Docket #0072 Date Filed: 3/23/2023

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re ALDRICH PUMP LLC, *et al.*[1] Debtors.	Chapter 11 Case No. 20-30608 (JCW)
ARMSTRONG WORLD INDUSTRIES, INC. ASBESTOS PERSONAL INJURY SETTLEMENT TRUST *et al*. Plaintiffs, v. ALDRICH PUMP LLC, *et al*. Defendants.	Miscellaneous Proceeding No. 22-00303 (JCW) (Transferred from District of Delaware)

DELAWARE CLAIMS PROCESSING FACILITY, LLC'S (I) RESPONSE TO DEBTORS' MOTION FOR REHEARING CONCERNING THE ISSUE OF SAMPLING ON DCPF'S SUBPOENA-RELATED MOTIONS AND (II) JOINDER

The Delaware Claims Processing Facility, LLC (the "DCPF") hereby submits its (i) response to the motion filed by the above-captioned Debtors[2] seeking reversal of the Court's ruling on the issue of sampling [Docket No. 54] (the "Reconsideration Motion") and (ii) joinder to *Third-Party Asbestos Trusts' Opposition to Debtors' Motion for Rehearing Concerning the Issue of Sampling on DCPF's Subpoena-Related Motions* filed contemporaneously herewith by the Trusts. In further support of this response and joinder, the DCPF respectfully states as follows:

[1] The Debtors are the following entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): Aldrich Pump LLC (2290) and Murray Boiler LLC (0679). The Debtors' address is 800-E Beaty Street, Davidson, North Carolina 28036.

[2] Capitalized terms not defined herein shall have the meaning ascribed to them in the DCPF's *Delaware Claims Processing Facility, LLC's (I) Motion To Quash Or Modify Subpoena And (II) Joinder* [D.I. 4-2] (the "Motion to Quash").

PRELIMINARY STATEMENT

1. Never satisfied with less than everything, the Debtors continue their relentless pursuit of the DCPF with their Reconsideration Motion. Prompted by innocuous comments from the Court (in a different case without the DCPF or the Trusts present), the Debtors have now abandoned what had seemed like an agreement on sampling methodology and have shifted gears completely to pursue a full do-over on the DCPF's Motion to Quash. This latest effort should be rejected because the Court got it right the first time. And the law is clear that a losing litigant does not get a second bite at the apple.

2. The Court's November 30, 2022 ruling (the "Ruling") correctly limited the Subpoena to a 10 percent sample of the 12,000 targeted claimants. In so ruling, the Court took into account the real burden on the DCPF and the need to protect PII. Nothing has changed. The Reconsideration Motion is little more than a regurgitation of the same arguments the Debtors made last year opposing the DCPF's Motion to Quash. The Debtors go to great lengths in describing the history of trust discovery in *In re DBMP LLC*, No. 20-30080 (Bankr. W.D.N.C.) ("DBMP") and *In re Bestwall,* No. 17-31795 (Bankr. W.D.N.C.) ("Bestwall"), just as they did last year, in an attempt to draw artificial comparisons between the cases even though a different Rule 45 standard applied. But the Court knew the history and circumstances in *DBMP* and *Bestwall* at the time of the Ruling. The Court heard and considered those arguments. The Court, nevertheless, granted the DCPF's motion and ordered sampling, significantly reducing the burden on the DCPF.

3. After the Ruling, the Debtors consulted with their experts and proposed a sampling protocol. Now, months after the Debtors proposed their sampling protocol, they argue that sampling is not precise enough without explaining why that would now be the case and failing to identify any facts or law warranting reconsideration of the Court's prior Ruling. Their current

arguments are simply not credible. The Court should reject the Debtors' request for a second bite at the apple and deny the Reconsideration Motion.

RELEVANT FACTUAL BACKGROUND

A. The Court rules that the Debtors' Subpoena would be limited to a 10% random sample.

4. On November 30, 2022, the Court ruled, quite expressly, that the DCPF's Motion to Quash would be granted in relevant part and that the Debtors would be limited to a 10 percent sample of the claims data they sought. The Court did so with full knowledge that its Ruling was a departure from prior rulings on the issuance of subpoenas in *Bestwall* and *DBMP*. But the Court nonetheless believed, correctly, that a departure was required in light of the facts and circumstances presented to the Court in this case.

5. In opposing the Motion to Quash, the Debtors largely took it for granted that the Court would rule against the DCPF and the Trusts because the Court had ruled against them in *Bestwall* and *DBMP*: "[N]othing is any different and we trust your Honor's rulings won't be any different."[3] The Debtors were, in fact, thoroughly dismissive of the need to use sampling to protect sensitive PII: "Sampling issue we heard today and your Honor has now heard, I know, at least three times, including from the DCPF last October in the *DBMP* case. And your Honor has, has dispatched with that repeatedly."[4]

6. As the DCPF explained, however, the Motion to Quash requires a different analysis than did the Debtors' request to issue the Subpoena.[5] The focus is no longer whether the subpoenaed information is relevant to the case the Debtors hope to make at estimation; rather, the

[3] November 30, 2022 Hearing Transcript ("Nov. 30, 2022 Hr'g Tr.") 64:13-19, a copy of which is attached to the *Declaration of Kevin A. Guerke in Support of Delaware Claims Processing Facility, LLC's (I) Response to Debtors' Motion for Rehearing Concerning the Issue of Sampling on DCPF's Subpoena-Related Motions and (II) Joinder* ("Guerke Declaration") as **Tab 1.**
[4] Nov. 30, 2022 Hr'g Tr. 65:18-21.
[5] Nov. 30, 2022 Hr'g Tr. 75:13-19.

analysis properly focuses on the burden on the DCPF, as the responding party, and on the need to protect individuals' PII. Accordingly, through demonstrative evidence provided to the Court at the November 30 Hearing, the DCPF for the *first* time specifically showed the painstaking process of redacting PII from the production.[6] The DCPF walked the Court through the categories of information requested, illustrating the PII captured in narrative fields requested by the Debtors.[7]

Claimant Pseudonym	ExposedToOEP	OtherRelationship	ExposureStartDate	ExposureEndDate	ExposureDesc
	True	Spouse	1/1/1960	12/31/1962	Clamaint was exposed to and inhaled the asbestos dust on EOEP s (XXXXXXXXXXXXX, SSN XXXXXXXXXX) clothing and personal belonging when she shook out his clothes, when she did his laundry and when they hugged.

7. The demonstrative was an example of the end product that the DCPF would produce after the DCPF's review and redaction.[8] The evidence showed specifically the PII captured by the subpoena: "You'll see that this claimant had secondary or take-home exposure from her spouse. She provided her spouse's name and she provided her spouse's Social Security number in two places in the narrative text that she filled in and as you can see, it's, it's been redacted as part of the production process."[9] In other words, part of the problem with the Debtors' Subpoena is that they do not simply invade claimants' PII; they also invade the PII of third parties whose PII is not otherwise available to the Debtors. The Court recognized this specifically when granting, in part, the Motion to Quash.[10]

8. Indeed, it was the first time that the Court had tangible examples of the PII that the Debtors' Subpoena captured or that the Court had helpful descriptions of the extensive process that the DCPF has to undertake to review and redact PII. The Debtors did not directly address the

[6] Nov. 30, 2022 Hr'g Tr. 50:10-56:7; Nov 30. Hr'g Demonstrative, a copy of which is attached to the Guerke Declaration as **Tab 2.**
[7] Nov. 30, 2022 Hr'g Tr. 53:24-54:8.
[8] Nov. 30, 2022 Hr'g Tr. 53:1-4.
[9] Nov. 30, 2022 Hr'g Tr. 54:11-16.
[10] Nov. 30, 2022 Hr'g Tr. 76:15-16 ("I'm sensitive to the disclosure of these *non-parties'* information." (emphasis added)); *cf*. Reconsideration Motion ¶ 7 ("But the reality, of course, is that DBMP already had all of the PII *for the claimants* at issue, given that those claimants already had asserted and resolved asbestos claims against DBMP." (emphasis added)).

facts that the DCPF presented regarding the burden associated with complying with the Subpoena. And they failed to challenge the Declaration of Richard Winner [Adv. D.I. 4-3], ("Winner Decl.") or to address the production sample that the DCPF presented to the Court. The Debtors simply regurgitated the arguments they had made when seeking the Subpoena. In reply, the DCPF pointed out that it had presented the Court with new information:

> There was an argument made that the same arguments have been made before and they're being made today and the Court should just rule as it has in the past. But the **information presented** today, that DCPF presented today, the **sample I provided**, the explanation I provided, has not previously been presented. We submitted an affidavit from DCPF's COO, Richard Winner. It's part of the record.[11]

9. At the end of the November 30 Hearing, the Court ruled in the DCPF's favor, explaining that the DCPF had demonstrated more precisely what PII would be disclosed. Based on the arguments and information presented, the Court ruled that the Subpoena would be limited to claims data from a 10 percent random sample of the 12,000 individuals whose information the Debtors sought:

> The second change is, perhaps I am hidebound or – my wife would say so, anyway – but you, you have gotten through to me on the sampling issue. I agree that's a new argument today as to what **exactly** might be disclosed and I'm sensitive to the disclosure of these non-parties' information.[12]

10. The Court explained that it had, in fact, been operating under the assumption that there would be a 10% sample when it approved the Subpoena in the first place:

> So I'm adopting the 10 percent sampling. Frankly, the first time I got this issue my assumption was that, is Judge Connolly had done it previously and we were not going to be the compliance court, that that would likely be implemented, anyway. The time that I most recently discussed this with counsel, I guess in the DBMP case, it sounded like that it was going to be six of one or half dozen of another as to whether you took a sample or whether you took all of it, and there might be, actually, more problems in agreeing on a random sample than there would be in just taking all the data.

[11] Nov. 30, 2022 Hr'g Tr. 74:13-19 (emphasis added).
[12] Nov. 30, 2022 Hr'g Tr. 76:12-16 (emphasis added).

> **Recognizing now** that we're going to see some of this information in narrative form and that you might have **information that is, in fact, PII**, I want to reduce the harm there as much as possible. So I'll leave it to y'all to talk about how you formulate that random sample, but my inclination is to limit that.
>
> So the motion to quash is, motions to quash are **granted**, to that extent, and otherwise denied, all right? Got it? Everybody understand?[13]

B. The parties move forward with the creation of a random and representative sample.

11. The parties thereafter set about determining the proper methodology for determining the random sample required by the Court. The Debtors, for their part, conferred with Bates White and proposed a detailed sampling protocol on December 19, 2022:

> In response to Judge Whitley's November 30 sampling ruling in regard to the Debtors' subpoena served on DCPF, we wanted to begin a dialogue with you to see if we can agree to a sampling methodology. **After discussing the issue with Bates White**, we suggest that we confer on the structure of the sample first so that we can better ascertain where we differ, if at all.
>
> As we understand Judge Whitley's ruling, the goal is to draw a representative random sample of ten percent of the Aldrich Pump and Murray Boiler ("Aldrich Murray") mesothelioma claims resolved through settlement or verdict between January 1, 2005 and Aldrich Murray's bankruptcy petition date of June 18, 2020 (the "Aldrich Murray Random Sample").[14]

12. The Debtors explained how the proposed methodology they had arrived at with Bates White would create a "representative" sample that provides "a reliable cross-section" of the data sought in the Subpoena:

> For the Aldrich Murray Random Sample to best aid in the estimation of Aldrich Murray's asbestos liability, reorganization plan formulation, and/or plan confirmation, the sampling methodology should be a straightforward application of stratified random sampling techniques. The stratification is important to ensure that events that could have a disproportionate impact on the analysis of the Debtors' settlement history, such as claims resolved through high-value settlement, are included in the sample in an efficient manner. Stratification increases the probability that low-frequency events are included, while properly weighting those

[13] Nov. 30, 2022 Hr'g Tr. 76:17-77:10 (emphasis added).
[14] Dec. 19, 2022 email from Morgan R. Hirst re: In re Aldrich Pump LLC et al (Case No. 20-30608) (emphasis added), a copy of which is attached to the Guerke Declaration as **Tab 3.**

> events and keeping the total sample size similar to that ordered by Judge Whitley. This will allow the Aldrich Murray Random Sample to be a **representative and efficient sample** that can provide a **reliable cross-section** of Aldrich Murray's mesothelioma claims' settlement history.[15]

13. More specifically, the Debtors proposed a stratified random sample that would include the following categories: [16]

> The data for the Aldrich Murray Random Sample are first restricted to the following population:
>
> 1. Mesothelioma claims resolved through verdict or settlement (with a resolution amount greater than $0)
> 2. Resolved between January 1, 2005 and June 18, 2020
>
> These data are then stratified using the following categories:
>
> 3. Debtor
>   1. Aldrich
>   2. Murray
> 4. Resolution type
>   1. Verdict
>   2. Settlement
> 5. Resolution period
>   1. Prior to 2014
>   2. 2014 and later
> 6. Group deal status
>   1. Group Deal (whether on or off-complaint)
>   2. Individual Resolution
> 7. Resolution amount category:
>   1. > $0, < $10,000
>   2. ≥ $10,000, < $50,000
>   3. ≥ $50,000, < $100,000
>   4. ≥ $100,000, < $150,000
>   5. ≥ $150,000, < $200,000
>   6. ≥ $200,000, < $250,000
>   7. ≥ $250,000, < $500,00
>   8. ≥ $500,000

14. The DCPF, the Trusts, and the Asbestos Creditors' Committee ("ACC"), among others, held a meet and confer on January 12, 2023 to discuss the Debtors' proposed stratified random sample. In that meet and confer, the Debtors represented that the sampling protocol they

[15] *Id.* (emphasis added).
[16] *Id.* The Debtors also attached an "Aldrich Murray Proposed Sampling Strata" that was marked CONFIDENTIAL — PROFESSIONAL EYES ONLY.

had proposed would be workable. After that meet and confer, the Debtors continued to negotiate the details of the sample with the ACC (without including the DCPF). But at no point after the Court's Ruling did the Debtors assert that a 10 percent sample would be insufficient or could not work for their purposes. To the contrary, the Debtors represented their proposed sample would be representative, efficient, and reliable.[17]

15. Over the following months, the ACC and the Debtors worked to lock down a mutually agreeable sample. On February 9, 2023, however, the Court's comments at a hearing in DBMP prompted a motion for reconsideration in this case.[18] Sure enough, the very next morning, the Debtors informed the DCPF that while their "negotiations with the ACC and FCR regarding sampling in the Aldrich/Murray bankruptcies [we]re continuing," the Debtors were "strongly considering seeking **reconsideration** of Judge Whitley's November 30 sampling ruling."[19]

16. A month later, the Debtors filed their motion, seeking "rehearing" on whether the Subpoena should be limited to a 10 percent sample. The motion does not identify any intervening changes in law or fact that would support modification of the Ruling that has governed this case for the last three months. Nor do the Debtors offer any legal predicate for their requested "rehearing." Instead, they simply re-assert their prior arguments and hope that the Court will give them another bite at the apple.

ARGUMENT

17. The Court should deny the Debtors' request to reconsider (or "rehear") its prior Ruling on the issue of sampling. The Fourth Circuit has plainly instructed that "where litigants

[17] *Id.*
[18] February 9, 2023 Hearing Transcript ("Feb. 9, 2023 Hr'g Tr.") 94:3-95:14, a copy of which is attached to the Guerke Declaration as **Tab 4**.
[19] Feb. 10, 2023 email from Morgan R. Hirst re: In re Aldrich Pump LLC et al (Case No. 20-30608)(emphasis added), a copy of which is attached to the Guerke Declaration as **Tab 5.**

have once battled for the court's decision, they should neither be required, nor without good reason permitted, to battle for it again."[20] It is a sound principle and fully applies here.

18. The Debtors' motion seeking reversal of the Court's Ruling on sampling fails for at least four reasons. First, and most obviously, that Ruling was entirely correct. Second, the Debtors' arguments to undo the Court's Ruling depend on a fundamental misunderstanding of the facts and arguments here. Third, there is no legal predicate for reconsideration of the Court's Ruling (and the Debtors offer none). And fourth, reversing the Court's Ruling on the issue of sampling would be bad policy and bad precedent. The Court should, thus, deny the Debtors' motion, as set forth in more detail below.

A. The Court has already considered, and rejected, the Debtors' arguments.

19. The Court's prior Ruling on the issue of sampling was entirely correct. The Debtors dismiss the burden on the DCPF, preferring instead to focus on the subpoenaed information's supposed relevance to the estimation case that the Debtors hope to make. In doing so, the Debtors fail to account for the entirely different standard this Court had to apply when assessing the burden on the DCPF as the compliance court under Rule 45.[21] While an issuing court may consider the relatively low bar of "relevance" before issuing a subpoena, the compliance court must consider whether the subpoena subjects a third party to an "undue burden."[22] At this stage, the supposed relevance of the subpoenaed information is largely irrelevant, so to speak.

20. The Debtors also attempt to fall back on the rulings made by this Court and by Judge Beyer in connection with the issuance of subpoenas directed to the trusts and the DCPF in

[20] *U.S. Tobacco Coop. Inc. v. Big South Wholesale of Va., LLC*, 899 F.3d 236, 257 (4th Cir. 2018). (quoting *Official Comm. Of the Unsecured Creditors of Color Tile, Inc. v. Coopers & Lybrand, LLP*, 322 F.3d 147, 167 (2d Cir. 2003) (internal quotation marks omitted)).
[21] Fed. R. Civ. P. 45.
[22] Fed. R. Civ. P. 45(d) (providing for "[t]he court for the district where compliance is required" to protect those subject to a subpoena). *See also* Fed. R. Civ. P. 45(f) Advisory Committee Note (2013 amendments) (the Court's primary consideration is to avoid "burdens on local nonparties subject to subpoenas.").

other cases. Those rulings, however, arose in a different context; they were decided while the Court acted as the issuing court before the subpoenas were served. In both cases, the Court allowed the subpoenas using a lower relevance standard. The DCPF never addressed the Court in its role as the *compliance court* until the November 30 Hearing. This is a procedurally significant distinction.[23] Under the Rule 45 standard, as a compliance court, a court "must" modify or quash a subpoena that requires disclosure of privileged or protected information or subjects a party to undue burden – exactly what the Court did in its Ruling.

21. Undoing that Ruling would impose a significant burden on the DCPF and the individuals whose PII would be invaded. As the DCPF has explained to the Court, the burden on the DCPF to comply with the Subpoena is no little thing. First, it is necessary for the DCPF to review and redact the claims information before production to protect claimants' sensitive information. The Debtors call this necessary protection a "self-inflicted burden,"[24] but this burden is the DCPF's contractual obligation to the claimants and the Trusts.[25] The DCPF is the custodian of significant amounts of highly sensitive, private, and confidential information.[26] All claims submitted and data used in evaluating and settling claims are the property of the respective Trusts.[27]

[23] In the amendments made to Fed. R. Civ. P. 45 in 2013, the drafters made a clear distinction between the roles of the issuing court and the compliance court. *Short v. United States*, No. 1:18-CV-00074-DCN, 2019 WL 5457994, at *2 (D. Idaho Oct. 23, 2019) (noting how often Rule 45 draws the distinction between issuing and compliance court for deciding merits of a subpoena: *See* Fed. R. Civ. Proc. 45(3)(a) ("On timely motion, the court for the district where compliance is required must quash or modify a subpoena "); 45(3)(B) ("To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena"); 45(f) ("When the court where compliance is required did not issue the subpoena, it may transfer a motion under this rule to the issuing court if the person subject to the subpoena consents or if the court finds exceptional circumstances"); 45(g) ("The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.")). *See also In re SBN Fog Cap II LLC,* 562 B.R. 771, 774 (Bankr. D. Colo. 2016) (finding that there are "separate roles of the issuing court and the compliance court.").
[24] Reconsideration Mot. ¶ 47.
[25] Winner Decl. ¶ 8.
[26] Winner Decl. ¶ 9.
[27] Winner Decl. ¶ 9.

Other than publicly available trust distribution procedures and trust agreements, the Trusts' evaluation policies and decisions are protected under the work-product or attorney-client privileges, and all documents and information relating to the processing and settlement of claims are confidential and privileged.[28]

22. The Debtors next argue that the DCPF's burden is minimal based on more than $86,000 in production invoices from the separate DBMP case.[29] Only in a world where debtors spend $227,000,000 and counting on an estimation proceeding with unknown utility is $86,000 of non-party time and effort not burdensome.[30] But as the DCPF stated last year, hard costs do not accurately reflect the DCPF's true burden. The endless hours the DCPF must dedicate to the subpoenas distracts and delays the DCPF from its core mission of processing claims of sick and dying victims of asbestos exposure.[31] Only part of that burden is reflected in the two DBMP invoices.[32]

23. The two DCPF invoices the Debtors reference in the Reconsideration Motion cover the four month period September 7, 2022 through January 13, 2023. The two invoices reflect 1,075.77 hours of DCPF employee billed time complying with the subpoena. That is time the DCPF could not review claims from elderly, sick, or dying claimants. And there are 3,000 more claimants at issue in this case than in DBMP, a 33 percent increase. Responding to the Subpoena would be an enormous distraction and detrimental to the DCPF's business. A 10 percent sampling,

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[28] Winner Decl. ¶ 9.
[29] Reconsideration Mot. ¶ 36.
[30] January 26, 2023 Hearing Transcript ("Jan. 26, 2023 Hr'g Tr.") 22:23-23:3, a copy of which is attached to the Guerke Declaration as **Tab 6** ((remarks of Mr. Guy discussing the fees in DBMP and Bestwall) "Bestwall, $227 million, your Honor. They're over five years in. That's longer than America was in the Second World War. Paddock, 33 million, but that number's not getting any bigger. Our number's getting bigger. We're at 70 now. We're right up there with DBMP, even though they filed six months before.").
[31] Winner Decl. ¶ 29. *See also* Nov. 30, 2022 Hr'g Tr. 55:4-25 (detailing both the monetary and non-monetary costs imposed on the DCPF and the associated risk of potential harm to the injured claimants).
[32] *See* Delaware Claims Processing Facility, Invoice 12, Nov. 2, 2022 and Delaware Claims Processing Facility, Invoice 13, Jan. 18, 2023, a copy of which is attached to the Guerke Declaration as **Tab 7.**

on the other hand, will significantly reduce that burden. In plain terms, of the almost 150,000 claims associated with the 12,000 claimants, the DCPF will have to review 135,000 fewer claims under the Court's sampling Ruling.[33]

24. The Court's Ruling is consistent with its role as the compliance court under Rule 45, and it is consistent with the District of Delaware's ruling when it heard motions to quash similar subpoenas in its role as the compliance court in *Bestwall*.[34] As pointed out in the DCPF's previous briefing and at oral argument, the Third Circuit reversed the *Bestwall* decision on procedural grounds, not on the merits of the District of Delaware's sampling order.[35] Those procedural issues that were fatal in *Bestwall* do not exist here. The Court's Ruling is, therefore, consistent with relevant precedent.[36] The Ruling was, and is, entirely correct.

B. The Debtors' motion depends on a misapprehension of the facts and arguments presented.

25. The Debtors' arguments are mistaken in two main ways. First, as noted above, the Debtors misunderstand the burden on the DCPF. It is not simply the $86,000 that is the issue. While the DCPF appreciates that (curiously enough) the Debtors in this chapter 11 bankruptcy have more than enough money to pay that freight, the issue is not the money itself but what that money represents. The DCPF's employees are generally not on the same pay scale as the Debtors' attorneys and advisors. That $86,000 represents countless hours that the DCPF's employees were

[33] *See* Winner Decl. ¶ 29.
[34] *In re Bestwall LLC*, 2021 WL 2209884 (D. Del. June 1, 2021), *rev'd and remanded on other grounds*, 2022 WL 3642106 (3d Cir. Aug. 24, 2022).
[35] *See generally In re Bestwall LLC*, 2021 WL 2209884 (D. Del. June 1, 2021), *rev'd and remanded on other grounds*, 47 F.4th 233 (3d Cir. Aug. 24, 2022). In *Bestwall*, this Court set the standard for data protection, using sampling and anonymization procedures. *See Bestwall*, 2021 WL 2209884, at *1. While the Third Circuit overturned the case on procedural grounds, the reasoning behind those data protections still stands. *See Bestwall*, 47 F.4th 233.
[36] In contrast, when the Court heard the Fed. R. Civ. P. 45 argument in DBMP, the argument was only made by the Matching Claimants that were proceeding anonymously and not by the DCPF, the party actually responsible for the data's production.

not fulfilling the DCPF's mission—to the detriment of the DCPF, its clients, and the sick and dying individuals who submit claims to the trusts. The DCPF is not meant to serve as an information clearing house for mass-tort debtors, and treating it as such *is* a significant burden.

26. Second, the Debtors erroneously claim (just as they did last year) that there is no harm in producing PII because they already have the claimants' PII. The Debtors know that the PII at issue is *not limited to the PII of the claimants*, yet they repeatedly claim that it is.[37] The Debtors' confidentiality argument is, therefore, based on a faulty premise – that the Debtors already have the PII in the exposure related fields.[38] This error is fatal to the Debtors' argument. Looking at the claim sample presented to the Court on November 30 proves this line of argument is false.[39]

Claimant Pseudonym	ExposedToOEP	OtherRelationship	ExposureStartDate	ExposureEndDate	ExposureDesc
	True	Spouse	1/1/1960	12/31/1962	Clamaint was exposed to and inhaled the asbestos dust on EOEP s (XXXXXXXXXXXXX, SSN XXXXXXXXXX) clothing and personal belonging when she shook out his clothes, when she did his laundry and when they hugged.
	True	Spouse	1/1/1966	12/31/1968	Clamaint was exposed to and inhaled the asbestos dust on EOEP s (XXXXXXXXXXXXX, SSN XXXXXXXXXX) clothing and personal belonging when she shook out his clothes, when she did his laundry and when they hugged.
	True	Spouse	1/1/1972	12/31/1975	Claimant was married to the EOEP. She was exposed to and inhaled the visible asbestos dust on the EOEP s clothes and personal belongings when she shook out his clothes, when she did his laundry and when they hugged.

And the Court itself emphasized its particular concern with the invasion of *non-parties'* PII.[40] The Debtors neglect this entirely.

C. There is no basis for reconsideration of the Court's Ruling.

27. The Debtors style their motion as a request for "rehearing," implicitly acknowledging that there is no cognizable basis for asking the Court to reconsider its Ruling. But

[37] Reconsideration Mot. ¶¶ 48, 49.
[38] Reconsideration Mot. ¶ 51.
[39] Nov. 30, 2022 Hr'g Tr. 50:10-56:7; Nov 30. Hr'g Demonstrative.
[40] Nov. 30, 2022 Hr'g Tr. 76:12-16.

there is no recognizable right to a "rehearing" outside of the appellate context.[41] For good reason—if a dissatisfied party could simply seek rehearing at every turn, the gears of justice would grind to a halt. Nor do the Debtors articulate any legal standard that would or could govern their request for "rehearing." There is no showing of any intervening changes to the law or the facts, just a rehash of the Debtors' arguments and an implicit request that the Court simply give them a do-over. But if the Court does not require parties seeking to relitigate settled issues to make some showing of a change in facts or circumstances, then the parties will never stop litigating any issues in these cases.

28. Logically, the "rehearing" motion can only be construed as a motion for *reconsideration*.[42] Reconsideration comes in two forms: (i) reconsideration of an interlocutory order under Federal Rule of Civil Procedure 54(b); and (ii) reconsideration of a judgment under Federal Rule of Civil Procedure 59(e).[43] The Debtors fall far short under either standard.

29. It is well settled in this Circuit that the Rule 59(e) standard guides any request for a court to revisit a prior non-final ruling.[44] Relief under Federal Rule 59(e) is "an 'extraordinary

[41] *See e.g.*, *In re Eisen*, No. CC-061433-PaMkT, SA 06-10372-ES, 2007 WL 7532273, at *2 n.6 (B.A.P. 9th Cir. Oct. 26, 2007) ("Rule 8015, 'Motion for Rehearing,' deals only with appeals in the Bankruptcy Appellate Panel or District Court.")

[42] Note that the Debtors themselves have conceded that the Reconsideration Motion is a motion to "reconsider" its November 30 Ruling. Feb. 14, 2023 Tr. 23-24 ("[O]ur current intention is to move for *reconsideration* of that particular order." (emphasis added)); Feb. 10, 2023 Email from M. Hirst ("After further discussion with our client, we are strongly considering seeking *reconsideration* of Judge Whitley's November 30 sampling ruling." (emphasis added))

[43] Outside of reconsideration, there is no other possible foundation for the Reconsideration Motion. The only other bases for a Court to revisit a prior trial or ruling include: (i) a motion for a new trial under Rule 59(a)(1)(B), or (ii) relief from a final judgment under Rule 60(b). Rule 59(a)(1)(B) relief is inapplicable as it only permits the grant of a new trial following a "nonjury trial." Fed. R. Civ. P. 59(a)(1)(B) ("[T]he court may, on motion, grant a new trial on all or some of the issues—and to any party—as follows: after a nonjury trial …."). No trial occurred in this matter. Similarly, Rule 60(b) applies only to *final* judgments and since this is not a final judgment and the Debtors fail to specify any basis for relief enumerated in Rule 60(b), Rule 60(b) does not apply. Fed. R. Civ. P. 60(b) ("On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons.").

[44] *Burrell v. Bayer Corp.*, 260 F. Supp. 3d 485, 490 (W.D.N.C. 2017).

remedy that should be used sparingly."'[45] Federal Rule 59(e) "may not be used . . . to raise arguments which could have been raised prior to the issuance of the judgment[.]"[46] And it certainly may not be used to re-raise arguments that have already been considered and rejected.

30. Nor would the Debtors fare any better with reconsideration under Federal Rule 54(b). There have not been any new "litigation develop[ments]" or any "new facts or arguments [that have] come to light."[47] As noted above, the Fourth Circuit has itself recognized that Rule 54(b) does not allow litigants a second bite at the apple.[48]

31. The Court's alternative ruling in the unrelated *DBMP* case, under different circumstances with different facts, is not a legitimate basis for reconsideration here. Indeed, the Debtors have not offered any reason why the Court needs to treat these two distinct cases as if they were identical. Despite the Debtors' baseless accusation that the DCPF somehow confused the Court on its burden during the November 30 Hearing, the Debtors offer no facts to support it. Instead, the presentation offered by the DCPF at the November 30 Hearing submitted new evidence for the Court's consideration and this helped factually distinguish this case from *DBMP*.

32. The DCPF provided new information to the Court that changed the landscape in which the Motion to Quash was decided. The DCPF showed the Court exactly what PII the Subpoena captured and the extensive process the DCPF had to go through to redact it.[49] The Court made its Ruling based on that "new argument today as to what exactly might be disclosed."[50]

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[45] *Id.* (quoting *Pac. Ins. Co. v. Am. Nat'l Fire Ins. Co.*, 148 F.3d 396, 403 (4th Cir. 1998) (internal citations omitted)).
[46] *Pac. Ins. Co. v. Am. Nat'l Fire Ins. Co.*, 148 F.3d at 403.
[47] *U.S. Tobacco Coop. Inc.*, 899 F.3d at 256 (citation omitted).
[48] *Id.* at 257 (finding that "where litigants have once battled for the court's decision, they should neither be required, nor without good reason permitted, to battle for it again") (citation omitted).
[49] Nov. 30, 2022 Hr'g Tr. 50:10-56:7.
[50] Nov. 30, 2022 Hr'g Tr. 76:14-15; Reconsideration Mot. ¶ 23.

Unlike in previous cases, the Court had real, tangible evidence that convinced it to deviate from its previous rulings.[51]

33. Undoubtedly, *Bestwall*, *DBMP*, and this case share some similarities. But they also involve different companies, different players, different strategies, decisions, and motivations. Each case can and should be allowed to chart its own course. And any one such course may ultimately prove to be a model for the others. But the cases are not consolidated, and there is no reason to treat them as such.

D. Undoing the Court's Ruling on the issue of sampling would be bad precedent and bad policy.

34. A dissatisfied litigant should not be entitled to continue raising the same issues over and over. The Court did not indicate that its Ruling was provisional or subject to change; rather, the Court delayed entry of a written order only so that the parties could agree on the language to "formulate" the random sample the Court ordered.[52] But the fact that the Court gave the parties an opportunity to reach consensus is not properly an opportunity for the Debtors to re-raise issues that have already been decided. Courts discourage relitigation of decided issues for good reason—parties are entitled to finality and certainty, which is more critical for non-parties who bear the burden.

35. Granting the Debtors an opportunity to relitigate this Court's Ruling will also substantially prejudice the DCPF that has worked with the Debtors and patiently waited to comply with the Ruling for months while the Debtors and ACC finalized a sampling protocol. To require the Debtors to produce the information of 12,000 claimants instead of the sample of 1,200 would literally increase the burden on the DCPF tenfold. In addition to the timely, costly and burdensome

[51] *Cf.* Feb. 9, 2023 Hr'g Tr. 94:3-95:14 ("One was, as I recall it, this was the first time I had actually been presented with demonstratives that showed me exactly what kind of information can be in the narratives.").
[52] Nov. 30, 2022 Hr'g Tr. 76:12-77:10.

undertaking in complying with the Subpoena without the 10 percent sample modification, the highly sensitive personal information will be susceptible to security breaches, fraud, and identity theft.

36. The Debtors fail to explain how sampling is insufficient or why 100% of the claimants' data is needed for estimation purposes. In fact, the Debtors already proposed a representative, efficient, and reliable sampling protocol in December 2022 after consulting with Bates White. In their 60 paragraph Reconsideration Motion, the Debtors do not assert that their proposed sample (or sampling generally) would not work, they simply (re)argue that they are entitled to all of the claimants' information.

37. The Debtors merely argue that "one drawback of sampling is that it would decrease the precision of estimates by introducing the possibility of sampling error in the analysis.[53] But that is inconsistent with the Debtors' representation that their proposed sample was "representative and efficient sample that can provide a reliable cross-section of Aldrich Murray's mesothelioma claims' settlement history."[54] And this hypothetical theory is belied by the Debtors' agreement to sampling when the Debtors were the producing parties.[55] Considering the big picture realities of the case, entire precision is not required for "estimation."[56] In any event, the Court agreed that a sample would be sufficient: "So I'm adopting the 10 percent sampling. Frankly, the first time I got

[53] Reconsideration Mot. ¶ 44.
[54] Dec. 19, 2022 email from Morgan R. Hirst re: In re Aldrich Pump LLC et al (Case No. 20-30608), a copy of which is attached to the Guerke Declaration as **Tab 3.**
[55] Nov. 30, 2022 Hr'g Tr. 85:18-86:1; Reconsideration Mot. ¶ 44 n. 10.
[56] Jan. 26, 2023 Hr'g Tr. 38:1-11 ((remarks of the Court) "This is an estimation and at the end of the day the claimants have the block. You -- Judge Hodges gave a very low number as compared to where we ended up in Garlock. It was a tenth of what, what I think the claimants were asking for. So at the end of the day, you, you weren't willing to go forward with that and then negotiations break out. I still don't quite understand why we need entire precision with regard to the estimation number to, to the point of why can't you just come in and have one hearing and, and tell me what your experts think and I pick a number and then you move on, so.").

this issue my assumption was that, is Judge Connolly had done it [sampling] previously and we were not going to be the compliance court, that that would likely be implemented, anyway."[57]

38. At bottom, the Debtors' entire argument rests on the idea that any ruling in *DBMP* and the other asbestos cases must apply identically to this case and vice versa. But if the Court follows that reasoning, then it will delay and complicate all these asbestos cases because every party (and, worse, non-parties) will need to make an appearance on every issue in every case. That is not practical or necessary and is unfair to non-parties like the DCPF.

CONCLUSION

WHEREFORE, for the reasons set forth herein, the DCPF respectfully requests that this Court deny the Reconsideration Motion.

[57] Nov. 30, 2022 Hr'g Tr. 76:17-20.

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