

4. Attached hereto as Exhibit C is a true and correct copy of the October 11, 2022 Reply Declaration of Mark Eveland (D.N.J. Case No. 22-5116 Dkt. No. 37-1).

5. Attached hereto as Exhibit D is a true and correct copy of the August 19, 2022 Declaration of Mark Eveland (D.N.J. Case No. 22-5116 Dkt. No. 5-2).

Dated: May 15, 2023

/s/ Zachary D. Wellbrock
Zachary D. Wellbrock, Esq.

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1 Dr. Mullin's declaration if there was going to be testimony in
2 the other cases, there was a declaration that was submitted in
3 connection with the motion for trust discovery. Here, the
4 debtors determined not to do that.

5 And again, we believe that having gone through the
6 hearing, having had the Court reach the determination it did,
7 we do object to rehearing on the motion.

8 THE COURT: Anyone else?

9 MR. GUERKE: May I add one point, your Honor?

10 THE COURT: Please.

11 MR. GUERKE: On the, on the quantity burden argument
12 that the, the debtors didn't know, two points. One, they
13 argued extensively about DBMP at the November 30th hearing, in
14 their briefing. They were well aware what was going on in that
15 case.

16 The other point I want to make, your Honor, is, as I
17 stated earlier, the first invoice is dated November 2, 2022,
18 like four weeks before. How can that be a surprise?

19 Thank you.

20 THE COURT: Okay. Let me, let me jump in at this
21 point, folks, because I do have an opinion and it's no one's
22 fault, but my own. So I'm going to just tell you that I think
23 I've created some confusion based on the two cases and what I
24 may have said in this one and then, of course, this issue got
25 raised in DBMP. And I want to make sure that we have a good,

1 clean record and that the decisions are properly made, to the
2 extent I have the ability to, to do so, and that the District
3 Court on appeal gets a clean record.

4 So I have an opinion on the idea of whether we should
5 have a rehearing on the issue of sampling and that backs you
6 into the quash motions, to a certain extent. I think we
7 should. The reason is that I think I've contributed to some
8 confusion in all this and there is one fact that may not change
9 anything. I'm not at all convinced that I need to change the
10 ruling. I do think I need to have a rehearing of the motion
11 and the bottom line is, as was pointed out in the DBMP case,
12 and the parties were speculating as to what the Court knew and
13 what the Court was thinking and why it was different between
14 Aldrich and DBMP and all that.

15 First thought. It is not humanly possible to do the
16 same thing in two different cases as much as they are alike.

17 I'm, I'm with you, Ms. Ramsey, on that.

18 You will notice that Judge Beyer and I always don't
19 rule the same way and you folks learn from an experience in a
20 case and the next case you give us a slightly different look
21 and a different tactic, a different method, different motion.
22 Judge Beyer's had, I guess she's on her third motion to
23 dismiss. I haven't seen any. I seem to draw relief from stay
24 motions, but whatever.

25 The cases are slightly different. I cannot humanly --

1 and three months ago, I guess it was, I had parties from this
2 case showing up in the DBM [sic] case fearing that I was going
3 to decide a motion in DBMP that would practically decide it in
4 this case. Now if y'all want to, to really be bodacious, let's
5 just consolidate both cases and we'll just have three-or-four
6 day hearings at a time and we'll, we'll try to be more
7 consistent.

8 But absent that, there are going to be differences in
9 the decisions and I don't apologize for that. Just as you
10 learn from the experience, I'm probably learning more. This is
11 my first estimation exercise. I picked up Garlock after
12 estimation. So I'm, I'm learning along the way and I'll have
13 to change my tactics.

14 But the, the confusion I think I've created in this
15 was what I said in this case and that was I didn't say quite
16 enough, I guess. Several things were happening here and as
17 the, I guess it's the Facility's response points out, there was
18 a demonstrative given to me in the November hearing in this
19 case and the demonstrative showed the, the details of what the
20 narrative portions of these, these documents might reflect.

21 And that, I may have seen that earlier, Mr. Evert, but
22 I don't recall seeing it in, in DBMP. That was the first time
23 I, I think I've ever noticed that.

24 The second thing that was moving me in this case was
25 Mr. Guy getting through to me on, on costs, seeing the charts

1 of how much these cases are costing, and watching in the two
2 cases I have as we seem to go farther and farther from getting
3 to a resolution with more litigation and more discovery and
4 more expense and the thought that maybe we can start reining
5 some of that in with sampling.

6 Now I won't argue about sampling or not at the moment,
7 but the thing that I forgot in this case on November 30th was
8 that in DBMP we had put in the PII scrubbing mechanism. That
9 was not on my mind. I knew it. I just didn't think about it.
10 Y'all, by the end of a day, y'all have me in knots, anyway. So
11 I have to, have to say that that just didn't occur to me that
12 we had done that. And that's why I think I need a rehearing.
13 If for no other reason, is I want to know more about why
14 sampling doesn't work for the debtors' side, why sampling
15 wouldn't reduce the risk of just even human error missing some
16 of that stuff. And so I'm inclined to have a further hearing
17 on that.

18 With that being the case, I'm not inclined to strike
19 the declaration of Dr. Mullin's yet, but you can raise that at
20 the next hearing if it's here. And now the question is when do
21 we do all that. But I'm inclined to hold that one until I hear
22 all the arguments, the substantive arguments on whether I
23 should adopt sampling.

24 So that's kind of the -- the -- where I've got it at
25 this point.

1 That, then, begs the question of do we do the
2 rehearing today or do we do it next month and that, I guess I'm
3 announcing the Verus motion at this juncture.

4 I've read those e-mails that y'all had and it looks
5 like you were ships passing in the night as to what you're
6 saying. I can see from what the debtors said that they assumed
7 that there -- if future days we were going to talk about
8 reconsideration in, in this case, then, then we were, but I
9 don't get the sense that Verus understood that was on the
10 table. And again, I believe in full and fair hearings for all
11 of you and I don't want to foreclose anyone from having that
12 chance.

13 So I am inclined to grant the request for a
14 continuance and do all of this at one time next month and get
15 it all on the table. I think, if nothing else -- now maybe
16 procedurally you might want to clean that up a little bit in
17 terms of, of either a consent order or a stipulated order or
18 one that just says the Court says that the Verus situation is
19 going to be heard along with the Delaware Miscellaneous
20 Proceeding and we're going to talk about all these issues next
21 month. I don't know how you want to say it, but the, the
22 bottom line is that if Verus thinks that they need more
23 clarification of why they're not bound by this, well, you
24 hadn't asked me to send you back to New Jersey. So I guess
25 that's not part of the --

1 I look at you, Ms. Bennett and Mr. Houston. That's
2 not part of the relief that you want at this juncture?

3 MS. BENNETT: Your Honor, that's correct. We know
4 we're not going back to Jersey, but we will want the
5 opportunity to supplement the record. If it's just a "me too"
6 of what's been said against DCPF, we'll put in a supplemental
7 submission --

8 (Extraneous talking on telephone)

9 THE COURT: Hang on one second.

10 Folks, we got someone who's, who's talking and has
11 unmuted their receiver. Unless it's really spicy, we don't
12 want to hear it.

13 Yes, ma'am. The -- I don't know. Y'all might be able
14 to work out -- and we're about due for a lunch or a mid break,
15 anyway -- y'all might want to talk about how we put the
16 procedural deadlines for filing any additional documents.

17 Similarly, if you want to, on this end, depose
18 Dr. Mullins, then you can get that done. And frankly, if there
19 are other declarations that need to be filed, then we need to
20 go ahead and set a time period for all that.

21 Do you think we might be able to take about a 10-or-20
22 minute break and, and get some of that squared up?

23 MR. EVERT: Let's give it a shot, your Honor.

24 THE COURT: Everyone good? Okay.

25 Yes?

1 MR. HOGAN: Your Honor, I don't mean to complicate the
2 record at all, but I just -- and I know your earlier ruling on
3 the motion to strike. I get that and --

4 THE COURT: Mr. Hogan, we're not getting it clear
5 enough. Either get near a microphone or --

6 THE AUDIO OPERATOR: Yes, please.

7 MR. HOGAN: How about if I speak up? Is that fine?
8 Can you hear me now? Can you hear me now?

9 THE COURT: Okay. Go ahead.

10 MR. HOGAN: Thank you.

11 So I understand your order on the motion to strike. I
12 understand your order on anonymity. We're standing down. I
13 get all that.

14 But what I'm hearing you say, effectively, is that
15 we're going to have another hearing in April on the motions to
16 quash. Our motions to quash have not been stricken. We filed
17 motions to quash.

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

20 MR. HOGAN: They were opposed. And so I'm left in a
21 bit of a quandary about whether I can or should participate in
22 a hearing on my motion when it hasn't been stricken, but you've
23 ordered on the anonymity that we can't participate. So I'm in
24 a box and I need some, some guidance.

25 THE COURT: Well, the bottom line is, again, I don't

1 think it's a question of which motion. I think it's a question
2 of can you participate in the case without identifying your
3 clients and while I respect why your clients don't want to give
4 that information up, I believe it's, it's legally required if
5 they're going to be heard in these cases.

6 So, so bottom line -- and the exception being the
7 District Court. They can make their own decisions about what
8 they want to do -- but yes, I'm afraid they're going to have to
9 identify if they want to be heard on those motions.

10 MR. HOGAN: Understood, your Honor. That's crystal
11 clear. I appreciate that.

12 And so with regard to the motion to quash that the
13 Matching Claimants filed --

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

16 MR. HOGAN: -- absent a motion to strike by any of the
17 parties, what -- will the disposition of that motion be
18 commensurate with the other determinations? Is that what I'm
19 left to believe?

20 THE COURT: Well, the bottom line is we're not going
21 to let the other parties prosecute your motion, but if the
22 relief is the same, then the relief is the same. Whatever
23 disposition is made probably will be applicable to every
24 claimant in the case, so. Right? Okay.

25 MR. HOGAN: Thank you.

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.

1 THE COURT: Anybody else want to weigh in on that?

2 Ms. Ramsey.

3 MS. RAMSEY: Thank you, your Honor. Natalie Ramsey
4 for the Committee.

5 Your Honor, we do think that it would be most
6 productive to have the advantage of your Court's ruling and
7 then to have a little time to continue to meet and confer with
8 the debtor. As we indicated, we were very close before and I
9 think it, depending on how the Court rules, we could either
10 have a, a deal more quickly or more slowly. But I think, I
11 think it's worth continuing the dialogue after the Court rules
12 on this motion.

13 THE COURT: Well, if at all possible, I'll try to rule
14 from the bench on that and then let the order follow along
15 behind.

16 What would you have in mind in terms of continuing the
17 motion? Are you wanting to move it to July or are you wanting
18 to -- we're early in June, anyway. We were the 8th and I --
19 that was my next question, was are we still doing the omnibus
20 day on the 8th? We're, we're moving everything to the, to the
21 6th and hoping for the best.

22 MR. EVERT: That would be our suggestion, your Honor.

23 THE COURT: I'm sure the clerk's told you. I've got a
24 summary judgment motion the next morning in another case. So
25 if we run long, then I may have to have you wait until the

1 afternoon of the 7th to finish. But we'll try to do what we
2 can.

3 So about the FCR's motion, July?

4 MR. GUY: Whatever the next date would be, your
5 Honor --

6 THE COURT: What is the next day?

7 MR. GUY: -- for the Court's convenience.

8 THE COURT: The 14th of July.

9 THE COURTROOM DEPUTY: Yeah, July 14th.

10 MR. GUY: That works for us, your Honor.

11 THE COURT: Okay.

12 MR. GUY: Thank you.

13 THE COURT: All right. So ordered.

14 What else?

15 MR. GUY: Long as it doesn't go past September.

16 THE COURT: Yes, Counsel. Mr. Guerke?

17 MR. GUERKE: Your Honor, I've already stood too many
18 times today and I apologize.

19 But on the Winner declaration, two points. One, his
20 declaration was already admitted into evidence without an
21 objection back at the November 30th hearing. And two, your
22 Honor, if you're still going to allow for a, a deposition, we
23 ask that the deposition be limited to new grounds and not go
24 over topics that have already been discussed with the witness
25 in prior depositions.

1 THE COURT: In the DBMP case?

2 MR. GUERKE: Yes, sir.

3 THE COURT: I can't do that. That's different
4 parties, different cases.

5 Overruled on those. I, I don't fault you for trying.
6 I know they're similar, but all I would say is try to learn
7 from the other case and use as much of that as we can. You
8 could simply ask him questions, "Do you have any differences in
9 your opinions than those expressed in the DBMP deposition," and
10 maybe that would speed it up some, but --

11 All right. Anything else for today's purposes?

12 (No response)

13 THE COURT: Well, I would -- thank you for your
14 negotiations on trying to get this squared back up. Unless --
15 I told the law clerk, "Well, when I miss one, I really hit the
16 hornet's nest hard." And so I'm sorry to the extent that I
17 didn't remember the other. I think we had some other things we
18 would need to talk about, anyway.

19 And I guess the more encouraging thing is I used the
20 time while you were negotiating to start signing Aldrich fee
21 orders. So there is some positive benefit for what had
22 transpired.

23 And for those of you who were like witnesses and the
24 like coming in expecting the hearing on this, I'm sorry we
25 couldn't accommodate you today. This is a very important issue

1 and of great magnitude and it's going to affect discovery by
2 other parties as well, if only by the good for the goose good
3 for the gander arguments. So I think we need to get this one
4 right.

5 And I'm sorry I've caused as much delay as I have
6 here, but rather than having you speculate as to what the Court
7 was thinking I thought it best just to tell you what the, what
8 the rub was and hopefully, we'll figure out whether we really
9 need, whether sampling's appropriate or whether full-blown
10 discovery is appropriate and get that behind us, okay?

11 If nothing else, travel safely.

12 We're in recess.

13 MR. EVERT: Thank you, your Honor.

14 MR. GUERKE: Thank you, your Honor.

15 (Proceedings concluded at 3:56 p.m.)

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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

EXHIBIT B

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UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

-----X
 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

1 Deposition of CHARLES HENRY MULLIN, PH.D.,
2 held at the law offices of Jones Day, 51 Louisiana
3 Avenue, Northwest, Washington, D.C. 20001, before
4 Cindy L. Sebo, Registered Merit Court Reporter,
5 Certified Real-Time Reporter, Registered Professional
6 Reporter, Certified Shorthand Reporter, Certified
7 Court Reporter, Certified LiveNote Reporter, Real-Time
8 Systems Administrator, California Shorthand Reporter
9 #14409, New Jersey Certified Court Reporter,
10 #30XI00244600, New Jersey Certified Realtime Reporter
11 #30XR00019500, New York Realtime Certified Reporter,
12 New York Association Certified Reporter, Washington
13 State CSR #23005926, Oregon CSR #230105, Tennessee CSR
14 #998, Remote Counsel Reporter, LiveLitigation
15 Authorized Reporter and Notary Public, beginning at
16 approximately 1:06 p.m. EDT, when were present on
17 behalf of the respective parties:
18
19
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21
22

1 A. I've been retained by policyholders;
2 I've been retained by insurance companies; I've
3 been retained by reinsurance companies, whether
4 it's reinsurance and insurers in litigation, and
5 retrocession errors. So it's kind of up and down
6 the line.

7 Sampling is common regardless of who
8 my clients are in those contexts.

9 Q. Okay. You were involved in the -- in
10 the Mallinckrodt case, correct?

11 A. Correct.

12 Q. What was it that you did there?

13 A. I was retained relatively late in
14 that case. There was a settlement in place. There
15 were objectors to that plan, and I was brought in
16 to discuss the reasonableness of the settlement --

17 Q. Okay.

18 A. -- with regard to opioid claimants in
19 particular was the emphasis of that.

20 Q. Okay. If you flip to Page 17 of 30,
21 the ECF page numbers on the top of your
22 declaration, there is a list of selected

1 In this case, for example, we are
2 using the entire Debtors' historical claims
3 database. We're not saying let's use a 10 percent
4 sample of data already in electronic format. We're
5 saying no, we use all of it because it's all
6 already in electronic form. And that's going to,
7 on a cost-benefit analysis, make sense as opposed
8 to sampling from the historical claims data.

9 You know, in contrast, when you look
10 at claim files in the case and you say what
11 historical claim files might want to get produced
12 and reviewed, that's an expensive operation; you do
13 sampling.

14 So in one case, you turn over
15 everything because it's already in electronic
16 format. In the other case, because there's a large
17 volume of manual labor and cost and time, you use a
18 sample.

19 So even within this case, there's
20 places where my opinions are use all the data, and
21 there's other places where it's use a sample of the
22 data. It's not one or the other; it's what makes

1 All right. In looking through the
2 declaration, Dr. Mullin, can you point me to which
3 paragraph or paragraphs contain your opinion on why
4 the proposed 10 percent sample is not sufficient
5 for the Debtors?

6 (Whereupon, the witness reviews the
7 material provided.)

8 THE WITNESS: I think the core of
9 that starts in Paragraph 15 --

10 BY MR. KAPLAN:

11 Q. Okay.

12 A. -- and probably runs through
13 Paragraph 18 of how the data would be used in broad
14 brush strokes.

15 Q. Okay. And is it your opinion that a
16 10 percent sample is not sufficient for the
17 purposes?

18 A. So it's my opinion that on a
19 cost-benefit assessment, which is how you decide
20 whether you should sample or not, the benefits
21 greatly outweigh the costs here, so it makes sense
22 to get those benefits when they outweigh the costs.

1 So it's going to allow me an estimation to give a
2 much more precise answer and address some questions
3 that otherwise I may not be able to address or
4 quantify reliably, so it -- so, yes, because it
5 passes that cross -- cost-benefit analysis.

6 Q. Okay. Yeah, the -- is your entire
7 opinion related to the sufficiency tied to just
8 cost-benefit?

9 A. I mean, that is the fundamental
10 principle of designing a sample and when do you
11 sample and when don't you, so you can't really
12 answer these questions about is sampling
13 appropriate or not in the absence of talking about
14 what it costs.

15 If there's zero cost to having all
16 the data, you should use all the data because
17 you'll be more precise, and why would you give up
18 the precision? If it's impossible to get all the
19 data, it's a silly exercise to talk about what
20 would happen if we did get it. So the two are --
21 can't be separated, the -- what are the benefits,
22 what are the things that the data enable you to do

1 binding constraint on addressing the bulk of what
2 would fall under that first item.

3 Q. Okay. How about with respect to the
4 estimation of the Debtors' asbestos liability -- is
5 it your opinion that a 10 percent sample would not
6 be sufficient for that?

7 A. "Sufficient" is probably not the term
8 I would use.

9 Could I perform an estimate with a
10 10 percent sample if constrained? Yes. That
11 estimate would have a much broader range of
12 uncertainty about it, and so the Court would have
13 less guidance; the Trust would have a higher risk
14 of not reserving enough funds for future claims.

15 So this is a question of precision,
16 right? It's -- is it worth gaining the extra
17 precision for whatever costs are associated with
18 producing those data?

19 It's still feasible to give an
20 opinion, but you're just going to have a lot less
21 precise about that opinion.

22 Q. Let's stop there for a second with

1 respect to precision.

2 Can you quantify how much less
3 precise 10 percent would be versus, say, for
4 example, a 12 percent sample size?

5 A. So there are areas where I was
6 comfortable doing that. You know, I did drop all
7 the dismissed claims from the request. I dropped
8 everything that wasn't a mesothelioma from the
9 request. So there's areas where I felt like I had
10 the information to have confidence that
11 constraining myself to 3 percent of the historical
12 claims that the Debtors have received would still
13 leave me in a position where I hadn't given very
14 much up in terms of precision.

15 Beyond that, it's very hard to
16 quantify until you have the data, because you don't
17 know what you're going to find.

18 So, for example, if you take the
19 Garlock-style question, if it turns out that the
20 assertions of the Plaintiffs' bar is validated and
21 all exposures are being revealed in a
22 contemporaneous manner, that issue just drops out

1 We're talking about the difference
2 between 1,200 Claimants and 12,000 Claimants,
3 correct?

4 A. Correct.

5 Q. All right. How much -- can you
6 quantify for me how much getting the, say, 2,400
7 Claimant files would improve the estimation in
8 claims forecasting?

9 A. So -- and what you can do
10 definitively is talk about what's the relative
11 improvement in precision. This is actually a place
12 where Dr. Wyner and I don't disagree. The basic
13 statistical formulas move with the square root of
14 the sample size. So if you quadruple the sample
15 size, you double your precision. You take the
16 square root of the relative movement.

17 So asking to take a 10th of the
18 sample is asking you to slightly more than triple
19 your level of uncertainty in everything you're
20 doing.

21 So we're going to present things to
22 the Court that have three times -- a little bit

1 more than three times the uncertainty about them
2 than if we had the 12,000. We know that's going to
3 be the relative impact.

4 Q. Let's start with the 1,200 out of the
5 12,000.

6 What -- can you quantify the level of
7 precision there?

8 A. Again, it depends on the question.
9 So I don't disagree with what Dr. Wyner put in,
10 where he said, If you're asking the question about
11 a proportion for the totality of the population.
12 He applied that formula correctly.

13 If, on the other hand, you want a
14 proportion for one law firm, and that law firm has
15 300 records that now we only sampled 30, you're
16 going to apply that same formula to a population or
17 a sample of 30 and you're going to have very large
18 confidence intervals. You can apply the same
19 mathematical formula. I don't do those in my head.
20 But you will have confidence intervals that are
21 quite broad that -- in my experience, broad enough
22 that most courts would say, that's not very

1 precise; I don't know if we're going to rely on it.

2 So it's a question of how large of a
3 subpopulation are we able to analyze. And that's,
4 I think, the main difference between what Dr. Wyner
5 was looking at and myself. He's implicitly assumed
6 you always only care about a question for the
7 entire population so you get to use all 1,200
8 files.

9 And as soon as you go to questions
10 that involve a subset of the population -- maybe
11 the liability differs by gender, and you want to
12 look at females separately, but they're only
13 20 percent of the Claimants.

14 Now, if gender matters, I don't have
15 1,200; I have 240. I don't have 12,000. I'm
16 already down to a 20 percent sample, in essence,
17 because only 20 percent of the Claimants are
18 female.

19 So as soon as you start looking at
20 subpopulations of interest, 1,200 within a
21 subpopulation would be sufficient, but there's many
22 subpopulations that would have less than 1,200 if I

1 take a 10 percent sample.

2 Q. Is there a way to design the sample
3 so that it addresses the subpopulations you're
4 interested in?

5 A. You could attempt to mitigate. So
6 you could say I want 1,200 females out of the 2,400
7 or so females, if you were to -- out of the --
8 yeah, 2,400 out of -- if it's about 20 percent, and
9 then 1,200 males. You could make it bigger, and
10 that might address that question.

11 But then if you go to law firm -- if
12 there's a law firm that only has 300 claims --
13 Dr. Wyner and I, I think, agree that 30 claims is
14 not enough. We'll probably learn in his deposition
15 whether he thinks 30 claims is sufficient, but, you
16 know, at 300, we'd probably agree -- I don't want
17 to put words in his mouth, but -- on the
18 statistical formulas, that you'd need all 300.

19 So for any law firm that has less
20 than somewhere usually in the 3- to 500 range, most
21 statisticians are going to say you really need to
22 look at all of them if you want to be able to use

1 that data to make projections about the future.

2 Q. Let's talk about -- turning back to
3 the -- the 10 percent sample that is being
4 discussed here, is there a way to design the sample
5 size to address the stated purposes that you're
6 looking for?

7 A. You can mitigate, right -- you can
8 mitigate the risk. And that is what you do in
9 sample design. Whenever you take a sample, you're
10 always taking a risk that you actually won't have
11 the information you need. It's in -- it's
12 intrinsic to sampling.

13 And the smaller you make the sample,
14 the greater that risk becomes because the ultimate
15 answer is only known after the fact. You don't
16 know ahead of time.

17 And so, in this context, yes, you can
18 design things that mitigate that risk, but you
19 can't eliminate it. And the smaller you make the
20 sample, the greater that risk becomes.

21 Q. And sitting here today, can you give
22 me -- can you quantify what the risk is if the

1 Court were to order just the 10 percent sample, or
2 1,200 Claimants?

3 A. As I said, I can't give you a
4 specific number because that's not known until
5 after you have the data and you do the analysis.

6 That said, in general, if you want to
7 forecast liability, particularly if you want to
8 forecast what Claimants would have received in the
9 tort system, you need to control for law firm and
10 jurisdiction. Those are two things that, when I do
11 financial reporting disclosure work, I will control
12 for. When you're looking at future tort system
13 spend, you control for those two elements.

14 If you start controlling for those
15 two here and you look at a law firm in a given
16 jurisdiction, there's only a couple law firms and
17 jurisdictions that have more than 400 claims. So
18 in those, maybe you could sample, and you would
19 still end up with more than 10,000 claims, because
20 for the vast majority, this -- you're already at a
21 size where you wish you had more data.

22 Q. Maybe I just missed it.

1 I guess your testimony -- am I
2 correct your testimony is you cannot quantify the
3 risk sitting here today, put a number on it? If
4 the sample -- what I mean -- by "quantify," I mean
5 it's only 30 percent reliable or 40 percent
6 reliable or 50 percent reliable.

7 A. So, ultimately, the Court, in my
8 experience, is who tells me whether it's reliable
9 or not. What I tell the Court is what's the
10 uncertainty of the estimate.

11 And so every time you tell me to
12 triple my uncertainty, I get nervous. If three
13 different inputs all tell me to triple my
14 uncertainty -- this is one input into estimation.
15 Now the uncertainty is 27 times as big.

16 Going into a court where I might have
17 been able to say, Here's an estimate plus or minus
18 30 million, you tell me to triple, and now I have
19 to say, Here's an estimate plus or minus 90. But I
20 have another input that also adds uncertainty of
21 threefold. Now, instead of plus or minus 90, it's
22 plus or minus 270.

1 Each uncertainty interacts with the
2 other ones, and they -- it's more multiplicative in
3 nature. So it's not that this is the only
4 parameter that matters and creates uncertainty;
5 there are others. And as you fold them, they start
6 to get larger.

7 So this is a place where sampling at
8 10 percent will likely approximately triple the
9 uncertainty for key inputs into the model.
10 Tripling that uncertainty means I'm going to triple
11 my confidence with the uncertainty at the end.

12 And I don't see the costs as
13 justifying that, given the benefit of being able to
14 triple my precision and the guidance I give a
15 court, when, in the best case, a scenario is
16 already going to be you have tens of millions of
17 uncertainty; so now you're going to triple that.
18 That's adding an awful lot of uncertainty -- tens
19 of millions at least of uncertainty to the
20 estimate.

21 So you said "quantify." Going to the
22 10 percent sample will add tens of millions of

1 uncertainty, maybe 100 million. I don't know. I
2 haven't done that work. But it will be at least in
3 the tens of millions based on historical
4 experience.

5 Q. When you say "uncertainty," can you
6 explain what it is you mean there? There's
7 factors -- is that factors or variables you can't
8 account for? Or what is that?

9 A. I would have less data to be able to
10 refine an estimate. So that future estimate will
11 have greater statistical -- that will add
12 statistical uncertainty on top of the other types
13 of uncertainty that already exist. And so it's
14 going to expand any level of confidence you have in
15 an estimate; "expand" in the sense of degrade your
16 confidence, expand the uncertainty.

17 Q. Let's look at Paragraph 16, which
18 is -- again, I'm focusing on the end of it, which
19 is where you say, This would enable us to quantify
20 the proportion of alternative exposure disclosed to
21 the Debtors at the time of settlement.

22 You see that?

1 protocols, the processes they put in place. They
2 had to develop some process for reviewing and
3 redacting. And the other piece that's in there
4 because of the likely overlap, if they chose to
5 cross-reference with the records that they already
6 produced in DBMP in their production process, the
7 ones that had information that needed to be
8 redacted from DBMP, they could bring over the
9 redacted field and not have to redo the redaction.

10 So the overlap should make it less
11 expensive because they've already done it for
12 subpopulation, and the fact that they have the
13 experience of having done it before and they aren't
14 developing the protocols should make it less
15 expensive.

16 Q. Do you have any firsthand knowledge
17 of the process that DCPF employs to review and
18 redact these records?

19 MR. EVERT: Objection: asked and
20 answered.

21 THE WITNESS: No.
22

1 BY MR. GUERKE:

2 Q. Even though the subpoena doesn't
3 specifically request personal identifying
4 information, you agree that it would capture
5 certain personal identifying information, right?

6 A. That is the allegation by the Trusts.
7 I understand their allegation. You know, it is
8 not -- there's traces when you build a database and
9 the exposure fields. If they've chosen to include
10 that type of information in an exposure field, then
11 it could be there.

12 They assert that some of those
13 exposure fields contain that information. So
14 that's -- their position is it does.

15 You could imagine a database about
16 exposure that doesn't have PII in because that's
17 really not relevant to the exposure.

18 So if you had a clean exposure field,
19 then you wouldn't have that issue. Right? So it's
20 the fact that their exposure field isn't clean,
21 it's contaminated with PII, that creates this
22 issue. It wasn't obvious at the time of issuing,

1 seeking the data that that would be the case.

2 Q. But you don't dispute that that is
3 the case, right?

4 A. I -- I don't dispute the assertion.

5 Q. Are you measuring DCPF's burden by
6 using the \$86,000 billed in production costs in
7 DBMP?

8 A. I view it as a relevant data point.
9 I don't think they're going to be at the exact same
10 number next time.

11 I mean, from a burden perspective,
12 it's more about the hours, because that's --
13 ultimately, that was paid by the Debtors and DBMP,
14 as I understand it. So the financial burden was
15 borne by the Debtors, but it's the scope of the
16 exercise.

17 Q. You don't know what the per record
18 review costs for these Debtors' subpoenas will be
19 for DCPF, right?

20 A. So you can get a rough estimate. And
21 if -- you can look at things like the Garlock data
22 and estimate how many Trusts a typical Claimant

EXHIBIT C

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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

In re
ALDRICH PUMP LLC, et al.,
Debtors.

Case No.: 22-cv-5116

Underlying Case No.: 20-30608 (JCW)
(United States Bankruptcy Court for
the Western District of North Carolina)

**REPLY DECLARATION
OF MARK T. EVELAND**

MARK T. EVELAND, of full age hereby declares under penalty of perjury pursuant to 28 U.S.C. § 1746:

1. I am the president of Verus Claims Services, LLC (“Verus”). I submit this declaration in reply to the Debtors’ brief and the supporting declaration of Charles. H. Mullin, Ph.D. in opposition to the motions to quash filed by Verus (ECF Doc. No. 5) and the Trusts (ECF Doc. No. 1). I make this declaration based on my own personal knowledge, and the facts stated herein are true and correct to the best of my knowledge, information and belief.

2. Debtors' Subpoena seeks information regarding approximately twelve thousand (12,000) claimants who may have submitted asbestos-related personal injury claims to one or more of the Trusts.

3. In their brief and in the supporting declaration of Dr. Mullin, Debtors contend that compliance with the Subpoena will require Verus to only "extract certain data fields from within the database it admits it possesses (which should be an entirely automated process) and place that data in an excel or database file for production." This is not the case.

4. As a result of how information is submitted to the Trusts and how that information is maintained by Verus, compliance would necessarily require a labor-intensive review and redaction process for each claim record.

5. As I explained in my prior declaration, when a claimant asserts a claim against a Trust, that person is required to provide data and documentation sufficient to support the claim. This information routinely includes private and personal, medical, family and financial information of the claimants and third parties such as their spouses, dependents, other family members, co-workers and personal representatives.

6. Verus's claim files include this confidential information, and also contain the claim processors' claim notes and comments, as well as privileged communications with the Trusts and their counsel. Verus's comments, notes and

annotations are added to the information supplied by the claimant. Claim records can have numerous such annotations in multiple data fields.

7. While the Debtors' subpoena specifies certain data fields to be produced, it casts a broad net for "all exposure-related" data without limitations.

8. There is no practical way for Verus to ensure that all of its work-product, notes, thought-process, comments, evaluations and determinations in processing claims have been extracted from each and every data field across all eight Trust databases. In order to minimize this risk, a time-consuming review is required.

9. Claimants' exposure histories are often quite extensive, consisting of multiple exposure records spanning decades in the workforce. Each of the Trusts at issue require claimants to provide only sufficient evidence of exposure to prove the minimum requirements for compensation according to the exposure requirements of that Trust's Trust Distribution Procedures; thus, comprehensive exposure histories are not required and a specific claimant may submit a different subset of exposure data to each Trust.

10. For example, the Debtors' supposedly anonymized "Matching Key" of approximately 12,000 claimants corresponds to over 63,000 unique claims filed with the Trusts. The exposure records related to these over 63,000 unique claims number approximately 200,000 – the rough equivalent of over 3,300 pages of densely printed tabular information just for the exposure data. Because the requested claim data is

voluminous and may contain sensitive information, data cannot be exported without being reviewed first to ensure that: (1) information responsive to the Subpoena is included; and (2) confidential information is not being disclosed. I understand that this process is roughly similar to attorney review of document productions to ensure that responsive documents are captured but that any privileged material is withheld.

11. This review, for the most part, cannot be automated. Although simple tasks like the identification of Social Security Numbers (“SSNs”) within claim files could possibly be automated, the narrative information submitted by the claimants must be reviewed by a human data analyst. Complying with the Subpoena will therefore be labor-intensive and expensive.

12. Estimating the costs of this process is difficult because the time necessary to review any particular claim is highly variable and highly dependent on what information the corresponding claimant included in their submissions. This highly variable per-claimant cost must then be multiplied by the enormous number of claimants for whom the Debtors seek information (more than twelve thousand). The exercise of comparing the debtor’s Matching Key to the databases that Verus maintains on behalf of the eight trusts which are subject to the subpoena has already required approximately 80 hours of labor and cost the Trusts over \$15,000. The total labor for identifying claimant records and extracting, reviewing and redacting data

for other recent third-party subpoenas has ranged from 350 hours to over 975 hours, at a cost to the Trusts ranging from approximately \$51,000 to over \$162,000.

13. Additionally, Verus cannot allocate the resources needed to respond to the Subpoena without severely disrupting the performance of its duties required under its contracts with the various Trusts.

14. Verus employs one data analyst and three statisticians who are familiar with the data at issue here and have the skills necessary to extract the data as the first step in responding to this subpoena. These critical employees would have to devote their time and attention exclusively to responding to the Subpoena for a period of several days. These same resources are critical to the day-to-day operations of the trusts for which Verus works, having responsibility for providing updated analyses of operational issues, liability forecasts, and anticipated cash flows that are necessary for the trusts to make key decisions regarding payment of claims.

15. While some of the data analysis tasks required to respond to this subpoena could be assisted by Verus's software engineers, they too would have to turn their attention to the Subpoena instead of their normal work. Since these individuals do not specialize in database work and are primarily engaged in developing software unrelated to the trust databases, they are not familiar with the structure of the data requested in this subpoena. As such, if engaged in production of this data, their work would have to be closely reviewed by someone with

knowledge and experience of the data, thus adding to the expense of the process. This disruption would also put at risk key deadlines for data collection, analysis and production in unrelated litigation projects for which Verus is routinely engaged by other clients.

16. Also, as a very real practical matter, the labor market for the skilled labor required for requested production is unprecedentedly tight. It is unrealistic to think that Verus could demand significantly more effort or time from its employees (even if overtime is paid) in order to meet current contractual obligations without risking staff resignations.

17. Besides the obvious delays in claims processing and payment, it is anticipated that the time expended to respond to the Subpoena will cause Verus delays in: (i) improving its software applications; (ii) performing needed system maintenance and re-design; (iii) generating audits and reports; (iv) implementing policies and performing data analysis which will result in significant delays in processing, making offers on, and paying compensable claims for certain Trusts; (v) invoice production; (vi) monthly new code releases; (vii) administrative work; (viii) responding to claimant inquiries; and (ix) responding to internal requests for assistance.

18. Debtors' brief and the Subpoena itself also demonstrate how the "anonymization" procedures that Debtors refer to are of no practical value.

19. The Matching Key already contains the SSN and surname for each claimant, which are connected to a “numerical pseudonym.” Responding to the Subpoena with then requested information for each pseudonym will necessarily allow Debtors to link each pseudonym to the corresponding SSN and surname, thereby destroying any anonymity. Once the information is linked to the corresponding claimant, there is no meaningful way to ensure that it can ever be re-anonymized.

20. I am aware that Debtors have argued that disclosure of the requested information to Bates White poses no risk to Verus because Bates White does not compete with Verus. While it is true that Bates White does not process trust claims, it does work for numerous asbestos defendants and insurance carriers. Therefore, its interests and the interests of its clients are potentially adverse to those of Verus’ trust clients, to which Verus bears contractual and other obligations.

21. Therefore, separate from the economic costs of compliance, using a statistical sample would dramatically reduce the commercial and competitive risks posed by the requested disclosure.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: October 11, 2022

By: 

Mark T. Eveland

EXHIBIT D

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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

In re
ALDRICH PUMP LLC, et al.,
Debtors.

Case No.: 22-cv-5116

Underlying Case No.: 20-30608 (JCW)
(United States Bankruptcy Court for
the Western District of North Carolina)

**DECLARATION OF
MARK T. EVELAND**

MARK T. EVELAND, of full age hereby declares under penalty of perjury pursuant to 28 U.S.C. § 1746:

1. I submit this declaration in support of Verus’s motion to quash and to stay, as well as the Motion to Quash Subpoenas and in Support of Stay (ECF Doc. No. 1) filed by the eight third-party asbestos settlement trusts identified below¹ (collectively, the “Trusts”). I make this declaration based on my own personal

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.

knowledge, and the facts stated herein are true and correct to the best of my knowledge, information and belief.

2. I am the president of Verus Claims Services, LLC (“Verus”), a third-party claims review facility. Verus is a New Jersey limited liability company with its principal place of business located in Princeton, New Jersey. It is in the business of reviewing claims using its proprietary database, software and review process. Its servers and database – along with the information stored therein that is the subject matter of the Subpoena – are located in a colocation facility in Parsippany, New Jersey with disaster recovery backups in Spartanburg, South Carolina.

3. Verus operates under contract for, among others, the Trusts that are the subject of a subpoena issued by Aldrich Pump LLC and Murray Boiler LLC (together, the “Debtors”) (the “Subpoena”). Verus is not, however, an authorized agent of the Trusts.

4. The Subpoena seeks information regarding approximately twelve thousand (12,000) claimants who may have submitted asbestos-related personal injury claims to one or more of the Trusts.

5. Verus maintains all of the records and documents requested in the Trust Subpoenas.

6. Verus has created a proprietary web-based system to facilitate its claims administration responsibilities, including by significantly reducing turn-around time

and ensuring timely and effective communications between parties to the claims process, giving Verus a competitive advantage in the market. Verus expended substantial effort and money in developing its computer software system and its trust databases, which are proprietary trade secrets that are vital to its business and extremely valuable.

7. Responding to the Trust Subpoenas will expose Verus's proprietary trade secrets to third parties, including competitors such as Bates White LLC ("Bates White"), the Debtors' expert. For example, at great time, expense, and effort, Verus has developed proprietary algorithms that better enable it to evaluate and ultimately determine the value of individual asbestos claims. However, if a competitor, like Bates White, which I understand has access to extensive data from other asbestos defendants receives data such as date of birth, date of death, occupations, jobsites, exposure dates, diagnosis dates, dependents, injury level, earnings information, name and SSN (to cite just a few examples) from Verus in response to the Trust Subpoenas, that competitor or third party can potentially "reverse engineer" the data to recreate Verus's proprietary algorithms. Consequently, Verus's algorithms and trade secrets would lose their value, that competitor would gain an unfair competitive advantage at Verus's expense, and Verus would have to invest additional time and funds to create new algorithms to stay competitive.

8. Verus takes substantial measures to safeguard its software system and trust databases, including: (i) making access to the office keypad-restricted; (ii) installing locks on all internal offices; (iii) securing its servers within a locked data center and behind state-of-the-art hardware and software firewalls; (iv) 24-hour intrusion monitoring of all databases and file servers; (v) 124-bit encryption of all sensitive data transmitted via the internet; (vi) requiring all Verus employees to sign a confidentiality agreement; (vii) requiring dual-factor authentication for all users granted access to the system; and (viii) requiring all law firms to execute an electronic filer agreement with specific provisions barring the firms' designated agents from sharing any proprietary information contained within the system, including review notes, reports, screen prints, or any other information pertaining to the functioning of the Verus system.

9. Verus does not keep the original paper documentation as submitted by a claimant. Instead that information is uploaded into Verus's database by both Verus and/or the claimant's counsel. The original paper documents are then destroyed within six months. Verus then uses information culled from that documentation to evaluate a claim against a specific trust.

10. Verus's comments, notes and annotations are added to the information supplied by the claimant.

11. Claimants submit confidential information to Verus and the Trusts under the expectation of privacy and in furtherance of claim resolution. When a claimant asserts a claim against a Trust, that person is required to provide documentation to support that claim. Additionally, some claimants reside in jurisdictions with heightened privacy protections under local law (such as, for example, the California Consumer Privacy Act or the UK General Data Protection Regulation).

12. Claimants are instructed that all information they provide will be kept confidential. Routinely, that information includes private and personal, medical, family and financial information of the claimants and third parties (spouses / dependents / personal representatives) such as: Social Security Numbers (SSNs), Social Security Administration earning statements, dates of birth, birth certificates, medical records, death certificates, divorce records, tax returns and military records. Claimants may also submit economic loss reports or statements describing the mental and physical disabilities / drug addictions / marital issues / special needs of spouses, children and dependents.

13. Often times, claimants' counsel mistakenly upload the personal information and confidential documents to the incorrect claimants' electronic files.

14. The claim files contain the confidential information of individuals who make no claim of exposure to asbestos containing products, such as the claimant's children, spouses, dependents and personal representatives.

15. The claim files also contain Verus's proprietary work-product and claim notes, such as its proprietary methodology of reviewing and analyzing claimants' medical information as well as Verus's claim processors' review and analysis of the claimant's: (i) physical exams and other physician reports; (ii) X-ray readings and CT scans; (iii) pulmonary function tests; and (iv) pathology and/or autopsy reports. As discussed in paragraph 7, above, providing this proprietary information to a competitor that also holds asbestos claimant data would allow them to recreate the proprietary review method that Verus invested substantial time and money to create.

16. The claim files also contain the claim processors' claim notes and comments, as well as privileged communications with the Trusts and their counsel.

17. Claim files can consist of numerous documents totaling thousands of pages.

18. Pursuant to the confidential Claims Processing Agreements between Verus and the Trusts, information and documents submitted by the claimants are the property of the Trusts.

19. Verus does not maintain one monolithic database containing all claimant data submitted to any of the Trusts. Rather, Verus maintains logical separation of data for each Trust. Except in instances where the same document is submitted by one claimant to multiple trusts, the data is not commingled or shared across trusts or accessible by users without separate access privileges for each trust.

20. In general, the claim forms and the Trust Distribution Procedures require only that claimants provide sufficient exposure history to (a) satisfy the requirements for exposure to the particular defendant's products; and (b) to meet the Significant Occupational Exposure requirements, which require at least five years in a suitable industry and occupation where the claimant was exposed to asbestos in general, of which the claimant was exposed to the defendant's products for at least six months.

21. A claimant could normally satisfy both (a) and (b) above by providing an exposure history consisting of five years out of a potential 30 to 40 year work history.

22. Verus has contractually mandated performance obligations to the Trusts it serves.

23. Complying with the Trust Subpoenas will be labor-intensive and expensive. Verus cannot allocate the resources needed to endlessly respond to

subpoenas and discovery requests in a manner that would negatively impact the performance of its duties required under its contracts with the various Trusts.

24. Besides the obvious delays in claims processing and payment, it is anticipated that the time expended to respond to the Trust Subpoenas will cause Verus delays in: (i) improving its software applications; (ii) performing needed system maintenance and re-design; (iii) generating audits and reports; (iv) implementing policies and performing data analysis which will result in significant delays in processing, making offers on, and paying compensable claims for certain Trusts; (v) invoice production; (vi) monthly new code releases; (vii) administrative work; (viii) responding to claimant inquiries; and (ix) responding to internal requests for assistance.

25. There is no practical (or automatic) means through which Verus can ensure that all of its work-product, notes, thought-process, comments, evaluations and determinations in processing claims have been extracted from each and every field and document across all eight Trust databases.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: August 19, 2022

By: 
Mark T. Eveland