

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re

ALDRICH PUMP LLC, *et al.*,

Debtors.

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

Plaintiff(s),

v.

ALDRICH PUMP LLC, *et al.*

Defendant(s).

AC&S ASBESTOS SETTLEMENT TRUST,
COMBUSTION ENGINEERING 524(G)
ASBESTOS PI TRUST, GI HOLDINGS INC.
ASBESTOS PERSONAL INJURY
SETTLEMENT TRUST, GST SETTLEMENT
FACILITY, KAISER ALUMINUM &
CHEMICAL CORPORATION ASBESTOS
PERSONAL INJURY TRUST, QUIGLEY
COMPANY, INC. ASBESTOS PI TRUST T H
AGRICULTURE & NUTRITION, L.L.C.
ASBESTOS PERSONAL INJURY TRUST, and
YARWAY ASBESTOS PERSONAL INJURY
TRUST,

Petitioners,

v.

ALDRICH PUMP LLC and MURRAY BOILER
LLC,

Chapter 11

Case No. 20-30608 (JCW)

(Jointly Administered)

Miscellaneous Pleading

No. 22-00303 (JCW)

(Transferred from District of Delaware)

Miscellaneous Pleading

No. 23-00300 (JCW)

(Transferred from District of New Jersey)



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| Respondents, VERUS CLAIM SERVICES, LLC, Interested Party, NON-PARTY CERTAIN MATCHING CLAIMANTS, Interested Party. |
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OBJECTORS' EX PARTE MOTION TO AMEND SCHEDULING ORDER

This motion is brought on behalf of the Verus Parties¹ and the DCPF Parties² (collectively the “**Objectors**”). For the reasons set forth below, the Objectors request that this Court amends the scheduling order (the “**Order**”) entered on May 3, 2023, to allow the Objectors additional time to file our brief in support of sampling pursuant to Local Rule 9013-1(f)(1) and Rule 9006 of the Federal Rules of Bankruptcy Procedure.

BACKGROUND

1. On March 30, 2023, this Court determined that it would hold a rehearing of its prior order restricting Aldrich Pump LLC and Murray Boiler LLC (together, the “**Debtors**”) to a ten percent sample of confidential asbestos claimant information they sought in subpoenas they issued to the Objectors and directed the parties to discuss logistics for scheduling and conducting

¹ The Verus Parties consist of Verus Claims Services, LLC (“Verus”); (i) ACandS Asbestos Settlement Trust; (ii) Combustion Engineering 524(g) Asbestos PI Trust; (iii) G-I Holdings Inc. Asbestos Personal Injury Settlement Trust; (iv) GST Settlement Facility; (v) Kaiser Aluminum & Chemical Corporation Asbestos Personal Injury Trust; (vi) Quigley Company, Inc. Asbestos PI Trust; (vii) T H Agriculture & Nutrition, L.L.C. Asbestos Personal Injury Trust; and (viii) Yarway Asbestos Personal Injury Trust.

² The DCPF parties consist of the Delaware Claims Processing Facility (“DCPF”); the Armstrong World Industries Asbestos Personal Injury Settlement Trust (“Armstrong”); Babcock & Wilcox Company Asbestos Personal Injury Settlement Trust (“B&W”); Celotex Asbestos Settlement Trust (“Celotex”); DII Industries, LLC Asbestos PI Trust (Halliburton, Harbison-Walker Subfunds) (“DII”); Federal Mogul U.S. Asbestos Personal Injury Trust (T&N, FMP, Flexitallic, Ferodo) (“Federal Mogul”); Flintkote Asbestos Trust (“Flintkote”); Owens Corning Fibreboard Asbestos Personal Injury Trust (FB and OC Subfunds) (“Owens Corning”); Pittsburgh Corning Corporation Asbestos PI Trust (“Pittsburgh Corning”); United States Gypsum Asbestos Personal Injury Settlement Trust (“United States Gypsum”); and WRG Asbestos PI Trust (“WRG”, and collectively with DCPF, Armstrong, B&W, Celotex, DII, Federal Mogul, Flintkote, Owens Corning, Pittsburgh Corning, and United States Gypsum.

discovery. The Debtors and the Objectors agreed to a schedule which is reflected in this Court's May 3 Order. (ECF No. 125.) The Order, among other things, set the rehearing on the sampling issue for June 6, 2023 (the "**Hearing**"), and required the Objectors to file their brief in support of sampling on or before May 12, 2023.

2. The Objectors now request that the Court amend the Order to allow the Objectors to file their brief in support of sampling on or before **May 22, 2023**, and to allow the Debtors to submit their reply brief on or before **June 2, 2023**.

ARGUMENT

3. An amendment to the Order is appropriate based on new information learned through the recent deposition of the Debtors' expert, Dr. Charles Mullin, which occurred earlier this week. Dr. Mullin's testimony addressed areas not covered in his Declaration opposing sampling (ECF No. 55), areas which not only provide the Debtors' justification for sampling but also bases to attack the Objector's expert, Dr. Wyner. For example, he opined that sampling was inappropriate because he intended to use the data to study subpopulations of claimants, such as by law firm, occupation, and gender. (Declaration of Michael A. Kaplan, Esq., Ex. A at 105:18–106:2.) This is the first time the Objectors learned of this rationale, as it was not listed in Dr. Mullin's Declaration filed in connection with sampling. Dr. Mullin advanced a number of additional arguments that also were not explicitly covered in his Declaration.

4. We believe that, among other things, fairness dictates that the schedule as a whole, or simply the briefing schedule, be adjusted to allow the Objectors to respond to these new arguments through the testimony of Dr. Wyner (our expert). In this way, the Objectors will be able to include Dr. Wyner's deposition testimony in their briefing the same way the Debtors will be able to use Dr. Mullin's testimony in their reply, thereby giving the court a complete record prior to the Hearing. That deposition is scheduled to occur on Wednesday of next week. We

proposed extending the deadlines as follows, which would not have impacted the June 6, 2023 hearing: (i) Objectors' brief due **May 22, 2023**; and (ii) Debtors' brief due **June 2, 2023**. While the revised schedule provides less time than anticipated for the Court to review the briefs, we believe that the revision will provide the Court with a comprehensive and complete record.³

CONCLUSION

5. For the foregoing reasons, the Objectors respectfully request that this Court amend the Order to allow the Objectors to file their brief in support of sampling on or before **May 22, 2023**, and to allow the Debtors to submit their reply brief on or before **June 2, 2023**.

May 11, 2023

Respectfully submitted,

/s/ Michael A. Kaplan

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³ In the event that this schedule does not provide the Court with sufficient time to review the briefs, we have no objection to rescheduling the June 6 hearing and adjusting the dates accordingly.

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