

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

ARMSTRONG WORLD INDUSTRIES,
INC. ASBESTOS PERSONAL INJURY
SETTLEMENT TRUST, *et al.*,

Plaintiffs,

v.

ALDRICH PUMP LLC, *et al.*

Defendants.

Miscellaneous Proceeding

No. 22-303 (JCW)

(Transferred from the District of Delaware)

In re:

ALDRICH PUMP LLC, *et al.*,¹

Debtors.

Chapter 11

No. 20-30608 (JCW)

**THIRD-PARTY ASBESTOS TRUSTS' JOINDER TO DELAWARE CLAIMS
PROCESSING FACILITY'S MOTION TO STRIKE, OR IN THE ALTERNATIVE,
MOTION TO CONTINUE HEARING ON DEBTORS' MOTION FOR
RECONSIDERATION**

1. The ten asbestos settlement trusts identified below² (the "Trusts"), by and through their undersigned counsel, respectfully submit this joinder to the Delaware Claims Processing

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 The ten Trusts are: Armstrong World Industries, Inc. Asbestos Personal Injury Settlement Trust; The Babcock & Wilcox Company Asbestos PI Trust; Celotex Asbestos Settlement Trust; DII Industries, LLC Asbestos PI Trust; Federal-Mogul Asbestos Personal Injury Trust; Flintkote Asbestos Trust; Owens Corning / Fibreboard Asbestos Personal Injury Trust; Pittsburgh Corning Corporation Asbestos Personal Injury Settlement Trust; United States Gypsum Asbestos Personal Injury Settlement Trust; and WRG Asbestos PI Trust.



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Facility's ("DCPF") Motion to Strike, or in the Alternative, Motion to Continue Hearing on Debtor's Motion for Reconsideration (the "Motion"), seeking to strike the Declaration of Charles H. Mullin, Ph.D. [D.I. 55] (the "Mullin Declaration") or, alternatively, to continue the hearing on the Motion for Reconsideration³ [D.I. 54] to allow the parties sufficient time to depose Dr. Mullin. In support of their joinder, the Trusts submit as follows:

2. On November 30, 2022, this Court, acting as the compliance court, granted the Trusts' and DCPF's motions to quash [Dkts. 3-1 & 4-2], thereby limiting the production of Trust claimant data to a random 10% sample of the confidential claims data of the 12,000 mesothelioma victims (the "Trust Claimants") originally sought.

3. On March 9, 2023, approximately four months after the Court's ruling and after the parties expended time and resources diligently working in reliance on the Court's November 30 ruling to develop a sampling protocol, the Debtors filed the Motion for Reconsideration, asking this Court to rethink its November 30 ruling.

4. In support, the Debtors attached the Mullin Declaration. The Mullin Declaration purports to provide "new" opinions from the debtors' expert, Bates White, in which it attempts to: (i) discount DCFP's previously presented burden argument, Mullin Decl. ¶¶16-22; (ii) refute the propriety of sampling, *id.* ¶¶24-30; and (iii) interpret a prior declaration Bates White submitted to this Court, praising the use of sampling for Trust Claimant discovery and estimation, *id.* ¶¶ 31-32.

5. As explained in the Trusts' Opposition to the Motion to Reconsider, none of the opinions expressed in the Mullin Declaration are new or newly discovered. Opp'n to Debtors' Mot. for Rehearing ¶¶33-34. The Mullin Declaration merely repeats the same arguments the Debtors presented at the November 30 hearing and in the briefing on the Trusts' and DCPF's

³ Capitalized terms have the meaning ascribed to them in the Motion.

motions to quash. *Id.* Moreover, the Debtors have not proven, much less alleged, the necessary precondition for this Court to consider the Mullin Declaration – a “legitimate justification for not presenting” it at the November 30 hearing. *Ingle ex rel. Estate of Ingle v. Yelton*, 439 F.3d 191, 197 (4th Cir. 2006).

6. For these reasons, the Mullin Declaration is non-cognizable and should be struck. *E.g., Alvarez v. NBTY, Inc.*, 2020 WL 42767, at *1-2 (S.D. Cal. Jan. 2, 2020) (striking “new” declaration from previously engaged expert on reconsideration where opinions were “not based on any new evidence or newly discovered arguments”); *Cellairis Franchise, Inc., v. Duarte*, 2016 WL 858787, at *1 (N.D. Ga. Mar. 2, 2016) (striking declaration on reconsideration because it “consist[ed] entirely of previously available and/or inappropriate assertions”); *Standefer v. T.S. Dudley Land Co.*, 2010 WL 11534312, at *2-4 (M.D. Pa. Feb. 12, 2010) (striking affidavit on reconsideration because it was “not new evidence that was not previously available”); *Oto v. Metropolitan Life Ins. Co.*, 224 F.3d 601, 606 & n. 4 (7th Cir. 2000) (affirming decision to strike affidavit submitted in support of reconsideration containing previously available evidence).

7. Alternatively, if the Court does not strike the Mullin Declaration, the Court should continue the hearing on the Motion for Reconsideration to the April 27, 2023 omnibus hearing date to allow the parties sufficient time to depose Dr. Mullin with respect to the arguments contained in the Mullin Declaration.

8. Therefore, the Trusts respectfully request the Court enter an order granting the relief requested in the Motion and any other relief as is just and proper. The Trusts reserve all rights to supplement, modify, and amend this Joinder and further reserve all rights as to the Court’s consideration of the Motion.

Date: March 24, 2023

/s/Lance P. Martin

Paul A. Fanning (N.C. No. 025477)
Lance P. Martin (N.C. No. 027287)
Norman J. Leonard (N.C. No. 039852)
Ward and Smith, P.A.
Post Office Box 2020
Asheville, NC 28802-2020
Tel: 828.348.6070
Email: paf@wardandsmith.com
lpm@wardandsmith.com
njl@wardandsmith.com

-and-

Beth Moskow-Schnoll (*pro hac vice*)
Tyler B. Burns (*pro hac vice*)
Ballard Spahr LLP
919 N. Market Street, 11th Floor
Wilmington, DE 19801
Tel: (302) 252-4465
Email: moskowb@ballardspahr.com
burnst@ballardspahr.com

*Attorneys for Armstrong World Industries,
Inc. Asbestos Personal Injury Settlement
Trust; The Babcock & Wilcox Company
Asbestos PI Trust; Celotex Asbestos
Settlement Trust; DII Industries, LLC
Asbestos PI Trust; Federal-Mogul Asbestos
Personal Injury Trust; Flintkote Asbestos
Trust; Owens Corning / Fibreboard
Asbestos Personal Injury Trust; Pittsburgh
Corning Corporation Asbestos Personal
Injury Settlement Trust; United States
Gypsum Asbestos Personal Injury Settlement
Trust; and WRG Asbestos PI Trust*

CERTIFICATE OF SERVICE

I certify that the foregoing Third-Party Asbestos Trusts' Joinder to the Delaware Claims Processing Facility's Motion to Strike, or in the Alternative, Motion to Continue Hearing on Debtors' Motion for Reconsideration was filed electronically in accordance with the local rules and was served electronically on those entities that have properly registered for such electronic service. Entities not registered for electronic service have been served by depositing a copy thereof in the United States mail, postage pre-paid:

Kelly E. Farnan, Esq.
Richards Layton & Finger
One Rodney Square
920 North Kings Street
Wilmington, DE 19801
*Attorneys for Defendants Aldrich Pump LLC
and Murray Boiler LLC*
Served via CM/ECF

U.S. Bankruptcy Administrator Office
402 W. Trade Street, Suite 200
Charlotte, NC 28202-1669
U.S. Trustee
Served via CM/ECF

John R. Miller, Jr., Esq.
Rayburn Cooper & Durham, P.A.
1200 The Carillon
227 West Trade Street
Charlotte, NC 28202
*Attorneys for Defendants Aldrich Pump LLC
and Murray Boiler LLC*
Served via CM/ECF

Miller Freeman Capps, Esq.
Fleton Parrish, Esq.
Alexander Ricks, PLLC
1420 E 7th St., Ste. 100
Charlotte, NC 28204
*Attorney for Interested Party Delaware
Claims Processing Facility, LLC*
Served via CM/ECF

Kevin A. Guerke, Esq.
Edwin J. Harron, Esq.
Young, Conaway, Stargatt & Taylor, LLP
1000 North King Street
Wilmington, DE 19801
*Attorneys for Interested Party
Delaware Claims Processing Facility, LLC*
Served via CM/ECF

Daniel K. Hogan, Esq.
Hogan McDaniel
1311 Delaware Ave., Suite 1
Wilmington, DE 19806
*Attorneys for Interested Party
Certain Matching Claimants*
Served via CM/ECF

William D. Sullivan, Esq.
Sullivan Hazeltine Allinson LLC
919 N. Market St., Suite 420
Wilmington, DE 19801
Attorneys for Interested Party
Kazan McClain Matching Claimants
Served via CM/ECF

Thomas W. Waldrep, Jr.
Waldrep Wall Babcock & Bailey PLLC
370 Knollwood Street, Suite 600
Winston-Salem, NC 27103
Attorneys for Interested Party
Certain Matching Claimants
Served via CM/ECF

Daniel K. Hogan, Esq.
Hogan McDaniel
1311 Delaware Ave., Suite 1
Wilmington, DE 19806
Attorneys for Interested Non-Party
Certain Matching Claimants
Served via CM/ECF

Thomas W. Waldrep, Jr.
Dianna Santos Johnson, Esq.
Jennifer B. Lyday, Esq.
Waldrep Wall Babcock & Bailey PLLC
370 Knollwood Street, Suite 600
Winston-Salem, NC 27103
Attorneys for Interested Party
Certain Matching Claimants
Served via CM/ECF

This the 24th day of March 2023.

/s/Lance P. Martin

Lance P. Martin

N.C. State Bar I.D. No.: 27287

Email: lpm@wardandsmith.com

For the firm of Ward and Smith, P.A.

Post Office Box 2020

Asheville, NC 28802-2020

Telephone: 828.348.6070

Facsimile: 828.348.6077

Attorneys for Armstrong World Industries, Inc. Asbestos Personal Injury Settlement Trust; The Babcock & Wilcox Company Asbestos PI Trust; Celotex Asbestos Settlement Trust; DII Industries, LLC Asbestos PI Trust; Federal-Mogul Asbestos Personal Injury Trust; Flintkote Asbestos Trust; Owens Corning / Fibreboard Asbestos Personal Injury Trust; Pittsburgh Corning Corporation Asbestos Personal Injury Settlement Trust; United States Gypsum Asbestos Personal Injury Settlement Trust; and WRG Asbestos PI Trust