

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

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ARMSTRONG WORLD INDUSTRIES,	)	
INC. ASBESTOS PERSONAL INJURY	)	
SETTLEMENT TRUST <i>et al.</i> ,	)	Miscellaneous Proceeding
	)	
Plaintiffs,	)	No. 22-00303 (JCW)
	)	
v.	)	(Transferred from District of Delaware)
	)	
	)	
ALDRICH PUMP LLC, <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	
	)	
	)	
IN RE:	)	Chapter 11
	)	
ALDRICH PUMP LLC, <i>et al.</i> ,	)	Case No. 20-30608
	)	
Debtors.	)	

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**VERUS CLAIM SERVICES, LLC'S SUPPLEMENTAL BRIEF IN OPPOSITION TO  
DEBTORS' MOTION FOR REHEARING CONCERNING THE ISSUE OF SAMPLING  
ON VERUS' SUBPOENA-RELATED MOTION**

On March 9, 2023, Aldrich Pump LLC and Murray Boiler LLC (together, the "Debtors") filed a Motion for Rehearing Concerning the Issue of Sampling on DCPF's Subpoena-Related Motions (Dkt. No. 54, the "Rehearing Motion"). A hearing on the Rehearing Motion is scheduled for Tuesday, June 6, 2023 at 9:30 a.m.



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Verus Claims Services, LLC (“Verus”), a claims processing service for the eight third-party asbestos settlement trusts commonly referred to as the Verus Trusts,<sup>1</sup> by and through undersigned counsel, hereby submits this memorandum of law in opposition to the Rehearing Motion. Verus previously filed a motion to quash in the District of New Jersey and is a party in the associated matter of *AC&S Asbestos Settlement Trust v. Aldrich Pump LLC* (the “Trust Matter”), Case No. 22-00300.

### **BACKGROUND**

1. Verus’ interests in this bankruptcy and the related asbestos litigation and involvement with the Debtors largely mirror those of the Verus Trusts, and as such, Verus echoes and incorporates by reference the procedural and factual history set forth in the Verus Trusts’ related Supplemental Brief in Opposition to Debtors’ Motion for Rehearing Concerning the Issue of Sampling on DCPF’S Subpoena-Related Motion (the “Versus Trusts’ Supplemental Brief”).

2. Prior to the transfer of the Trust Matter to this Court, Debtors served subpoenas on Verus which sought discovery of thousands of confidential asbestos claims submitted to the Verus Trusts (the “Trust Subpoenas”).

3. Verus and the Verus Trusts challenged the scope of the Trust Subpoenas before the United States District Court for the District of New Jersey (the district where compliance with the Trust Subpoenas would occur). This case was ultimately transferred to this Court prior to a resolution on the scope of the Trust Subpoenas – with the Debtors agreeing to be bound by a November 30, 2022 ruling from this Court related to same.

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<sup>1</sup> The eight trusts are: (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.

4. Verus, like the Verus Trusts, understood that – except for the sampling issue – the specifics of the production were yet to be decided by this Court, and that the Debtors expressly agreed that the production of information for the Trust Subpoenas would be made pursuant to rulings previously made by this Court.

5. Notwithstanding the foregoing, Debtors informed this Court at a February hearing of their intent to move for reconsideration of the Court’s prior ruling on the 10% sampling issue. The Debtors’ Rehearing Motion followed.

### **PRELIMINARY STATEMENT**

6. Verus expressly relies upon and incorporates by reference all arguments set forth in, and exhibits attached to, those pleadings already filed in opposition to the Rehearing Motion and join those being filed by the Verus Trusts, the Delaware Claims Processing Facility, LLC (“DCPF”) and the asbestos trusts that process their claims using DCPF (the “DCPF Trusts”). (Collectively, Verus, the Verus Trusts, DCPF, and the DCPF Trusts are referred to herein as the “Trust Parties.”)

7. As set forth in detail below, the Rehearing Motion should be denied because Debtors have failed to identify any way that the proposed sampling is not entirely sufficient for their claims estimation purposes.

8. Moreover, Verus and DCPF have identified significant risks that created by the process of responding to the Trust Subpoenas that would be mitigated by sampling. These risks have already been acknowledged by this Court. Debtors have provided nothing to address these risks and have no basis to dispute Verus’s and DCPF’s arguments on this point.

**ARGUMENT**

**I. SAMPLING IS ENTIRELY SUFFICIENT FOR PURPOSES OF CLAIMS ESTIMATION.**

9. During the proceedings on March 30, 2023, this Court asked the key question: “But from my vantage point, the questions I have, primarily, in my mind that made me want to have a further hearing is, given that we got down the road so far about sampling, why is that not sufficient?” Tr. of March 30, 2023 Hearing (Exhibit A to the accompanying Declaration of Zachary D. Wellbrock, Esq.), 189:22-25.

10. This question was answered thoughtfully and completely by Dr. Abraham Wyner on behalf of the Trust Parties. Debtors, in contrast, have steadfastly avoided the question, refusing to even entertain the premise.

11. Dr. Wyner explains that “a random sample that is large (10%), weighted or stratified towards larger settlement values, would be practically and materially no less accurate than a full census of the approximately 12,000 claimants in the targeted population.” *See* Expert Report of Abraham J. Wyner, Ph.D. (submitted as Exhibit A to the Declaration of Michael A. Kaplan., Esq. accompanying the Versus Trusts’ Supplemental Brief), ¶ 9.

12. Dr. Wyner explained that this conclusion is premised upon an axiomatic principle of statistics, which provides that the standard error of a sample is, at most, the inverse of twice the square root of the raw sample size. (In other words, the greater the sample size the lower the error, irrespective of what percentage of the whole population the sample size represents.) *Id.* at ¶ 18.

13. Dr. Wyner’s explanation is described in greater detail in the Verus Trusts’ Supplemental Brief, which Verus incorporates by reference.

14. But when presented with the Court’s critical question – *i.e.*, why is a 10% sample not sufficient? – Debtors conspicuously avoid the issue.

15. Dr. Charles H. Mullin, on behalf of Debtors, agreed with Dr. Wyner's premise that "[t]he basic statistical formulas move with the square root of the sample size." Mullin Dep. (Exhibit B to the Wellbrock Decl.), 74:5-16.

16. Dr. Mullin also testified that he has himself employed sampling before and that "[s]ampling is common regardless of who my clients are in those contexts." *Id.* at 25:1-8.

17. During his deposition, Dr. Mullin was asked: "with respect to the estimation of the Debtors' asbestos liability – is it your opinion that a 10 percent sample would not be sufficient for that?" Dr. Mullin dodged, responding that "[s]ufficient' is probably not the term I would use. ***Could I perform an estimate with a 10 percent sample if constrained? Yes.***" But added that he would simply prefer more data if it were available. *Id.* at 57:3-21 (emphasis added).

18. When asked to quantify how large of a sample Debtors require for their purposes, Dr. Mullin evaded the issue, repeatedly stating instead that his preference was not to use a sample (despite his testimony that the claims estimation exercise could in fact be performed with a sample). *See id.* at 38:15-39:14, 58:2-17, 74:5-20, 75:4-12, 78:21-79:5, 80:1-10, 82:5-16.

19. Of course, Debtors' position is also undermined by the representations of Bates White's Dr. Jorge Gallardo-Garcia in *Bestwall* that a sample was sufficient and reliable for claims estimation. Dr. Mullin argues that these comments are irrelevant, but offers only that Dr. Gallardo-Garcia was constrained to using a sample in *Bestwall*. Mullin Decl. (Dkt. No. 55), ¶ 11. This reveals that Debtors' position has nothing at all to do with the **sufficiency** of a sample and is based solely on Debtors' preference.

20. Debtors' analysis also ignores the voluminous data that Bates White has already received from other trusts and in connection with other proceedings, all of which provides even more data for Dr. Mullin to construct a reliable sample.

**II. SAMPLING WILL MITIGATE THE RISKS ASSOCIATED WITH A FULL RESPONSE TO THE TRUST SUBPOENAS.**

21. A second issue raised by the Court is the risk of sensitive claimant information being exposed during the process of the responding to the Trust Subpoenas. The Court explained: “And that’s why I think I need a rehearing. If for no other reason, is I want to know more about why sampling doesn’t work for the debtors’ side, why sampling wouldn’t reduce the risk of just even human error missing some of that stuff.” Tr. of March 30, 2023 Hearing, 179:12-16.

22. This risk was acknowledged by the Court in the November 2022 ruling that first imposed the sampling requirement.

23. Mark Eveland, President of Verus, has previously explained this exact risk. Specifically, Verus maintains claimant information, which routinely includes sensitive medical and other personal information. Any response to the Trust Subpoenas will necessarily encompass such information, which then has to be manually reviewed and redacted.

24. “[W]hen a claimant asserts a claim against a Trust, that person is required to provide data and documentation sufficient to support the claim.” Reply Declaration of Mark Eveland (D.N.J. Case No. 22-5116 Dkt. No. 37-1, the “Eveland Reply Decl.,” Exhibit C to the Wellbrock Decl.), ¶ 5. “Claimants’ exposure histories are often quite extensive, consisting of multiple exposure records spanning decades in the workforce.” *Id.* at ¶ 9.

25. This information is submitted and stored in narrative form. “Routinely, that information includes private and personal, medical, family and financial information of the claimants and third parties (spouses /dependents / personal representatives) such as: Social Security Numbers (SSNs), Social Security Administration earning statements, dates of birth, birth certificates, medical records, death certificates, divorce records, tax returns and military records. Claimants may also submit economic loss reports or statements describing the mental and physical

disabilities / drug addictions / marital issues / special needs of spouses, children and dependents.” Declaration of Mark Eveland (D.N.J. Case No. 22-5116 Dkt. No. 5-2, the “Eveland Decl.,” Exhibit D to the Wellbrock Decl.), ¶ 12

26. “Although simple tasks like the identification of [SSNs] within claim files could possibly be automated, the narrative information submitted by the claimants must be reviewed by a human data analyst. Complying with the [Trust Subpoenas] will therefore be labor-intensive and expensive.” Eveland Reply Decl., ¶ 11.

27. The time and labor required for this process creates an additional concern: the opportunity cost of Verus’s lost time and productivity. If Verus is required to expend significant time and labor on an extensive review and redaction process, that will result in a corresponding delay in Verus’ actual work – processing, making offers on, and paying compensable claims. Eveland Decl., ¶ 24; Eveland Reply Decl., ¶ 17.

28. In other words, if the Trust Subpoenas are not limited to a 10% sample, Verus will incur greater delay in processing trusts and some deserving claimants will experience an avoidable delay in receiving compensation for asbestos-related illness. This concern – often raised by the Future Claimants’ Representative – was also recognized by the Court in the November 2022 and March 2023 hearings.

29. Potentially, this could mean the difference between compensation being paid to living claimants or to the survivors of deceased claimants in some cases.

30. Debtors have never rebutted this testimony, nor could they. Dr. Mullin admitted (with respect to DCPF) that he has no “firsthand knowledge\_of the process [used] to review and redact these records.” Mullin Dep., 193:16-21.

31. Dr. Mullin also admitted that he does not dispute the Trust Parties' position that confidential and private health information is contained in the requested exposure fields. *Id.* at 194:2-195:4.

32. Dr. Mullin opines that the production of data in response to the Trust Subpoenas in this matter will not be particularly burdensome because DCPF has already constructed the required queries and algorithms during the process of preparing its responses to similar subpoenas in the *Bestwall* and *DBMP*. Mullin Decl., ¶ 22.

33. This rationale, however, does not apply at all to Verus, which was not involved in *Bestwall* or *DBMP*, has not previously constructed such processes, and has not previously responded to such a subpoena.

34. In fact, Dr. Mullin testified that where "there's a large volume of manual labor and cost and time, you use a sample." Mullin Dep., 31:14-18.

35. Verus expressly relies upon and incorporates by reference the prior Eveland declarations. Verus reserves all rights to supplement this submission and the prior Eveland declarations in the event the extent new issues are raised during Mr. Eveland's deposition, which has not yet occurred.

**CONCLUSION**

For the foregoing reasons, Verus respectfully requests that this Court enter an order denying the Rehearing Motion and imposing a 10% sampling provision with respect to Verus's response to the Trust Subpoenas.

Respectfully submitted, this the 15<sup>th</sup> day of May, 2023.

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