

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re

ALDRICH PUMP LLC, *et al.*,

Debtors.

Chapter 11

Case No. 20-30608 (JCW)

(Jointly Administered)

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

Plaintiff(s),

v.

ALDRICH PUMP LLC, *et al.*

Defendant(s).

Miscellaneous Pleading

No. 22-00303 (JCW)

(Transferred from District of Delaware)

AC&S ASBESTOS SETTLEMENT TRUST,
COMBUSTION ENGINEERING 524(G)
ASBESTOS PI TRUST, GI HOLDINGS INC.
ASBESTOS PERSONAL INJURY
SETTLEMENT TRUST, GST SETTLEMENT
FACILITY, KAISER ALUMINUM &
CHEMICAL CORPORATION ASBESTOS
PERSONAL INJURY TRUST, QUIGLEY
COMPANY, INC. ASBESTOS PI TRUST T H
AGRICULTURE & NUTRITION, L.L.C.
ASBESTOS PERSONAL INJURY TRUST, and
YARWAY ASBESTOS PERSONAL INJURY
TRUST,

Petitioners,

v.

ALDRICH PUMP LLC and MURRAY BOILER
LLC,

Respondents,

Miscellaneous Pleading

No. 23-00300 (JCW)

(Transferred from District of New Jersey)



VERUS CLAIM SERVICES, LLC,

Interested Party,

NON-PARTY CERTAIN MATCHING
CLAIMANTS,

Interested Party.

DECLARATION OF MICHAEL A. KAPLAN

I, **Michael A. Kaplan, Esq.**, hereby declares under penalty of perjury:

1. I am a Partner at the law firm Lowenstein Sandler LLP, and counsel for the eight third-party asbestos settlement trusts identified below¹ (collectively, the “Verus Trusts”).

2. Attached hereto as **Exhibit A** is a true and correct excerpt from the May 8, 2023 deposition of Dr. Charles Mullin.

Dated: May 11, 2023

s/ Michael A. Kaplan

Michael A. Kaplan, Esq.

¹ The eight 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.

EXHIBIT A

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UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

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

DEPOSITION OF CHARLES HENRY MULLIN, PH.D.
Monday, May 8, 2023; 1:06 p.m. EDT

Reported by: Cindy L. Sebo, RMR, CRR, RPR, CSR, CCR,
CLR, RSA, NYRCR, NYACR, Remote CA CSR #14409, NJ CCR
#30XI00244600, NJ CRT #30XR00019500, Washington State
CSR #23005926, Oregon CSR #230105, TN CSR 998, Remote
Counsel Reporter, LiveLitigation Authorized Reporter,
Notary Public
Job No. 5905066

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1 (Sotto voce discussion.)
 2 BY MR. KAPLAN:
 3 Q. Given that -- you've seen this
 4 before, correct, Dr. Mullin?
 5 A. Correct.
 6 Q. I believe you said you were
 7 discussing it with your team in advance of today.
 8 Which part or parts of Dr. Wyner's
 9 opinion is it that you take issue with?
 10 MR. EVERT: I object to the form
 11 of the question.
 12 Is that really fair?
 13 Do you want to walk him through
 14 each paragraph, or do you want to --
 15 MR. KAPLAN: I just want to know
 16 what he disagrees with. You told me he's not
 17 going to produce a rebuttal report, so I'm
 18 not going to get an opportunity to hear -- to
 19 get it on a line-by-line. I want to know
 20 what he's got an issue with here.
 21 MR. EVERT: Do you think you can
 22 do that?

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1 THE WITNESS: I'm going to be
 2 talking for a while. That's a very broad,
 3 open question. I'm happy to answer it, but
 4 I'm going to ask you not to ask follow-up
 5 questions until I finish, because I need to
 6 give a complete answer if we're going to do
 7 that. I don't want to get segued halfway
 8 through by a follow-up and then be told that,
 9 no, you didn't finish and so that's it.
 10 BY MR. KAPLAN:
 11 Q. You have my absolute word. I'm ready
 12 for you to tell me what it is you have an issue
 13 with.
 14 A. Start on Paragraph 6.
 15 Q. Okay.
 16 A. He says, As described in detail
 17 below, it is my opinion that a random sample -- a
 18 random 10 percent sample of 1,200 Claimants would
 19 fulfill all of the Debtors' reasonable needs.
 20 He never defines "reasonable needs."
 21 He never defines "all." So he's made this blanket
 22 statement with a universal qualifier. And at no

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1 point he -- does he -- he covers two specific
 2 questions in his report, two. He entirely ignores
 3 the question that the 90 percent of the data that
 4 the Trusts are requesting that not get produced
 5 would be used. He only addresses two questions,
 6 where my intent was to only use the 10 percent of
 7 the data that would be produced in the sample.
 8 So if -- and the critique is, On the
 9 questions where Dr. Mullin's already only going to
 10 use a 10 percent sample, a 10 percent sample
 11 suffices; ergo, it suffices for everything.
 12 The latter doesn't follow. He
 13 addressed the two places where I'm already
 14 constraining myself to a 10 percent sample and
 15 saying, There, it's enough.
 16 He doesn't talk anything outside of
 17 that scope anywhere. Yet it doesn't even define
 18 what those other reasonable uses would be, yet has
 19 this universal statement with no backing anywhere
 20 in the report.
 21 So at its highest level, you can put
 22 almost every complaint I have under that category.

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1 I don't think he has any idea how I'm going to use
 2 the data. I don't know how he could.
 3 I'm going to go forward and do an
 4 estimation report. I've given broad categories of
 5 how I would use that. And he's made a statement
 6 that "all reasonable" ways.
 7 As we talked through earlier, I
 8 expect to have to condition things on law firm and
 9 jurisdiction because that's frequently very
 10 important.
 11 It may turn out not to be here, but
 12 it's much more likely that it would be than not.
 13 And he has no opinions about what happens as soon
 14 as you need to address the subpopulation. All of
 15 his opinions are assuming I'm only looking at the
 16 entire universe at once, that he's disclosed here
 17 at least.
 18 And so I expect to have to look at
 19 subpopulations. Jurisdiction, law firm would be a
 20 key one. Gender could easily come up as one, you
 21 know, and industry and occupational groups. I
 22 expect to use that data to put people into

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1 clustered groups that behave similarly and then do
 2 extrapolations based on each of those subgroups.
 3 So he has entirely ignored what
 4 happens when only a subset of the sample is
 5 applicable to the question of interest.
 6 And if you look at simple tabulations
 7 in the data, like paid mesothelioma claims by law
 8 firm, paid mesothelioma claims by gender, paid
 9 mesothelioma claims by jurisdiction, you see really
 10 quickly that if you sample, you're not going to
 11 have enough data to answer those questions.
 12 You know, so at a big level, that's
 13 the overarching problem with his whole report.
 14 He very much mischaracterizes the
 15 testimony of my partner, Dr. Jorge Gallardo-Garcia.
 16 He asserts in Paragraph 8 that Dr. Gallardo-Garcia
 17 clearly states that sampling is sufficient.
 18 He does not state that. If you go
 19 read his report, he makes it clear that there's a
 20 court order that constrains him to 10 percent, and
 21 within that, he's going to design the most
 22 sufficient sample -- the most efficient sample he

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1 can -- but he actually is explicit that that's not
 2 what he believes is best, but he's got an external
 3 constraint forcing him.
 4 To that point, I speak with
 5 Dr. Gallardo-Garcia on a regular basis. His office
 6 is a few doors from mine. I know that is not his
 7 opinion. So I don't know how he's reaching that
 8 when you read that report in totality, but it is
 9 explicitly wrong.
 10 There's an irony. Well, he complains
 11 that At no point does Dr. Mullin quantify the
 12 potential loss of accuracy.
 13 I think he very much knows that is an
 14 exercise you can't do ex ante when the very data
 15 you're seeking is fundamental to what
 16 subpopulations you need to analyze later. That's
 17 an impossibility.
 18 The irony is, he reaches a conclusion
 19 that the 10 percent sample is enough in a
 20 cost-benefit without ever quantifying the cost. So
 21 if he's going to complain that you have to quantify
 22 an element of it and he's reaching the opposite

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1 conclusion without ever quantifying the loss, the
 2 cost, and his -- one of his clients has done this
 3 exercise, so one of his clients has already
 4 redacted information for a different request.
 5 So instead of all of us sitting here
 6 in the dark and saying, How often does this PII
 7 show up in these exposure fields, there's one --
 8 one of his clients knows the answer to that in the
 9 context of DPMP. He either didn't ask him for
 10 that, they didn't disclose it to him, but he could
 11 know, oh, that occurs in one in a thousand records,
 12 one in 100 records, one in two records, which could
 13 greatly inform this question.
 14 He could also ask them, when they did
 15 their redaction process and their quality control
 16 on it, did they think they eliminated half of them?
 17 Ninety-five percent? Ninety-nine percent? So how
 18 many do you think slipped through?
 19 He's silent even though his client
 20 actually has done this exercise once and has the
 21 data. So the person who could actually quantify
 22 the cost whose client has access to know exactly

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1 how many records have this information and
 2 presumably has done quality control on that process
 3 to know what their rate of eliminating it is, he
 4 stays silent on, you know, that information. Yet
 5 he concludes at the same time, even though his
 6 client has this data, that the cost-benefit
 7 analysis isn't justified.
 8 So if we had that information, you
 9 would be able to be much more precise. I gave a
 10 hypothetical; 5 percent of the fields have it;
 11 99 percent get cleaned up by the facility;
 12 99 percent get cleaned up of what was missed by
 13 Bates White to get to 0 or 1.
 14 The first two numbers in that, they
 15 actually know. So those are knowable. So are we
 16 really looking at a handful of PII coming through?
 17 Thousands? I hope not thousands of records, given
 18 they went through that process. But he doesn't
 19 access any of that even though his client has it.
 20 As an expert, if my client has
 21 information directly on point and doesn't share it
 22 with me -- you should ask for it; hopefully, they