

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.*,¹

Debtors.

Chapter 11

Case No. 20-30608

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.



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' Opposition to Objectors' Ex Parte Motion to Amend Scheduling Order*, 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 the transcript of the March 30, 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.).

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: May 12, 2023
Chicago, IL

Respectfully submitted,

/s/ Morgan R. Hirst
Morgan R. Hirst

EXHIBIT A

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1 THE COURT: Let me know. I'm going to ask the clerk
2 to, to sit in the courtroom.

3 THE COURTROOM DEPUTY: Uh-huh (indicating an
4 affirmative response).

5 THE COURT: Or can they just buzz you at a number or
6 something so you don't have to sit here? Okay.

7 All right. Well, we'll take a recess until you're
8 ready to go.

9 MR. EVERT: Thank you, your Honor.

10 (Recess from 2:46 p.m., until 3:41 p.m.)

11 AFTER RECESS

12 (Call to Order of the Court)

13 THE COURT: Have a seat.

14 All right. What was arrived at during the break?

15 Mr. Hirst.

16 MR. HIRST: Your Honor, Morgan Hirst for the debtors.

17 Mr. Evert got to do all the fun argument. I got to
18 announce an agreed schedule. So --

19 THE COURT: Okay. Well, you're one up.

20 MR. HIRST: -- exciting, exciting for me.

21 So, your Honor, we did, I think, reach an agreement.
22 We have one tiny disagreement, which we'll raise at the end.

23 THE COURT: Okay.

24 MR. HIRST: It is a, maybe a lengthier schedule than
25 your Honor originally may have suggested.

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

3 MR. HIRST: The other side would like to retain an
4 expert to rebut, or attempt to rebut Dr. Mullin. We have no
5 issue with that.

6 So June 6 is what we decided on for a hearing date --

7 THE COURT: Okay.

8 MR. HIRST: -- if that works for the Court and we --

9 THE COURT: It does.

10 MR. HIRST: -- -- I think, understand that it does.

11 And then there's some interim dates in the middle.

12 First of all, here's what we understand and I think
13 the other side understands what this hearing is. We want to
14 make sure your Honor is -- is --

15 THE COURT: Okay.

16 MR. HIRST: -- agreeing with this. The, the issue at
17 the hearing is whether or not there's going to be compliance
18 with a subpoena in full; in other words, a response concerning
19 all the claimants or all the Matching Claimants, or whether
20 it's going to be a sampled compliance with a subpoena.

21 THE COURT: Okay.

22 MR. HIRST: That's what we understand the hearing to
23 be about.

24 With that in mind, here's kind of some interim dates
25 that we've agreed to. This is more for your Honor's

1 information, but we'll --

2 THE COURT: Please.

3 MR. HIRST: -- make it for the record.

4 The other side's going to retain an expert. They're
5 going to submit some expert report or a declaration or some
6 form of expert submission by April 25th. They will then have
7 the opportunity to depose Dr. Mullin up until May 5th.

8 THE COURT: Okay.

9 MR. HIRST: We -- I'm sorry. They will then submit
10 their brief. Verus will submit a brief in opposition to our
11 motion for rehearing. DCPF can supplement their opposition to
12 the motion for rehearing. Those briefs from the objectors to
13 the motion for rehearing will be done by May 12th.

14 THE COURT: Right.

15 MR. HIRST: We will have the right to depose the
16 expert they're going to put up and Mr. Eveland, who is the
17 Verus President, I believe, who submitted an affidavit, and
18 then, potentially, Mr. Winner, who's the DCPF President, though
19 that's our area of disagreement, but those depositions have to
20 take place by May 19th. And then our reply brief is due May
21 26th.

22 THE COURT: Okay.

23 MR. HIRST: And there'll be no -- yeah -- there'll be
24 no further briefing after May 26th. One issue of minor
25 disagreement for your Honor, I think, can decide today is

1 Mr. Winner.

2 So Mr. Winner is DCPF's President.

3 Is that right, Kevin?

4 MR. GUERKE: I believe he's COO.

5 MR. WINNER: Or COO. He submitted a declaration in,
6 in support of their motion to quash --

7 THE COURT: Right.

8 MR. HIRST: -- last summer.

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

11 MR. HIRST: They have -- DCPF -- and Mr. Guerke'll,
12 Mr. Guerke'll tell me if I got this wrong -- they've indicated
13 they will at least rely on his old declaration. They may
14 submit a supplemental declaration. We would like to take his
15 deposition, regardless. DCPF has indicated they would only
16 agree to a deposition of Mr. Winner in the event they provide a
17 supplemental declaration. And so our view is if they're going
18 to rely on his declaration, we should get to depose him whether
19 it's a new declaration or an old declaration. That, I think,
20 is the only issue in dispute.

21 THE COURT: Okay.

22 MR. GUERKE: That is in dispute, your Honor. Again,
23 Kevin Guerke on behalf of DCPF.

24 We object to a deposition of Richard Winner at this
25 point. The, the declaration was filed in July. The debtors

1 chose not to depose him and the motion to -- so the first we
2 heard about the deposition, that they want to take his
3 deposition after all these months was just now out in the
4 hallway, but struck a, a, a reasonable balance that if we're
5 going to supplement with new information, they'd have a chance
6 to depose Mr. Winner on the new information, but don't get a
7 chance to go back and, and start all over again.

8 DCPF is not a party to this case. You've heard us
9 argue burden and expense probably more than you, you want to
10 hear. We shouldn't have that burden magnified by additional
11 discovery directed at us. I know we're going down on this path
12 on sampling --

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

15 MR. GUERKE: -- and additional expert discovery, but,
16 you know, your Honor, we had a sampling ruling. We thought it
17 was great. The debtors proposed a sampling that worked for the
18 debtors. The parties talked about it and reached agreement on
19 a sampling protocol, at least a 99 percent agreement, and, and
20 this all could be avoided with the 10 percent sampling, your
21 Honor and -- but if we have to go down this path, it's going to
22 be a, a longer, more drawn-out, burdensome, expensive process.

23 Thank you.

24 THE COURT: And what is it you want to ask him about,
25 generally?

1 MR. HIRST: If they're going to rely on him -- they
2 have his affidavit -- if they're going to rely on that
3 affidavit on June 6th, we'd like a chance to ask him questions
4 about his affidavit and the factual underpinnings behind it.
5 If they're not going to rely on his affidavit on June 6th at
6 the hearing or in their papers, we don't have any reason to
7 bother.

8 THE COURT: So why now and not before?

9 MR. HIRST: Why now? 'Cause they're going to rely on
10 him in a hearing in --

11 THE COURT: Okay.

12 MR. HIRST: -- two months where they're now going to
13 have an expert who, presumably, is going to rely, in part, on
14 some of Mr. Winner's factual underpinnings to his testimony.
15 So that's, that's why.

16 THE COURT: Well, I got to tell you. What I was
17 envisioning more was talking about the need for sam, for full-
18 blown production versus sampling, not as much on, on burden to
19 that. But if we're going to argue about burden, then, you
20 know, if we're going to use him, that's fine. We probably need
21 to, to depose him.

22 But from my vantage point, the questions I have,
23 primarily, in my mind that made me want to have a further
24 hearing is, given that we got down the road so far about
25 sampling, why is that not sufficient? I mean, the bottom line

1 is what are the likelihood that, that, if we do full
2 production, that there's a risk, now that I can remember that
3 we were doing these hand scrubbing. But if we're going to
4 fight about the, you know, how much other cost there is to the,
5 the Facility, then yeah, I think I'd be inclined to, to allow
6 it.

7 The question is how, how broadly are y'all planning to
8 argue.

9 MR. HIRST: That's actually to my colleagues. 'Cause
10 we're happy to take the issue of burden off of the table,
11 essentially. If they're going to simply argue -- if the entire
12 hearing's going to be about -- I mean, their basis for a
13 sampling -- their, their motion requesting sampling was 'cause
14 it was burdensome.

15 MS. MOSKOW-SCHNOLL: That is not the only reason.

16 THE COURT: No, no, no. It was also about
17 confidentiality.

18 MR. HIRST: Confidentiality as well. No, those were
19 the, the two underpinnings.

20 THE COURT: Right.

21 MR. HIRST: If we're going to continue to --

22 THE COURT: So are we arguing both, or one? That's,
23 that's all I really think. 'Cause if we're arguing both, I
24 think I'm setting a rehearing and if I'm reconsidering all of
25 that, then fine. But the bottom line is the -- in that event,

1 I think we need to have full fact presentation there,
2 declaration, and if we're going to get anything else from him,
3 an amended declaration or whatnot, the chance to review. If
4 we're just going to talk about what the debtors needs are and
5 why they aren't satisfied, then I would say no.

6 MR. GUERKE: Your Honor, the, the, the same group of
7 people have already taken Mr. Winner's deposition --

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

10 MR. GUERKE: -- in DBMP. He already went through
11 that, that burden in time and effort. The declaration that we
12 filed in this case is similar to declarations that were filed
13 in past cases -- and I don't want to mix the cases up -- but --

14 THE COURT: Yeah. We've done too much of that.

15 MR. GUERKE: -- it's -- it's un -- it's unfair to DCPF
16 as a nonparty to keep being dragged, dragged into more and more
17 discovery and, and we, we object, your Honor. Unless we,
18 unless we assert additional facts in a supplemental
19 declaration, we ask that the Court not allow a deposition of,
20 of Mr. Winner. His, his declaration has been out there and
21 we've argued it for months and months.

22 THE COURT: If we're going to rehear burden, then I'm
23 going to, to allow them to do the deposition, okay? All right.

24 I, I appreciate where he's come, where the Facility's
25 coming from and this being nonparties, but they're very

1 interested nonparties and, and effectively, I think the
2 information is very key to what we're doing here.

3 So I, I want a decent record that can go up, if it
4 needs to be, and I believe we need him for that purpose, so.

5 All right. What else?

6 MR. GUERKE: Please.

7 MS. MOSKOW-SCHNOLL: Your Honor, I just wanted to put
8 on the record that we, we believe you did enter an order and
9 that this is procedurally improper.

10 THE COURT: Understood.

11 MS. MOSKOW-SCHNOLL: I just want to make sure that was
12 on the record.

13 THE COURT: Overruled.

14 MS. MOSKOW-SCHNOLL: Thank you.

15 THE COURT: Okay.

16 Mr. Guy?

17 MR. GUY: Your Honor, we weren't asked about these
18 dates, but we will totally work with them, of course.

19 On the sampling motion, I want to be practical about
20 it. I know I want to move forward, but I think, realistically,
21 we're not going to get progress until this is resolved.

22 So maybe we can continue it until after this hearing.
23 I hate to say that because my predictions have proven to be
24 true again, but that seems like the sensible thing to do. But
25 I defer to the Court entirely on that.

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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

April 4, 2023

Janice Russell, Transcriber

Date