

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)

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, MURRAY BOILER LLC.

Respondents.

Miscellaneous Pleading

No. 23-00300 (JCW)

(Transferred from District of New Jersey)

In re

ALDRICH PUMP LLC, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 20-30608

<sup>1</sup> 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.



**DEBTORS' OPPOSITION TO OBJECTORS EX PARTE MOTION TO AMEND  
SCHEDULING ORDER**

Aldrich Pump LLC ("Aldrich") and Murray Boiler LLC ("Murray"), as debtors and debtors in possession (together, the "Debtors") hereby submit their opposition to the Ex Parte Motion to Amend the Scheduling Order [Misc. No. 23-00300 Dkt. 54] (the "Motion") filed by Verus Claims Services, LLC ("Verus") and various trusts for whom Verus processes claims (the "Verus Trusts"),<sup>2</sup> Delaware Claims Processing Facility ("DCPF") and various trusts for whom DCPF processes claims (the "DCPF Trusts")<sup>3</sup> and with Verus, the Verus Trusts, and DCPF, the "Trust Parties").

The Debtors filed their Motion for Rehearing Concerning the Issue of Sampling on DCPF's Subpoena Related Motion on March 10, 2023. [Misc. No. 22-303, Dkt. 54] (the "Motion for Rehearing"). During the March 30 omnibus hearing, the parties carefully negotiated a scheduling order for the Motion for Rehearing, with agreed dates designed to both provide the Trust Parties ample time to retain an expert witness and file responsive papers, while also allowing sufficient time for: (1) the Debtors to depose that expert (and any other witnesses the Trust Parties relied on in their brief) and file their reply brief; and (2) the Court to review the parties' submissions in advance of the June 6 hearing. By the instant Motion, the Trust Parties seek to upend that carefully

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<sup>2</sup> The Verus Trusts are: ACandS Asbestos Settlement Trust; Combustion Engineering 524(g) Asbestos PI Trust; G-I 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

<sup>3</sup> The DCPF Trusts are the Armstrong World Industries Asbestos Personal Injury Settlement Trust; Babcock & Wilcox Company Asbestos Personal Injury Settlement Trust; Celotex Asbestos Settlement Trust; DII Industries, LLC Asbestos PI Trust (Halliburton, Harbison- Walker Subfunds); Federal Mogul U.S. Asbestos Personal Injury Trust (T&N, FMP, Flexitallic, Ferodo); Flintkote Asbestos Trust; Owens Corning Fibreboard Asbestos Personal Injury Trust (FB and OC Subfunds); Pittsburgh Corning Corporation Asbestos PI Trust; United States Gypsum Asbestos Personal Injury Settlement Trust; and WRG Asbestos PI Trust.

negotiated schedule, entirely to their own benefit, and to the ultimate prejudice of both the Debtors and this Court.

As set forth in more detail below, the Motion should be denied.<sup>4</sup>

### **ARGUMENT**

1. The instant Motion relates to subpoenas seeking trust discovery from the Trust Parties (the "Subpoenas"). This Court issued an order approving the service of those Subpoenas on July 1, 2022 [Base Case Dkt. 1240], and the Debtors served the Subpoenas four days later, on July 5, 2022.

2. The Debtors filed the Motion for Rehearing seeking rehearing on DCPF's and the DCPF Trusts' Motions to Quash. [Misc. No. 22-303, Dkt. 54]. In support of the Motion for Rehearing, the Debtors submitted the declaration of its expert, Dr. Charles Mullin. [Misc. No. 22-303, Dkt. 55] ("Mullin Declaration"). As the Debtors previewed to this Court at the February 14, 2023 omnibus hearing, and to the Trust Parties in advance of that hearing, they set the Motion for Rehearing, along with the still pending Verus and Verus Trusts' Motions to Quash (which raised nearly identical arguments) for the March 30 omnibus. [Base Case Dkt. 1677].

3. The Trust Parties and corresponding Matching Claimants responded to the Debtors' Motion for Rehearing with a flurry of oppositions, motions to continue, and motions to strike. [Misc. No. 22-303 Dkts. 58, 61, 63, 64, 65, 66, 67, 68, 70, 72, 74, 75, 77, 78].

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<sup>4</sup> The Debtors have agreed to provide the Trust Parties an extension to file their brief to Monday May 15, 2023.

4. At the March 30 hearing, the Court ruled that there would, in fact, be a rehearing on DCPF's and the DCPF Trusts' Motions to Quash concerning the issue of sampling, and ordered the parties to attempt to negotiate a schedule for the same.<sup>5</sup>

5. During a break at the March 30, 2023 hearing, the parties met and conferred for approximately 45 minutes in an effort to negotiate a schedule. While the ultimate hearing date for the Motion for Rehearing was much later than the Debtors had desired, the parties ultimately succeeded in reaching an agreement, and reported back the following schedule to the Court:

- On or before **April 25, 2023**, the Trust Parties disclose any expert witnesses and submit any expert reports;
- On or before **May 5, 2023**, the Trust Parties depose Dr. Mullin;
- On or before **May 12, 2023**, the Trust Parties file their briefs in opposition to the Debtors' Motion for Rehearing;
- On or before **May 19, 2023**, the Debtors depose the Trust Parties' expert, and any fact witnesses the Trust Parties intend to rely on in opposition to the Debtors' Motion for Rehearing;
- On or before **May 26, 2023**, the Debtors file their reply briefs, with no further briefing permitted;
- Hearing on the Motion for Rehearing on **June 6, 2023**.

The parties announced the schedule in open Court at the March 30 hearing. *See* March 30, 2023 Hearing Tr. at 184:13–186:24.

6. The agreed schedule on the Motion for Rehearing was formulated intentionally to ensure specific goals of all of the parties, which were, among other things: (1) that Dr. Mullin's deposition would take place after the Trust Parties' disclosed their expert witness and provided any report or declaration, so he could respond to any opinions offered by that expert; (2) that the Trust

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<sup>5</sup> Verus and the Verus Trusts agreed that their still pending motions to quash would be dealt with as part of the Motion for Rehearing and the Debtors agreed that Verus and the Verus Trusts would have the right to fully participate in that hearing.

Parties would have at least one week after Dr. Mullin's deposition to file their opposition brief(s); (3) that the Debtors would have the Trust Parties' brief before taking any depositions, so they could know what the Trust Parties' positions were and what evidence they were relying on before deposing their witnesses; and (4) that all briefing be completed approximately 10 days before the June 6 hearing, to provide the Court ample time to review all of the papers.

7. Since the schedule was set, the following has occurred:

- The Trust Parties served the declaration of their expert, Abraham Wyner, on April 25, 2023, consistent with the schedule.
- The Debtors offered Dr. Mullin for deposition on May 2 or May 3 2023, consistent with the schedule.
- The Trust Parties requested a scheduling alteration to Dr. Mullin's deposition to May 8, 2023, which the Debtors agreed to accommodate;<sup>6</sup>
- Dr. Mullin was deposed on May 8, 2023;
- The parties scheduled depositions for Mark Eveland (Verus's CEO) and Richard Winner (DCPF's CEO) for May 16, 2023 and for Dr. Wyner on May 17, 2023;
- The Debtors agreed, as a result of the pending Motion and the Court's unavailability on May 12, to extend the Trust Parties' deadline to file their opposition briefs to May 15, 2023.

8. The Trust Parties will (after the Debtors' agreement to extend their briefing deadline to Monday, May 15) have had one week after Dr. Mullin's deposition to file their brief, just as the parties negotiated and agreed in setting the schedule for the Motion for Rehearing.

9. But that is not enough for the Trust Parties. Through the instant Motion, the Trust Parties request this Court rewrite the carefully crafted schedule negotiated and agreed to by the parties, and instead set a schedule that would work solely to the Trust Parties' benefit, while prejudicing both the Debtors and the Court.

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<sup>6</sup> The scheduling order ultimately entered by the Court was entered after the agreement concerning Dr. Mullin, and thus reflects the May 8, 2023 scheduled date for that deposition. [Misc. No. 23-300 Dkt. 51].

10. The supposed "bases" for the Trust Parties' Motion do not pass muster.

11. First, the Trust Parties state that Dr. Mullin testified at his deposition that sampling was "inappropriate because he intended to use the data to study subpopulations of claimants, such as by law firm, occupation, and gender." Motion at 3. The Trust Parties complain that this "was the first time" they "learned of this rationale" as this, and "additional arguments" were "not explicitly covered in his declaration." Motion at ¶ 3. The Trust Parties do not articulate what those "additional arguments" are, but use this to claim an adjustment to the schedule should be made, because, according to the Trust Parties, "fairness dictates" such an adjustment "to allow the Objectors to respond to these new arguments through the testimony of Dr. Wyner (our expert)." *Id.* at ¶ 4.g

12. The Trust Parties are wrong. First, nothing Dr. Mullin testified to was "new" and each of the opinions given were within the topics of his Declaration attached to the Motion for Rehearing. While it's true that during his four hour deposition he did not restrict himself to only using the precise words of that 32-paragraph Declaration, that certainly doesn't mean the opinions offered were new. The Debtors have long asserted, and Dr. Mullin's Declaration contemplates, that the Trust data would be used for multiple purposes related to estimation and negotiation, formulation, and confirmation of a plan (*see* July 1, 2022 Order approving subpoenas [Base Case Dkt. 1240], attached to the Subpoenas), which provides that the subpoenas seek evidence "relevant and necessary" to the "estimation of the Debtors' liability" and "the negotiation, formulation, and confirmation of a plan of reorganization in these cases." As an example, the Trust Parties' purported surprise that Dr. Mullin intends to analyze "subpopulation characteristics" such as Plaintiff law firms is not credible. Almost one year ago, the Court authorized the Debtors to serve subpoenas on the Trusts which sought, among other things, claimant law firm data. *See* Base Case

Dkt. 1240 at ¶10. Further, paragraph 18 of Dr. Mullin's declaration precisely addresses patterns recognized by the *Garlock* court of "certain plaintiff law firms" and how this data will allow the Debtors to make similar assessments. Mullin Declaration at ¶18. Likewise, the Trust Parties profess shock that Dr. Mullin would seek to study claimants by occupation. Yet, Dr. Mullin's declaration specifically references using "the various occupations and trades of the Debtors' historical claimants" in his analysis (Mullin Declaration, ¶15). Dr. Mullin's Declaration, and, in fact, the Subpoenas themselves, make it clear all of the sought data will be critical to the analysis.

13. Even if the contemplated analysis of the trust data was "new" as the Trust Parties alleged, the schedule agreed to by the parties specifically contemplated that would happen, and ensures the parties are protected from any alleged surprise resulting from the same. Dr. Mullin was always going to be deposed after the Trust Parties disclosed their expert and expert report. And the reason the schedule was set up that way was to allow Dr. Mullin the opportunity to respond to points raised in the Trust Parties' expert's declaration. By the same token, the Trust Parties' expert, Dr. Wyner, will have the chance at his deposition next week to respond to points made by Dr. Mullin. This too was specifically contemplated in the agreed schedule. The Trust Parties attempt to rely on an arrangement they agreed to is decidedly not a basis to completely rewrite that scheduling order now.

14. Further, the Trust Parties' Motion only benefits them. It specifically prejudices the Debtors and specifically defeats one of the goals of the agreed schedule. By suggesting that their brief be filed after the depositions of their witnesses, the Trust Parties seek to force the Debtors to depose their witnesses without any idea of what arguments the Trust Parties intend to make with regards to sampling. Indeed, the last substantive briefs filed by the Trust Parties on the motions to quash were filed last fall. Those briefs include minimal discussion of sampling, the sole issue

before the Court now on the Motion for Rehearing. The Trust Parties had the Debtors' Motion for Rehearing and Dr. Mullin's affidavit before his deposition was taken. Conversely, the Debtors have no briefing or other information setting forth the Trust Parties' arguments or the testimony of their witnesses. The Debtors specifically negotiated a schedule whereby they would have a chance to review the Trust Parties' briefs before deposing their witnesses, to ensure the Debtors understood exactly what theory the Trust Parties were advancing and what evidence they were relying on before taking those depositions. *See* March 30, 2023 Hearing Tr. at 184:13–192:4; [Misc. No. 23-300, Dkt. 51]. The amended schedule the Trust Parties seek to impose by the Motion robs the Debtors of that opportunity. In fact, with the extension of the Trust Parties briefing deadline to May 15, the Debtors are now required to depose witnesses for the Trust Parties the business morning immediately after the Trust Parties briefs are filed.

15. Finally, the Motion also prejudices this Court. The current schedule specifically provides the Court to have ten days between service of the final brief (May 26), and the hearing on the Motion for Rehearing (June 6). Under the Trust Parties' proposal, the Court will only have two business days between service of the final brief (Friday, June 2) and the Motion for Rehearing (Tuesday, June 6). The Trust Parties suggest the solution to this prejudice is to further continue the hearing from June 6, 2023 to some to-be-determined date. The Court, however, agreed to hold a special setting on June 6th to accommodate the Trust Parties' desired schedule. They should not now be permitted to recant on that schedule. Further, these trust discovery-related proceedings have been pending, in one forum or another, for nearly a year. There should be no further delay.

### **CONCLUSION**

16. Under the current schedule, the Trust Parties will have had more than two months to file their briefs in response to the Motion for Rehearing. They will (after the Debtors' agreement to extend their briefing deadline to Monday May 15) have had one week after Dr. Mullin's



deposition to file their brief, fully consistent with what the parties originally agreed to when negotiating the schedule. The Trust Parties should not be permitted, at the eleventh hour, to change the entire basis of the agreed-upon schedule in a way that only benefits them and only prejudices the Debtors and this Court.

17. For the foregoing reasons, the Motion should be denied.

Dated: May 12, 2023  
Charlotte, North Carolina

Respectfully submitted,

/s/ John R. Miller, Jr.

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