

**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION**

---

	:	
	:	
In re:	:	Chapter 11
	:	
ALDRICH PUMP LLC, et al., <sup>1</sup>	:	Case No. 20-30608 (JCW)
	:	Jointly Administered
Debtors.	:	
	:	
	:	

---

**REPLY IN SUPPORT OF MOTION OF OFFICIAL COMMITTEE OF ASBESTOS  
PERSONAL INJURY CLAIMANTS TO QUASH SUBPOENAS SENT TO  
ALDRICH PUMP LLC AND MURRAY BOILER LLC**

The Official Committee of Asbestos Personal Injury Claimants (the “**Committee**”)<sup>2</sup> of Aldrich Pump LLC (“**Aldrich**”) and Murray Boiler LLC (“**Murray**,” and with Aldrich, the “**Debtors**”), by and through the undersigned counsel, respectfully submits this reply (“**Reply**”) in further support of the *Motion by Official Committee of Asbestos Personal Injury Claimants to Quash Subpoenas Sent to Debtors* [Dkt. No. 2157] (the “**Motion**”), and in response to: (a) *DBMP’s Objection to the Motion by Official Committee of Asbestos Personal Injury Claimants to Quash Subpoenas Sent to Debtors* [Dkt. No. 2181] (the “**DBMP Objection**”); (b) *Debtors’ Response to the Official Committee of Asbestos Personal Injury Claimants’ Motion to Quash Subpoenas Sent to Debtors* [Dkt. No. 2173] (the “**Aldrich Response**”); and (c) *The Future Asbestos Claimants’ Representative’s Response to the Motion by Official Committee of Asbestos Personal Injury Claimants to Quash Subpoenas Sent to Debtors* [Dkt. No. 2182] (the “**FCR Objection**,” and with

---

<sup>1</sup> The last four digits of the Debtors’ taxpayer identification numbers follow: Aldrich Pump, LLC (2290) and Murray Boiler LLC (0679). The Debtors’ address is 800 E. Beaty Street, Davidson, North Carolina 28036.

<sup>2</sup> Capitalized terms not defined herein shall have the meanings ascribed to them in the Motion.



the DBMP Objection and the Aldrich Response, the “**Objections**”). In further support of the Motion, the Committee states as follows:

**REPLY**

**I. THE MOTION IS NOT BARRED BY ISSUE PRECLUSION**

1. DBMP attempts to sidestep the merits of the Motion by invoking issue preclusion, or collateral estoppel, claiming that the Committee seeks only to relitigate issues that this Court and Judge Beyer decided two years ago in connection with subpoenas issued in the *Bestwall* bankruptcy. DBMP Obj. at 3. According to DBMP, the fact that similar discovery was permitted in a *different* bankruptcy case, in a *different* context, nevertheless precludes this Court from considering the Committee’s argument that the information sought in the Subpoenas is “sensitive or personal or confidential.” DBMP Obj. at 9; *id.* at n.9.

2. Issue preclusion does not apply here, however. Issue preclusion forecloses re-litigation of a specific issue only if five factors are all present: “(1) the issue or fact is identical to the one previously litigated; (2) the issue or fact was actually resolved in the prior proceeding; (3) the issue or fact was critical and necessary to the judgment in the prior proceeding; (4) the judgment in the prior proceeding is final and valid; and (5) the party to be foreclosed by the prior resolution of the issue or fact had a full and fair opportunity to litigate the issue or fact in the prior proceeding.” *In re Microsoft Corp. Antitrust Litig.*, 355 F.3d 322, 326 (4th Cir. 2004).

3. At the least, DBMP’s argument fails the first and fourth prongs. First, this discovery is new and the situation is different. When this Court allowed the Bestwall subpoenas, it specified that it “believed the discovery was appropriate under the circumstances.” Hr’g Tr. at 114:23-35, May 26, 2022. Identical circumstances are not present here. Most clearly, the discovery is cumulative, and the burdens and demands are ever increasing.

4. Moreover, as the Committee set forth in the Motion, Bestwall was permitted to issue its subpoenas largely because it had failed to obtain relevant information from other sources. Motion at 5; *see also* Hr’g Tr. at 23:22–24:1, May 18, 2022, *In re Bestwall LLC*, No. 17-31795, (J. Beyer) (“the discovery was largely precipitated by the fact that the debtor has been entirely unsuccessful in getting discovery from the trusts and stonewalled in its efforts to get the PIQ discovery from the non-compliant claimants”). DBMP argues that this was an issue only because estimation was fast approaching in that case; according to DBMP, proportionality is irrelevant here, because no schedule is threatened. DBMP Obj. at 13. DBMP’s position is, at bottom, troubling. There must be some limits on discovery. *See Harris v. Vanderburg*, No. 4:19-CV-111-D, 2020 WL 7319607, at \*2 (E.D.N.C. Dec. 11, 2020) (“Rule 26 requires the court to limit the frequency or extent of discovery if ‘the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive’; ‘the party seeking discovery has had ample opportunity to obtain the information by discovery in the action’; or the discovery sought is outside the scope of Rule 26(b)(1).”) (quoting Fed. R. Civ. P. 26(b)(2)(C)).

5. Finally, an order denying a motion to quash is generally considered interlocutory.<sup>3</sup> Thus, the Committee was not permitted, as of right, to appeal this Court’s prior ruling regarding the subpoenas issued by Bestwall.

---

<sup>3</sup> *See generally In re Hinners*, No. 12-80924-MC-MARRA, 2012 WL 4049967 (S.D. Fla. Sept. 13, 2012).

## II. THE SUBPOENAS SEEK SENSITIVE AND CONFIDENTIAL DATA

6. As the fiduciary representatives of current claimants of Aldrich and Murray, the Committee brought the Motion on behalf of affected claimants<sup>4</sup> listed on Schedule A to both Subpoenas.<sup>5</sup> Due to the lack of appropriate notice afforded to those individual claimants, the Committee acted to protect the claimants' rights and interests in their confidential and personal information.

7. There is a distinction between information that may be technically accessible to the public and a compilation of details such as the database fields sought by the Subpoenas. *See U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 764 (1989) (“[T]here is a vast difference between the public records that might be found after a diligent search of courthouse files, county archives, and local police stations throughout the country and a computerized summary located in a single clearinghouse of information.”). DBMP seeks information that is not public because it seeks disclosure of claimant records that may have been subject to confidentiality protections in the underlying settlement agreements.

8. DBMP's assertion that none of the fields requested in the Subpoenas seek confidential information fails to account for standard settlement confidentiality provisions that bar disclosure of any settlement-related details. The date of resolution and, if applicable, dates of settlement and payment, go beyond the “mere fact” of settlement and would be barred from disclosure under many confidentiality provisions.

---

<sup>4</sup> The FCR contends that “this is not the ACC's fight,” and that any paid claimants are necessarily not Committee constituents. FCR Obj. at 3. However, the individual claimants whose information is at risk *did not receive notice of the Subpoenas* and therefore had no opportunity to object.

<sup>5</sup> Copies of the Subpoenas to Produce Documents, Information, or Objects or Permit Inspection of Premises in Bankruptcy Case (Or Adversary Proceeding) issued to Aldrich & Murray are attached as Exhibit A to the Motion (collectively, the “**Subpoenas**”).

9. Prior to these Subpoenas, the claim database information of Aldrich and Murray has been carefully protected. *Agreed Protective Order Governing Confidential Information* ¶ J [Dkt. No. 345]; *see also Agreed Protective Order Governing Confidential Information* [DBMP, No. 20-30080, Dkt. No. 251] (together, the “**Protective Orders**”). The Subpoenas should be quashed in order to protect claimants’ confidential and private information.

### **III. THE INFORMATION SOUGHT IN THE SUBPOENAS IS NOT PROPORTIONAL TO THE NEEDS OF THE *DBMP* CASE**

10. The information sought is disproportionate to the needs of the *DBMP* case because of the burden production would place on the Debtors, its duplication of existing productions from other sources, and the claimant data at stake.

11. DBMP has already subpoenaed and received significant volumes of claimant information from numerous sources. Notably, outside of *Bestwall*, discovery of the type sought by the Subpoenas has not been permitted previously. Prior estimation proceedings of bankrupt asbestos defendants have proceeded without this type of information. Thus, DBMP does not need the information sought in the Subpoenas to “estimate[e] the share of liability that could be attributed to DBMP for a particular claimant” (DBMP Obj. at 11; *see also id.* at 5) or rebut the Committee’s historical settlement value methodology (*id.* at 5).

12. The purpose of discovery is not to provide a party with all information it seeks regardless of the cost and burden to third parties; discovery, while broad, is not granted in order to provide perfect knowledge above all else. *See Mancina v. Mayflower Textile Servs. Co.*, 253 F.R.D. 354, 357-58 (D. Md. 2008) (“It cannot seriously be disputed that compliance with the ‘spirit and purposes’ of these discovery rules requires cooperation by counsel to identify and fulfill legitimate discovery needs, yet avoid seeking discovery the cost and burden of which is disproportionately large to what is at stake in the litigation.”). Through the trust discovery and PIQ processes, not to

mention its own voluminous historical database and records, DBMP has acquired “a great deal of data”<sup>6</sup> by any standard. Proportionality here dictates that such an expansion of discovery be accompanied by some greater justification than to supplement existing discovery and productions that have sufficed in numerous other cases.

13. Moreover, notwithstanding the assurances of DBMP (and, previously, Bestwall) that the Subpoenas do not place an undue burden on any subpoenaed party because those parties do not object to producing the information sought, Aldrich and Murray lack the ability to objectively assess the burden required because they plan to seek similar discovery.<sup>7</sup> Thus, the Debtors have a continuing vested interest in the precedent issuing these Subpoenas would create. The data at stake here is not the Debtors’ data; the circumstances place all of the benefit on Debtors and all of the risk on claimants.

#### **IV. THE SUBPOENA VIOLATES THE *BARTON* DOCTRINE**

14. As described in the Motion, the *Barton* Doctrine applies here because DBMP sought to serve subpoenas on a fiduciary of a bankruptcy estate, namely Aldrich and Murray, debtors and debtors-in-possession. DBMP’s argument that the instant Subpoenas do not threaten to “impede the proper distribution of assets in bankruptcy or otherwise interfere with the administration of the estate” is incorrect. DBMP Obj. at 15. To the contrary, the Subpoenas require the Debtors to expend estate resources in addressing them and impact this Court’s administration of the bankruptcy estates. Notably, DBMP fails to provide any support (because

---

<sup>6</sup> DBMP Obj. at 14 (quoting Hr’g Tr. at 73:17-18, Oct. 31, 2022, *In re DBMP LLC*, No. 20-30080).

<sup>7</sup> *Debtors’ Response to the Official Committee of Asbestos Personal Injury Claimants’ Motion to Quash Subpoenas Sent to Debtors* [Dkt. No. 1123] at ¶ 5 (“The Debtors, to be clear, are seeking, and may seek in the future, similar information in regard to their own estimation proceedings.”); Aldrich Response at ¶ 8 (“[S]hould this (or some other) Court rule that the Subpoena are valid, the Debtors will seek similar information relevant to their own estimation proceeding via subpoena from Bestwall and DBMP.”).

there is none) for its baseless argument that a party which does not incur costs or face the burdens of complying with a subpoena cannot invoke the *Barton* Doctrine. *Id.* at 16.

15. Additionally, the Court should reject DBMP's argument that the *Barton* Doctrine does not apply because the fact pattern here differs from the fact patterns in *Eagan Avenatti* and *Circuit City*. *See id.* at 15-16. Indeed, it would be odd for the Court to hold that the *Barton* Doctrine does not apply on the ground that the facts here are not exactly analogous to *Eagan Avenatti* and *Circuit City* when the case law is clear that the *Barton* Doctrine applies to subpoenas served on a debtor-in-possession, as is the case here. *See* Motion ¶¶ 30-32.

#### **V. DBMP AND THE DEBTORS MUST NOTIFY CLAIMANTS OF INTENDED COMPLIANCE WITH THE SUBPOENAS**

16. As articulated in the comments to Civil Rule 45, “when production or inspection is sought independently of a deposition, other parties may need notice in order to monitor the discovery.” *See* Fed. R. Civ. P. 45(b) advisory committee's note to 1991 amendment. The language of the Protective Orders restricting database information to professionals' eyes only reflects the understanding that even though the Debtors (or their professionals) may be holders of the information in an asbestos claim database, the information is not, fundamentally, the property of the Debtors because it comprises data gathered in litigation from—and about—thousands of individuals. *See* Protective Orders, ¶ J. As noted *supra*, the Protective Orders forbid the respective committees from disclosing claimant information to their *own clients*—the very claimants whose information it is. *Id.* The current claimants represented by each individual committee have interests aligned within their constituency (the other holders of claims against that same debtor). The fact that even those claimants and their tort counsel, with a shared common interest in resolving respective claims against a specific debtor in order to receive payment, cannot view this information, demonstrates its highly protected nature.

17. As persons “affected by a subpoena” whose information is otherwise protected by extensive protective orders, the individual claimants whose information is sought are entitled to notice in order to decide for themselves whether to move to strike or quash.

**VI. THE COURT SHOULD, ALTERNATIVELY, IMPOSE THE CONFIDENTIALITY AND USE RESTRICTIONS ADOPTED IN CONNECTION WITH THE ALDRICH ORDER**

18. If the Court does not quash the Subpoenas, it should impose strict confidentiality and use restrictions to minimize any impingement on asbestos claimants’ privacy rights and ensure the inquiry is no more revealing of personal information than is required to achieve legitimate discovery objectives material to the Court’s ordered estimation proceeding.

19. As set forth herein and in the Motion, the information that the Subpoenas demand is private and confidential.

20. Although there may be no indication of a data breach or other improper use of claimant data in the years since the various claimant databases were produced (*see* DBMP Obj. at 18), that does not guarantee that there will not be a data breach in the future. The Debtors are under a continuing duty to protect asbestos claimant information to the fullest extent possible. To that end, the Court should institute the assurances that the parties negotiated in the Aldrich Order for this very purpose. *See Order Granting Motion of the Debtors for an Order Authorizing the Debtors to Issue Subpoenas on Asbestos Trusts and Paddock Enterprises, LLC* [Dkt. No. 1240].

**CONCLUSION**

WHEREFORE, for the reasons noted above and in the Motion, the Committee respectfully requests that this Court enter an order: (i) quashing the Subpoenas, or (ii) alternatively, entering a protective order directing that any information produced pursuant to the Subpoenas be governed



by the terms of the Aldrich Order, and (iii) granting such other and further relief as this Court deems just and appropriate.

Dated: April 12, 2024

HAMILTON STEPHENS STEELE  
+ MARTIN, PLLC

/s/ Robert A. Cox, Jr.

Glenn C. Thompson (Bar No. 37221)  
Robert A. Cox, Jr. (Bar No. 21998)  
525 North Tryon Street, Suite 1400  
Charlotte, North Carolina 28202  
Telephone: (704) 344-1117  
Facsimile: (704) 344-1483  
gthompson@lawhssm.com  
rcox@lawhssm.com

CAPLIN & DRYSDALE, CHARTERED  
Kevin C. Maclay (admitted *pro hac vice*)  
Todd E. Phillips (admitted *pro hac vice*)  
Jeffrey A. Liesemer (admitted *pro hac vice*)  
One Thomas Circle NW, Suite 1100  
Washington, DC 20005  
Telephone: (202) 862-5000  
Facsimile: (202) 429-3301  
kmaclay@capdale.com  
tphillips@capdale.com  
jliesemer@capdale.com

ROBINSON & COLE LLP  
Natalie D. Ramsey (admitted *pro hac vice*)  
Davis Lee Wright (admitted *pro hac vice*)  
Thomas J. Donlon  
1201 North Market Street, Suite 1406  
Wilmington, Delaware 19801  
Telephone: (302) 516-1700  
Facsimile: (302) 516-1699  
nramsey@rc.com  
dwright@rc.com  
tdonlon@rc.com

*Counsel to the Official Committee of Asbestos Personal Injury Claimants of Aldrich Pump LLC  
and Murray Boiler LLC*