

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.

In re

ALDRICH PUMP LLC, *et al.*,¹

Debtors.

Miscellaneous Proceeding

No. 22-00303 (JCW)

(Transferred from District of Delaware)

Chapter 11

Case No. 20-30608

DEBTORS' OPPOSITION TO VERUS CLAIM SERVICES, LLC'S AND THE VERUS TRUSTS' MOTION FOR ADJOURNMENT AND RELATED RELIEF

Regrettably, this Court is once again forced to weigh in on motion practice filed by various claims processing services and related asbestos trusts attacking subpoenas served by Aldrich Pump LLC ("Aldrich") and Murray Boiler LLC ("Murray"), as debtors and debtors in possession (together, the "Debtors"). This time, the movants are Verus Claims Services, LLC ("Verus") and various trusts for whom Verus processes claims (the "Verus Trusts"),² who have filed essentially identical Motions for Adjournment and Related Relief [Dkts. 61 and 58]. The Motions seek two

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 The Verus 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



forms of relief: (a) the right of Verus and the Verus Trusts to be heard at the March 30, 2023 hearing on the Debtors' Motion for Rehearing directed at this Court's November 30 oral ruling limiting the Debtors to a sample for subpoenas directed to Delaware Claims Processing Facility ("DCPF") and (b) a continuance of the Motion for Rehearing to the April omnibus.

The Debtors have no objection to the first request. Verus and the Verus Trusts previously filed motions to quash, raising arguments concerning the supposed need for sampling that were nearly identical to those that were presented by DCPF and that are the subject of the Motion for Rehearing. Those motions to quash are fully briefed, and are also set to be heard on March 30, 2023 at the same time as the Motion for Rehearing. The Debtors fully anticipated that Verus and the Verus Trusts would be heard on the issues of the propriety of sampling on March 30, whether in the context of the Motion for Rehearing, the Motions to Quash, or both.

The Debtors do object, however, to the second request in the Motion seeking a continuance of the Motion for Rehearing. The subpoenas at issue were served in July. The motions to quash filed by the Verus parties were fully briefed in October, and have been on this Court's docket since January. The Debtors previewed to Verus and the Verus Trusts in early February, before the last omnibus hearing, that they intended to schedule their motions to quash to be heard at the March 30 omnibus, and they also intended to seek rehearing on this Court's November 30, 2022 ruling concerning sampling regarding the DCPF subpoenas, also to be heard at the March 30 omnibus. The Debtors announced the very same thing in open court at the February 14, 2023 hearing, a hearing Verus and the Verus Trusts did not attend, despite the fact that their motions to quash were on the agenda. It is time to bring closure to these serial subpoena fights, and allow the Debtors to move forward with their estimation cases.

BACKGROUND

1. On July 5, 2022, the Debtors served subpoenas on Verus and the Verus Trusts, seeking claims information that this Court has deemed relevant and necessary to this bankruptcy proceeding.

2. In August 2022, Verus, the Verus Trusts, and certain unidentified matching claimants (the "Matching Claimants," and with Verus and the Verus Trusts, the "Verus Parties") moved to quash those Subpoenas in the District of New Jersey (the "Motions to Quash"). *See AC&S Asbestos Settlement Tr. v. Aldrich Pump*, Case No. 22-CV-05116 (D.N.J.) [Dkts. 1, 5, 13]. In their Motions to Quash, the Verus Parties requested that if the Subpoenas were not entirely quashed, they be limited to a 10 percent sample. *See id.* [Dkt. 1] at 4–5, 22–25, [Dkt. 5] at 9–11. The Verus Parties based their request for sampling on the alleged burden imposed in complying with the full Subpoenas, and the alleged confidentiality concerns implicated by the data to be produced. *See id.* In addition, the Debtors filed a motion to transfer, seeking to have the Motions to Quash transferred to this Court (the "Motion to Transfer"). Briefing was completed on both the Motions to Quash and the Motion to Transfer in October.

3. Shortly after this Court's November 30, 2022 oral ruling limiting the Debtors to a 10 percent sample on their identical subpoenas served on DCPF, the Verus Parties approached the Debtors about potentially consenting to transfer. All negotiations were conducted by email, and are contained in Exhibit B to the Verus Trusts' Motion. *See* Declaration of Lynda A. Bennett [Dkt. 58] (the "Bennett Decl."), Ex. B.

4. The Verus Parties' first proposal was that they would withdraw their opposition to the Motion to Transfer if "all parties to the subpoenas at issue in this matter will be subject to the same 10 percent sampling requirement that Judge Whitley recently imposed in another matter

involving your clients in North Carolina." *Id.* at 6, Email of Lynda Bennett to Counsel, Dec. 19, 2022 at 12:26 p.m.

5. The Debtors rejected this request. Instead, the Debtors proposed that, in exchange for the Verus Parties' consent to transfer, the Debtors would "agree that any production pursuant to said subpoenas *will be made consistent with whatever rulings Judge Whitley has made or makes in regard to the terms of compliance/production associated with our virtually identical subpoenas on DCPF and its member Trusts.*" *Id.* at 5, Email of Michael Evert to Lynda Bennett, Dec. 20, 2022 at 11:09 a.m. (emphasis added).

6. Counsel for the Verus Trusts responded that the Debtors were simply "repeating my proposal back to me" and that she would agree on that basis. *Id.* at 4, Email of Lynda Bennett to Michael Evert, Dec. 20, 2022 at 11:16 a.m. The Debtors, concerned that counsel for the Verus Trusts had misunderstood the difference between what the Verus Parties had proposed and what the Debtors were proposing, sent an email back two hours later, clarifying that their proposal was "different than the one you provided yesterday and want to ensure there is no confusion before the parties agree to resolve the transfer motion." *Id.* at 3, Email of Morgan Hirst to Lynda Bennett, Dec. 20, 2022 at 1:05 p.m. Instead, the Debtors made clear that their proposal was that "Verus and the Trusts (with the Matching Claimants' agreement) will, in responding to the Subpoenas, abide by the same production specifics (including the terms of any sample) *ultimately ordered by Judge Whitley concerning the DCPF subpoenas.*" *Id.* (emphasis added).

7. The parties agreed to the transfer on that basis, and prepared a consent order memorializing the same. That order specifically provided that transfer was granted, and that:

The Respondents, Trusts, Verus, and Matching Claimants agree that any production pursuant to the Subpoenas will be made consistent *with any rulings the Honorable J. Craig Whitley has made or makes* regarding the terms of compliance and/or production

associated with the similar subpoenas issued by Respondents to Delaware Claims Processing Facility and its member trusts in the underlying action pending in the United States Bankruptcy Court for the Western District of North Carolina.

See Misc. Proceeding Case No. 23-00300, [Dkt. 1] ¶ 2 (emphasis added). The New Jersey Court signed the order on January 5, 2023, and the transfer was effectuated on January 11, 2023. *Id.*

8. Subsequent to the transfer, the Motions to Quash were placed on this Court's docket and placed on agenda for both the January 26, 2023 and February 14, 2023 omnibus hearings. *Id.* [Dkts. 11, 15].

9. On February 10, 2023 the Debtors notified counsel for that the Verus Parties that: (a) they were considering filing a motion on or before March 9 seeking reconsideration of the Court's November 30, 2022 oral ruling ordering a 10 percent sample in response to the DCPF subpoena, with a hearing on that motion to be set for March 30, 2023; (b) they would also schedule the Verus Parties' Motions to Quash for hearing on March 30, 2023; and (c) they intended to inform this Court of their intentions at the February 14, 2023 omnibus hearing. *See* Bennett Decl. Ex. C, Email of Morgan Hirst to Counsel, Feb. 10, 2023 at 11:33 AM.

10. As previewed in their February 10 email, at the February 14, 2023 omnibus hearing, the Debtors informed the Court of their intention to seek rehearing on the Court's November 30 oral ruling, and further informed the Court of their intention to set that to-be-filed motion, along with the Verus Parties' Motions to Quash, for hearing on March 30, 2023. *See* Feb. 14, 2023 Hearing Trans. at 24–26, attached as Exhibit A to the Declaration of Morgan Hirst. Despite the preview provided by the Debtors on February 10 and the fact that their Motions to Quash were on the agenda for that day, none of the Verus Parties appeared at the February 14, 2023 hearing.

11. The Debtors filed that Motion for Rehearing on March 9, 2023 and set it for hearing on March 30, 2023. *See* [Dkt. 54].

ARGUMENT

12. Although it is unfortunate that fully transparent e-mail communications and statements in open court are somehow leading to a dispute, the issues are quite simple.

13. First, the Debtors have never taken the position that Verus and the Trusts do not have a right to be heard on the issue of sampling or the Motion for Rehearing. The Verus Parties have all filed Motions to Quash the Debtors' Subpoenas, seeking to limit the Subpoenas to a 10 percent sample based on the alleged burdens of complying and confidentiality concerns. The Verus Parties' positions are similar to the ones that DCPF took in support of its own motion to quash, and nearly the exact same positions that will be litigated in the Motion for Rehearing. The Verus Parties' Motions to Quash have been fully briefed since October, have been on this Court's docket since January, and are scheduled to be heard at the March 30, 2023 omnibus, at the same time the Motion for Rehearing will be argued. The Verus Parties have been heard, on the issue of sampling, through their Motions to Quash. The Verus Parties will be heard, again, on the issue of sampling on March 30—whether it be in support of their own Motions to Quash, in opposition to the Debtors' Motion for Rehearing, or both. The Verus Parties have received and will receive more than ample opportunity to be heard on these issues, and the suggestion of some due process violation is preposterous.

14. Second, for similar reasons, there is absolutely no basis to adjourn or continue the Motion for Rehearing. The Subpoenas at issue were served nearly nine months ago. The Verus Parties' Motions to Quash, which, again, raise nearly the exact same sampling issues that are presented in the Motion for Rehearing, have been fully briefed for nearly six months. Those Motions to Quash were transferred to this Court in early January, and have been on the agenda for the last two hearings, and continued both times. More than six weeks ago, the Debtors informed the Verus Parties of their intention to: (1) have the Motions to Quash argued at the March 30, 2023

hearing; (2) file the Motion for Rehearing; and (3) have the Motion for Rehearing also argued at the March 30, 2023 hearing. The fact that the Verus Parties chose to hire local counsel this week is a problem entirely of their own making. It is time for the seemingly endless delay tactics of the various Subpoena recipients to end, and for resolution of the Debtors' Subpoenas to occur.

15. Third, and finally, the Verus Parties' suggestion that they misunderstood the terms of the deal they struck in agreeing to transfer to this Court is meritless. The terms of the agreement are in black and white, both in the District of New Jersey's Court Order transferring this case, and in the email correspondence between the parties. And those terms are clear:

The Respondents, Trusts, Verus, and Matching Claimants agree that any production pursuant to the Subpoenas will be made consistent *with any rulings the Honorable J. Craig Whitley has made or makes* regarding the terms of compliance and/or production associated with the similar subpoenas issued by Respondents to Delaware Claims Processing Facility and its member trusts.

See Misc. Proceeding Case No. 23-00300, [Dkt. 1] ¶ 2 (emphasis added). There should be no misunderstanding as to the agreement that was reached. The Debtors anticipate that at the March 30, 2023 hearing, this Court will fully and finally resolve the issue of sampling concerning the subpoenas issued both to the DCPF parties and the Verus parties.

CONCLUSION

16. For the foregoing reasons, the Debtors respectfully request that the Motions for Adjournment be granted in part and denied in part. The Debtors have no objection (though believe it is unnecessary, given the pendency of their own Motions to Quash arguing the identical issues) to the Verus Parties' intervention, and further consent to the Verus Parties' right to be heard on the Motion for Rehearing. The Court should, however, deny any continuance of either the Verus Parties' Motions to Quash or the Debtors' Motion for Rehearing, scheduled to be heard on March 30, 2023.

Dated: March 27, 2023
Charlotte, North Carolina

Respectfully submitted,

/s/ John R. Miller, Jr.

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

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Proceedings recorded by electronic sound recording; transcript
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1 MR. EVERT: So obviously, whatever direction the Court
2 has to the clerk on that is, is, is fine with us, but that's, I
3 have no more status on No. 9.

4 THE COURT: Right.

5 MR. EVERT: As to Items No. 3 through 8, we, we
6 reached out to the Trusts to ascertain whether they wanted to
7 participate in our discussions with the ACC over sampling and
8 they indicated that they did not have any new proposals that
9 they wanted to raise and they wanted to follow discussions and,
10 and reserve all rights.

11 So although the -- so the Trusts have not been
12 involved in those discussions.

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

15 MR. EVERT: And I -- and I -- I don't -- I don't know
16 how to characterize it beyond that other than there -- there
17 were --

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

20 MR. EVERT: I, I don't know if they're communicating
21 with the ACC or not.

22 THE COURT: Uh-huh (indicating an affirmative
23 response).

24 MR. EVERT: As the, as the Court knows and as I
25 probably irritatingly made evident at our last hearing, we, we

1 disagree with the Court's ruling on, on sampling for the trust
2 discovery. We don't think it's appropriate. So we've, we've
3 continued to ponder it with our client, your Honor. And so
4 last Friday we, or Friday just a, Friday morning a few days
5 ago, we advised the ACC and the Trusts that our, our current
6 intention is to move for reconsideration of that particular
7 order. And I call it a motion for reconsideration. I guess
8 that's what it is. The Court --

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

11 MR. EVERT: -- ruled orally. No order has been
12 entered. So --

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

15 MR. EVERT: -- maybe we can talk about that in a
16 minute. But -- and, and obviously, I talked a little bit about
17 it at the last hearing and you don't want to hear it again. So
18 I'm not going to belabor where the, where the disagreement is.

19 But our intention would be to make that motion
20 according to the schedule for the March 30 hearing, which would
21 be filing the motion or whatever we call it and at the Court's
22 preference by March 9th. And we thought it important to, to
23 notify the ACC, in particular, that we were considering that
24 because obviously, we were in the midst of negotiations about a
25 sample and, and our goal, as we said at the time, has been to,

1 to try to hear the Court and try to work on sampling, although
2 we don't feel like it's appropriate in this particular
3 instance. And the ACC acknowledged that, that we'd let them
4 know and said they certainly reserve their right to oppose and
5 would oppose, in all likelihood, any, any motion for
6 reconsideration.

7 Now technically, and, and sort of going back to the
8 agenda, there are a number of New Jersey matters, which you'll
9 see starting at No. 6, that relate to Verus --

10 THE COURT: Right.

11 MR. EVERT: -- that are still pending, motions to
12 quash and related. And of course, these are highly similar
13 motions to quash that the Court heard and, and has already
14 heard in Items 3 through 5, which are the --

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

17 MR. EVERT: -- DCPF motions.

18 So we're talking about two different trust -- and I
19 know the Court knows this, but just to be clear -- we're
20 talking about two different trust claims facilities' highly
21 similar motions, one of which the Court has tentatively ruled
22 on or orally ruled on, I should say, denying the motion to
23 quash, but granting, with the exception of granting the 10
24 percent sample.

25 THE COURT: Uh-huh (indicating an affirmative

1 response) .

2 MR. EVERT: And the others have not been ruled upon.
3 And so we, we would anticipate setting those remaining Verus
4 motions for hearing at the same time any reconsideration is
5 heard. So let me, let me come back to that in just a second.

6 When we advised the ACC and the Trusts that we were
7 considering this motion to reconsider, we also said at the time
8 and still believe that we should absolutely continue with great
9 vigor these discussions about sampling to be ready to report to
10 the Court on March 30. Because, for a number of reasons, not
11 the least of which is if we do reconsider and the Court denies
12 it, then we're going to need a sampling methodology and
13 likewise, I think we're all in agreement that claims files,
14 whether it's our claims files that are currently the subject of
15 some discovery from the ACC or whether it's the claimants'
16 claim files that the debtors may discover in the future or some
17 others, are clearly, in our view, right for sampling because of
18 the nature of the, the tens of thousands of documents
19 associated with those particular, with that particular
20 discovery.

21 So we will and, and do pledge to the Court to continue
22 our discussions to see if we can get to agreement on claims
23 file discovery and, and then, you know, the chips will fall
24 where they may on any motion for reconsideration.

25 So your Honor, I guess I'll stop there setting forth

1 the, I guess, saving a minute for not rebuttal, but just
2 further discussion about procedurally how the Court would like
3 to look at this for March 30, assuming we go forward. But I'll
4 stop in case others have comments about our statements.

5 THE COURT: Ms. Ramsey.

6 MS. RAMSEY: Thank you again, your Honor. Natalie
7 Ramsey for the record.

8 Your Honor, we're not going to preargue anything
9 today, but, sort of trying to keep the truce that has broken
10 out.

11 But, but I will just say for the record that our
12 general interest and goal with respect to a sample is to put
13 both parties on, I'll call it, a level playing field where
14 there's a discrete number of files that we're both looking to
15 and considering as part of estimation and clearly, if, if there
16 is a motion for reconsideration, those are issues that we're
17 going to have to evaluate how to respond to.

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

20 MS. RAMSEY: Thank you.

21 THE COURT: Understood.

22 MR. GUY: Nothing to add, your Honor.

23 THE COURT: Mr. Parrish.

24 MR. PARRISH: Thank you, your Honor. Again, Felton
25 Parrish for the DCPF.

1 THE COURT: Thank you all.
2 (Proceedings concluded at 1:39 p.m.)
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7 CERTIFICATE

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

12 /s/ Janice Russell February 17, 2023
13 Janice Russell, Transcriber Date
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