHILLIPS: Yeah, the claims data destroyed.

21 THE COURT: I don't understand how that's
22 feasible. I don't know what happened. I'm interested in
23 what in the Garlock case. But that means that, if they get
24 it for a three-month period and then you have to destroy all
25 the data --

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CERTIFICATION

We certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of our knowledge and ability.

/s/ William J. Garling January 9, 2023

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1 for this motion.

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

4 MR. HOGAN: The Matching Claimants believe that it is
5 appropriate in these circumstances, considering those findings
6 and rulings that you issued in Aldrich Pump on November 30th
7 where nearly identical arguments were raised, for the Court to
8 reconsider its order regarding the motion to quash as it
9 relates to the Matching Claimants.

10 In, in ruling in Aldrich, your Honor, you'll recall
11 that you expressed concern regarding the confidential and
12 sensitive nature of the information that was sought in the
13 subpoenas. The Court indicated that it was sensitive to the
14 disclosures of non-party information and that it wanted to
15 reduce harm as much as possible. The Court also noted the
16 economic and privacy concerns implicated by the expansive
17 nature of the request in Aldrich Pump.

18 It's our argument, your Honor, that the results in
19 Aldrich Pump conflict with and run contrary to the order that
20 you entered in this case, primarily because of the same privacy
21 and economic considerations that we have in this case. At that
22 hearing, your Honor, you indicated that your position on the
23 issue of random sampling of data had changed after hearing
24 arguments of counsel in Aldrich Pump. I'm not going to quote
25 you back what you said at that, in that transcript, your Honor,

1 but if you look at Page 76, 13 to 21, you'll see that you had
2 indicated that, that the arguments had gotten through to you on
3 sampling and the need for sampling. Accordingly, it's our
4 position that the Court misunderstood the implications of
5 compliance with the DBMP orders and we believe it's, it's
6 critical where the Court misapprehends the parties' position
7 that reconsideration is appropriate.

8 It's a pretty discrete argument, your Honor, but let
9 me, if I could, address some of the arguments that had been
10 made in anticipation of what you're going to hear from DBMP.

11 THE COURT: Okay.

12 MR. HOGAN: They indicated initially that the Matching
13 Claimants never made the arguments that we seek to pursue now
14 in, in denying the motion to quash, okay? We believe that that
15 argument blatantly ignores the realities of these proceedings.
16 The Matching Claimants have joined in the motion to quash the
17 DBMP subpoenas and specifically joined in the objections
18 surrounding the issue of sampling that were made by the Trusts.
19 The fact that the Trusts later withdrew those, their motion to
20 quash doesn't change the fact that we had joined and made those
21 arguments. Joinders are generally allowed, as the Court's well
22 aware.

23 The Court should also reject the conclusory argument
24 that DBMP made regarding the anonymity order, your Honor.
25 You'll recall that the argument that they made was that because

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CERTIFICATE

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

/s/ Janice Russell

February 13, 2023

Janice Russell, Transcriber

Date