

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

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| 1 | | | |
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| 3 | IN RE: | : | Case No. 20-30608 (JCW) |
| 4 | ALDRICH PUMP LLC, ET AL., | : | (Jointly Administered) |
| 5 | Debtors, | : | Chapter 11 |
| 6 | | : | Charlotte, North Carolina |
| 7 | | : | Thursday, June 15, 2023 |
| 8 | | : | 10:31 a.m. |
| 9 | ARMSTRONG WORLD INDUSTRIES, | : | Miscellaneous Pleading |
| 10 | INC. ASBESTOS PERSONAL INJURY | : | No. 22-00303 (JCW) |
| 11 | SETTLEMENT TRUST, et al., | : | (Transferred from District |
| 12 | Plaintiffs, | : | of Delaware) |
| 13 | | : | |
| 14 | v. | : | |
| 15 | ALDRICH PUMP LLC, et al., | : | |
| 16 | Defendants, | : | |
| 17 | | : | |
| 18 | AC&S ASBESTOS SETTLEMENT : | : | Miscellaneous Pleading |
| 19 | TRUST, et al., | : | No. 23-00300 (JCW) |
| 20 | Petitioners, | : | (Transferred from District |
| 21 | | : | New Jersey) |
| 22 | | : | |
| 23 | ALDRICH PUMP LLC, et al., | : | |
| 24 | Respondents, | : | |
| 25 | | : | |
| | VERUS CLAIM SERVICES, LLC, | : | |
| | Interested Party, | : | |
| | | : | |
| | NON-PARTY CERTAIN MATCHING | : | |
| | CLAIMANTS, | : | |
| | | : | |
| | Interested Party. | : | |
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TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE J. CRAIG WHITLEY,
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES (via Teams):

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1 P R O C E E D I N G S

2 (Call to Order of the Court)

3 THE COURT: Okay. Have a seat, those of us in the
4 courtroom.

5 We are back today in the Aldrich Pump and Murray
6 Boiler cases in the miscellaneous proceedings, primarily, with
7 regard to a request for, by the debtors for rehearing for what
8 I will generically call the trust subpoena-related issues,
9 essentially talking about whether we are going to sample data
10 from the Trusts or whether the entire 12,000-person population
11 will be required and we'll get to that in a second.

12 I thought beforehand -- we're doing this by a Teams
13 videoconference call just to get the announcement of the
14 decision from last week's hearing -- let me ask who's on the
15 phone and, and who needs to make appearances, starting with the
16 debtors.

17 MR. HIRST: Your Honor, Morgan Hirst and Brad Erens
18 are here for the debtors. I'm sure there are others on the
19 line as well, but the primary speakers today.

20 THE COURT: All right.

21 Anyone else on the debtors' side needing to announce?
22 Don't feel the need unless it's, it's important to you and your
23 client or you're planning to actively participate.

24 (No response)

25 THE COURT: How about for the ACC? Anyone?

1 MR. WRIGHT: Yeah. It's -- good morning, your Honor.
2 Davis Wright from Robinson & Cole. I'm actually joined today
3 by Jim Wehner from Caplin & Drysdale and Rob Cox from Hamilton
4 Stephens Steele & Martin.

5 THE COURT: Okay.

6 How about the FCR?

7 MR. GUY: Good morning, your Honor. Jonathan Guy for
8 the FCR. I believe Mr. Grier is also on, online, too.

9 Thank you.

10 THE COURT: Okay.

11 And how about on the Delaware Trusts and
12 administrator? I'm gonna say DBMP if I'm not, not careful
13 here, the DCPF Trusts?

14 MS. MOSKOW-SCHNOLL: Your Honor, this is Beth Moskow-
15 Schnoll from Ballard Spahr for the DCPF Trusts.

16 THE COURT: Thank you.

17 MR. GUERKE: Good morning, your Honor. Kevin Guerke
18 from Young Conaway on behalf of DCPF Facility and I'm here this
19 morning with our local counsel, Felton Parrish.

20 THE COURT: Okay.

21 How about the Facility, the Delaware Facility?

22 MR. GUERKE: That's Kevin Guerke, your Honor, DCPF.

23 THE COURT: Okay. That's Guerke. Okay. Trying to
24 keep 'em all straight here.

25 How about with the Verus Trusts?

1 MS. BENNETT: Good morning, your Honor. Lynda Bennett
2 from Lowenstein Sandler on behalf of the Verus Trusts and my
3 local counsel, Andy Houston's, also on the line.

4 THE COURT: Okay.

5 And then Verus Claims Services?

6 MR. ANSELM: Good morning, your Honor. Andrew
7 Anselmi from Anselmi & Carvelli and I believe our local
8 counsel, Jay Bender, is on as well.

9 THE COURT: All right.

10 Any Affiliates appearing?

11 MR. MASCITTI: Good morning, your Honor. Greg
12 Mascitti, McCarter & English, on behalf of Trane U.S. Inc. and
13 Trane Technologies Company LLC.

14 THE COURT: Okay.

15 Others? Anyone else needing to announce?

16 MR. HOGAN: Good morning, your Honor. Daniel Hogan on
17 behalf of the Certain Matching Claimants. I, I am here, your
18 Honor.

19 THE COURT: Okay. I'd overlooked you folks. Sorry
20 about that.

21 MR. HOGAN: No worries.

22 THE COURT: Anyone else?

23 MS. MOSKOW-SCHNOLL: Your Honor, this is Beth Moskow-
24 Schnoll, again. I neglected to introduce Lance Martin, our
25 local counsel for the DCPF Trusts.

1 THE COURT: All right.

2 MS. MOSKOW-SCHNOLL: He's also on the line.

3 THE COURT: Very good. Thank you.

4 That got it?

5 (No response)

6 THE COURT: Okay. Should be a short hearing this
7 morning and I won't beat around the bush. I appreciate the
8 quality, as I said, of the presentations that were made last, a
9 week or so ago and you, as always, gave me a lot to think
10 about.

11 Just to put this procedurally, technically we're,
12 primarily, today in the two miscellaneous proceedings. That
13 would be Nos. 22-303 and 23-300, but these also bleed over into
14 the base case matter since I asked for everybody's appearances
15 and not just the direct participants.

16 As you know, we've taken this in, now, three steps
17 with multiplicity of, of filings. We started out in Round 1, I
18 guess, with the debtors' request for the subpoenas and then the
19 subpoenas were issued, and then we got, the Delaware and the
20 New Jersey District Courts became involved and ultimately, this
21 all ended up down here. I made a ruling back in November that
22 I announced from the bench in favor of sampling with a 10
23 percent sample and after, as, as y'all have recounted, after a
24 good bit of negotiation and scurrying around, the debtors asked
25 for, for a, whatever you wanna consider it, rehearing or

1 reconsideration, depending on your perspective of that. I
2 personally view it as a rehearing because I had nothing but a
3 bench ruling and no written order had been entered and that
4 being the case, bench rulings kinda have an interesting
5 perspective there. They're -- they are -- courts generally
6 expect you to adhere to them if we're in a hurry, but
7 technically speaking, they are not binding decisions until they
8 are actually entered.

9 So my view was that it was rehearing and for several
10 reasons, even though a written order hadn't been entered, I
11 thought that it would be appropriate to reconsider the matter
12 and, or rehear the matter with the focus today of whether or
13 not a sample would suffice for the debtors' purposes, as I had
14 announced in November, or whether the full, if you will,
15 population data of 12,000 settled meso claims should be
16 produced by the various trusts.

17 That we are having to do this at all comes from
18 several reasons. You know what I did in DBMP and you know what
19 Judge Beyer did before in Bestwall, but part of this is my
20 fault and I will just fall on my sword and say that, that when
21 we got to talking about this earlier and I announced the 10
22 percent ruling, part of that was about concern for privacy and
23 I had neglected to think about the double-scrubbing provisions
24 that we had included in DBMP and were being proposed here that
25 would allow first the Trusts and then Bates White to take out

1 any inadvertently produced PII. That was, that was my mistake,
2 but the ruling also had to do with other concerns, one of which
3 was that instead of moving forward, these cases appeared to be
4 spreading out horizontally and increasing the number of
5 disputes and the attendant costs and, and basically, bogging
6 down. I called it "ballooning" earlier, but litigation that
7 was not being accompanied with, with meaningful progress and I
8 was concerned about those costs concerns.

9 I also was aware that the Delaware District Court had
10 and ruled on a couple occasions that a 10 percent sample would
11 be sufficient and as I was concerned about costs and
12 efficiencies and moving these cases forward, my second thought
13 on that day was this might be a good spot where we can start
14 reining in our ever-expanding discovery demands by using a
15 sample. I still have the same concerns, but in short, I am
16 reluctantly holding today that I think the debtors could have a
17 legitimate need for the full population of 12,000 and that the
18 10 percent sample is likely to be inadequate for all purposes.

19 So I'm gonna require that production. I don't want to
20 go on at, drone on at length, but I need to at least identify
21 so that I can ask for the debtors to provide a proposed order.

22 Places where I disagree with their arguments, let me
23 say at the outset I thought the handiest way of dealing with
24 this after poring through all of your various pleadings was to
25 take the debtors' reply, which in, consolidated reply filed at

1 Docket No. 146 in Miscellaneous Proceeding 22-303, and work off
2 of that and if that will enable you to go back to your prior
3 documents and eyeball what, what has been said, I generally
4 agree with the arguments made there with a couple of
5 exceptions. So let me see if I can, without boring you to
6 death as I read to you through all of, all of this, go back and
7 try to address what we have need of here.

8 I guess the first thing was about the uncertainty that
9 might be inherent in sampling. I agreed, if you're looking on
10 Page 6 of the debtors' rebuttal part, the Trust Discovery Order
11 did, in fact, authorize a, a number of permitted uses,
12 including estimation and plan purposes for this data. So it's
13 broader than what we've had. On the other hand, where the
14 debtor argues that they only asked for, essentially, 3 percent
15 of the settled claims data, meaning 12,000 out of 400,000, I
16 thought that was a little bit misleading. As we all know, the
17 money in these cases is out of meso claims, not, not, the other
18 diseases and they tend to drive these asbestos cases,
19 particularly for plan purposes and trust distribution purposes.

20 So I looked at it more in terms of the way that the
21 objecting parties were viewing it, that what we were
22 essentially asking for was half of all the meso claims ever
23 presented and effectively, all of 'em, for whatever it was, the
24 last 15 years. So that, I didn't totally agree with.

25 As to whether there is sampling error and, and the

1 magnitude of that, that was a difficult decision to make. Both
2 experts, Mr. Wyner, Mr. Mullin, were eminently qualified,
3 excellent witnesses, obviously experts in some very rare air
4 of, of analysis, and if you want to coarsely analogize a
5 court's role in evaluating expert testimony as judging a beauty
6 contest, you would have to say that both would be finalists.
7 They were both excellent and both know what they're talking
8 about, certainly more than the Court itself, whose last
9 statistics class came in the 1970s. So I'm not, I have every
10 intention of thinking this was helpful and that I was going to
11 have to rely on their viewpoint.

12 I agreed with the general principle that Dr. Wyner
13 said that he didn't think there'd be a material practical
14 effect by sampling, but that is found in context, as, as
15 pointed out in the debtors' brief on, on Page 7 and beyond,
16 that that makes a bit of an assumption that is effectively
17 generalizing that he's assuming that the primary thrust of this
18 is to assess whether or not there is document suppression,
19 information suppression in the files and I believe, as
20 Dr. Mullin states, that his need is beyond that and the
21 debtors' need is beyond that. I would think if we were just
22 trying to come up with an overall estimate of the, of the
23 numbers without anything further, that you could get by on 10
24 percent, which is a large sample.

25 I did agree with Dr. Wyner and didn't agree with

1 Dr. Mullin that if you have a multi-variant analysis, that the
2 increase in uncertainty would be, I think Dr. Wyner said it
3 would be additive, not multiplicative, and I agreed that that
4 was my understanding of the way statistics work. But that
5 doesn't answer the question.

6 The bottom line is that even if we can't fully
7 identify how much the magnitude of uncertainty was, I thought
8 Dr. Mullin had a couple of observations that were particularly
9 relevant and gave me pause. Essentially, that there is a need
10 to forecast not just today, but off into the future and the
11 farther out you get, the more uncertainty there is. So the
12 better the information you needed and bleeding into that, the
13 fact that there would be subsets who would have different rates
14 of diminishment, if you will, of the disease over a period of
15 time and it might be that with, if you sampled, you wouldn't
16 have enough data on the subsets to make meaningful analysis and
17 that would greatly increase uncertainty and as --

18 (Joseph Lemkin exited the videoconference)

19 THE COURT: Okay. Might be a good time, if you
20 haven't already, to mute your receivers.

21 But basically, that with sampling we might end up with
22 subgroups that weren't large enough to really have good
23 information. So that's where I, I believe Dr. Mullin has the
24 long end of the stick. Whether that actually comes about or
25 not, I don't know at this point, but it is a rational,

1 reasonable concern and it may affect the forecast of future
2 claims. I am foursquare with the FCR on this topic, that if we
3 are happy enough to get a confirmed plan and a trust at some
4 day that is agreed to by the parties, that I wanna make sure
5 that trust is funded properly and that the future claimants
6 don't get short shrift because they were late and things
7 happened that we had not foreseen in the, as time passed and we
8 wanna be as accurate as we possibly can. And that's my primary
9 motivation for saying that we need the full data. It might
10 make it, the study of those subgroups inaccurate and I don't
11 really want to do that.

12 Now I will say that there, the argument goes that the
13 debtors' side needs this to, to support their legal liability
14 method and as you know, I was not in Garlock at the time that
15 Judge Hodges entered the estimation ruling. I didn't hear all
16 that evidence. I have no idea of what theory, whether legal
17 liability or historical settlement, is the proper approach and
18 I will reserve judgment on any of those thoughts. I've
19 intentionally not gone back and read that opinion because I
20 wanted it to be fresh and I wanted everyone to get an
21 independent view.

22 But the bottom line is that we'll reserve that, but I
23 think, as I said before, I want the two parties to be able to,
24 to present the evidence and the theory for this very difficult
25 topic that they believe is appropriate and I think this, the

1 full population of 12,000, that data is necessary for the
2 debtors to make that attempt.

3 Let me see where we go from there. One moment.

4 (Pause)

5 THE COURT: I generally agreed, at least in principle,
6 that in the same measure the reliance by the debtor on Page 13
7 of its reply brief that whether the debtor has the information
8 -- the objecting parties say a lot of this information is
9 already in the claims database that, that the debtors
10 possess -- the debtor makes the pitch that half of the Garlock
11 claims involved misrepresentation and, and then extrapolates
12 from that they're likely not to have the information in their
13 own files. I have no idea. Again, same thing. I didn't hear
14 the evidence in Garlock, but we'll jump that, that hurdle when
15 we get to it. So I really express no opinion on that.

16 Let's see.

17 Again, the, on Page 14 of the debtors' reply brief,
18 Dr. Gallardo-García's declaration in Bestwall. I adopted the
19 debtors' view of that, that effectively, that was done after
20 Bestwall, after the District Court in Delaware had declared
21 that only a 10 percent sample would be required and if, if
22 Dr. Gallardo-García was, was taking the position that the
23 sample he, he had formulated was adequate, well, what else
24 would he say under those circumstances that, "By the way, you
25 shouldn't rely on this." He didn't say it was ideal.

1 As to the cost benefit analysis that is discussed, I
2 did not agree with the debtors on 15 and 16 of their reply
3 brief, that it was not necessary for the Trusts to review that
4 documentation. I think that ignores legal realities. If I
5 were the administrator of the Trusts, I would certainly feel
6 obliged to take a look and make sure I didn't let any PII get
7 out there, particularly since it might not be the claimants'
8 PII, but some coworkers.

9 So I think they do need to do that. The compensating
10 balance, of course though, is the debtor is reimbursing for the
11 expense and I think that takes care a lot of the problems.

12 As to the Objectors' complaint that there are
13 opportunity costs, non-quantifiable burdens in producing
14 delays, distraction, staff, etc., that one, I think, is just
15 too ethereal factually to, for me to believe and I do note the
16 arguments that, well, these Trusts were looking to get into
17 this case to review PIQ information. So it appears they've got
18 some time to do this. I don't know what's going on in those
19 Trusts and how much claim administration is underway. There's
20 an argument made by the debtors on that that I don't know one
21 way or the other or whether there's plenty of free time.

22 But the bottom line is that complying with subpoenas
23 is an unfortunate, but necessary fact of modern life. Lawyers
24 have to do it. Businesses have to do it. In this case, our
25 goals are the same goals as, as to our present and future

1 claimants that is the goals of the Trusts are with regard to
2 the settled claims. We wanna get these people paid as quickly
3 as possible. So while I fully appreciate that it's a burden
4 and fully appreciate that, that claimants would like to get
5 their money quickly, the same applies here and we need it for
6 this purpose. So -- and as, I generally otherwise agreed with
7 the debtors' arguments in that regard.

8 As to whether or not there are confidentiality
9 concerns by the, by the full-population production as opposed
10 to the 10 percent sample, I'll just tell you at this juncture I
11 think it's a minimum risk and it's a risk that is borne by all
12 people these days who have their, their data in electronic
13 formats being held by corporations that, with which they do
14 business, but in this case I think it's pretty minimal about
15 the risk. I think the fight really here is that we've got a,
16 and the reality, we've got a fight about who gets the
17 information that they think they need to present their cases
18 and there's a desire on one end by the debtors to make that as
19 expansionistic as possible, even to the point of subpoenaing
20 other debtors, and then on the claimants' side, particularly
21 the, the law firms which are affiliated with the Trusts in some
22 form or measure, to minimize that for obvious reasons and the
23 bottom line is you wanna win and also, you don't wanna be
24 embarrassed in the press. I get all of that, but the bottom
25 line is that at the end of the day, there shouldn't be any PII

1 to begin with because it wasn't requested. If it comes in the
2 narrative forms, then the data will have been reviewed twice
3 and redacted twice and then it gets subject to the protective
4 order which further ensures it and it would ultimately take a
5 hack of the computers at Bates White to ultimately, for that to
6 get out. Now we're getting into some really remote possibility
7 and I don't think it's strong enough to overcome the force of a
8 subpoena.

9 The last reason -- and, and there are confidentiality
10 demands in the Trust Discovery Order that limits how this
11 information could be used -- and the last one is that,
12 consistency. I've spoken about this before. The last thing I
13 want you folks to do is feel like you need to start trying to
14 appear in the DBMP case lest something happened there that
15 you're gonna be stuck with. I've told you before that just as
16 you learn and adapt case-to-case, the Court does as well.
17 We're trying to learn by prior experiences and each case stands
18 alone. They are different cases in one major respect as to
19 whether or not the FCR supports the debtors' plan proposal and
20 they are going to have a different life, they have different
21 products, and they were filed at different times. I am not
22 capable of doing the same thing in each one.

23 At the same time on this particular issue, Bestwall
24 and DBMP have already established a full population as to these
25 items and as the facts and circumstances appear to be all but

1 identical, I believe consistency will be helpful in this
2 respect. So that's the last reason, even though I, I cannot
3 promise nor would I think it appropriate to have full
4 consistency across the cases.

5 So that's the ruling. I'd call on the debtor to
6 provide a proposed order. Since I've effectively relied on the
7 debtors' reply brief and noted where I, I differ from it, I
8 think we can keep it relatively short, but, and just make
9 reference to it in the event of an appeal.

10 Anything? That got it?

11 MR. HIRST: Your Honor, just one -- this is Morgan
12 Hirst for the debtors.

13 Just one question, which is can we set some sort of
14 compliance date in the order for compliance with the subpoena?
15 I'm open to, you know, I understand the time that it takes to
16 do this, but we would like to at least have a compliance date
17 so it's not hanging out there.

18 THE COURT: Let me inquire whether this would be a
19 good time for me to take a ten-minute recess and let you talk
20 amongst yourselves. I'll -- we'll keep the, the equipment on.

21 Can we keep it on without, and turn the recorder off?

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

24 THE COURT: Okay.

25 Do y'all need to discuss compliance time periods?

1 Anyone?

2 MS. BENNETT: Your Honor, this is Lynda Bennett on
3 behalf of the Verus Trusts.

4 My suggestion is let us caucus with our clients and
5 then we're happy to reach out to Mr. Hirst to provide a
6 timetable. I'm not in a position today to say how long it's
7 gonna take. We're gonna have to speak with the Verus Facility
8 before we'll be able to commit.

9 THE COURT: Anyone else?

10 MR. GUERKE: Your Honor, Kevin -- your Honor, Kevin
11 Guerke on behalf of Delaware Claim Processing Facility.

12 We would also like a little bit of time to consult
13 with our client before setting a compliance deadline.

14 THE COURT: Okay. That seems reasonable enough. I
15 just don't want this to drag out and become another delay on
16 trying to get an answer of what the compliance period is and I
17 don't -- we don't come back until July the 14th in this case.

18 So my suggestion would be that if y'all can't
19 agree -- if you can agree, put it in the, in the order and send
20 it on down. I'm sure whatever you can agree to will be
21 satisfactory to the Court.

22 If you can't agree, I've got a chapter 11 calendar on
23 the 27th. I'm pretty well wall-to-wall next week, but we could
24 set this on at 9:00 before I start with my regular calendar
25 and, and just get that one issue ironed out. That work?

1 And again, you don't need to fly to Charlotte for
2 that. We'll, we'll set it up with the clerk.

3 MR. HIRST: That works for the -- for the, for the
4 debtors, your Honor, that works. It won't be me, but we got
5 lots of people.

6 THE COURT: Okay.

7 MS. BENNETT: We appre -- your Honor, this is Lynda
8 Bennett for the Verus Trusts.

9 We appreciate the accommodation --

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

12 MS. BENNETT: -- and we'll, we'll work to iron it out,
13 to not be in your calendar, but if not, that will work for us.

14 THE COURT: Okay.

15 It'll be 9:00 Eastern, of course, on the 27th, if we
16 need it. Otherwise, send the order down if you, if you come to
17 terms.

18 All right. Well, thank you all. I appreciate the
19 quality of it. These are -- it is -- the old expression about
20 the, the blind man describing the elephant sometimes well-
21 describes how the Court is trying to phantom right and wrong
22 and, and proper and efficient ways of dealing with a case of
23 this size not being in on all of your discussions. So we grope
24 around in the dark occasionally, but try to, to get a, a good
25 and accurate ruling for you and I hope this one suffices. I

1 understand reasonable people can differ on this particular
2 issue, but that's the way I see it.

3 So if there's nothing else, we'll recess and let you
4 go about your day.

5 (Counsel thank the Court)

6 (Proceedings concluded at 11:01 a.m.)

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CERTIFICATE

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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.

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/s/ Janice Russell

June 19, 2023

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Janice Russell, Transcriber

Date

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