

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 (LMJ)

(Jointly Administered)

**MOTION TO AMEND THE SECOND AMENDED CASE
MANAGEMENT ORDER FOR ESTIMATION OF ASBESTOS CLAIMS
AND/OR THE PROTECTIVE ORDER**

The Official Committee of Asbestos Personal Injury Claimants (the “Committee”) of Aldrich Pump LLC and Murray Boiler LLC (collectively, the “Debtors”), hereby moves (this “Motion”) this Court for entry of an order amending and modifying the *Second Amended Case Management Order for Estimation of Asbestos Claims* [Dkt. No. 2656] (the “Second Amended Estimation CMO”) to enhance the confidentiality protections governing the Initial Expert Reports.² In support of this Motion, the Committee respectfully states as follows:

INTRODUCTION

Through this Motion, the Committee asks the Court to enter an order (a) limiting the use of the Initial Estimation Reports to the estimation proceeding in this case; and (b) to restrict access to and production of the Initial Expert Reports to the parties to the estimation proceeding (who are the same parties that are parties to the Protective Order) (the “Parties”).

¹ The Debtors are the following entities (the last four digits of the Debtors’ 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 As defined in the Second Amended Estimation CMO, at ¶3.



FACTUAL BACKGROUND

1. On June 18, 2020 (the “Petition Date”), the Debtors commenced these proceedings (the “Chapter 11 Cases”) by filing a voluntary petition for relief under the Bankruptcy Code.

2. On April 18, 2022, this Court entered the *Order Authorizing Estimation of Asbestos Claims* [Dkt. No. 1127], which provides for estimation of “the Debtors’ aggregate liability for all current and future asbestos personal injury claims.” *Id.* at ¶ 2.

3. On August 2, 2022, the Court entered the *Case Management Order for Estimation of Asbestos Claims* [Dkt. No. 1302] (the “Initial Estimation CMO”), which it subsequently modified on June 12, 2023 [Dkt. No. 1804] and April 25, 2024 [Dkt. No. 2229].

4. On March 6, 2025, the Debtors filed the *Debtors’ Motion to Amend Case Management Order for Estimation of Asbestos Claims* [Dkt. No. 2562] (“Motion to Amend CMO”). The requested deadlines included preliminary “filing” of expert reports. *Motion to Amend CMO* ¶ 24.

5. At the initial hearing on the Motion to Amend CMO, the Committee raised concerns about the request to file preliminary expert reports on the case docket. The Debtors indicated their intention for the Court to “have access to [the preliminary reports], one way or the other.” Mar. 27, 2025 Hr’g Tr. at 69:21 (Mr. Hirst). The Committee disagreed. *Id.* at 70:6-13 (Mr. Wright).

6. At the subsequent hearing on the Motion to Amend CMO, the Court noted its order would delete the proposed language requiring submission of preliminary expert reports to the Court, stating that the Initial Expert Reports were “simply to be exchanged by the parties directly.” Apr. 15, 2025 Hr’g Tr. at 6:11-12 (Court). After confirming that these reports “normally would not be filed on the docket,” *id.* at 13:23-14:2, the Court instructed that the Initial Expert Reports

“be directly exchanged,” and not filed. *Id.* at 14:25.³ The purpose of the Initial Expert Reports was “to facilitate, obviously, communications and negotiations between the parties.” *Id.* at 14:25-15:2.

7. Thereafter, the Court entered the Second Amended Estimation CMO. The Second Amended Estimation CMO incorporates and supplements the Initial Estimation CMO and required the Debtors and the Committee to exchange Initial Expert Reports by September 15, 2025. Second Amended Estimation CMO at ¶ 3. In addition, the Second Amended Estimation CMO authorized, but did not require, the FCR and the Non-Debtor Affiliates to submit Initial Expert Reports. *Id.* Under the Second Amended Estimation CMO, the Initial Expert Reports’ confidentiality treatment would be governed by the terms of the *Agreed Protective Order Governing Confidential Information* [Dkt. No. 345] (“Protective Order”). *Id.*

8. As required or authorized by the Second Amended Estimation CMO, the Debtors, the Committee, and the FCR exchanged Initial Expert Reports on September 15, 2025.

9. Prior to the September 15th deadline, the Debtors, the Committee, and the FCR⁴ communicated regarding the initial confidentiality treatment of the Initial Expert Reports. The Parties agreed that the Initial Expert Reports would be temporarily designated “professionals’ eyes only” (“PEO”) to permit the parties to review and identify any necessary ongoing heightened confidentiality designations.

10. These communications identified a disagreement among the Parties:

³ In response to questions from the Debtor and the Committee, the Court confirmed that it “wouldn’t get [Initial Expert Report] to begin with,” *id.* at 10:4-5, and that it intended “to follow what would typically be done with initial expert reports.” *Id.* at 13:23-24 (the Court).

⁴ The Non-Debtor Affiliates have elected to not submit expert reports, in accordance with paragraph 3 of the Estimation CMO. Together, the Debtors, the Committee, the FCR, and the Non-Debtor Affiliates are the “Parties” to the estimation. [Dkt. No. 1302].

notwithstanding the Court's comments regarding the non-filing of the Initial Expert Reports, the communications indicated to the Committee that the FCR intended to imminently file the Initial Expert Reports for the Court's review and that the Debtors intended to share the reports with other entities that were requesting the reports from the Debtors.

11. The Committee objected to both filing the Initial Expert Reports with the Court and disclosure of the Initial Expert Reports to entities that were not Parties to the pending estimation proceeding. At a meet and confer held on October 1, 2025, the Committee proposed that, consistent with the record of the hearings and the Motion to Amend CMO,⁵ Initial Expert Reports should remain confidential among the Parties, absent unanimous consent of the Parties or a court order. (Certain portions of the Initial Expert Reports would remain subject to a PEO designation.) This would facilitate negotiation and resolution of estimation-related issues while protecting from disclosure what amount to preliminary findings. The Debtors and FCR rejected this proposal but agreed to shortened notice of this Motion and the Court's determination of the outstanding issues.

ARGUMENT

12. In rejecting the Debtors' request to file the Initial Expert Reports, the Court correctly stated that "typically . . . the Court wouldn't get [expert reports] to begin with, you know." Apr. 15, 2025 Hr'g Tr. at 10:2-5 (the Court). In further clarifying its decision, the Court noted that it intended to "follow what would typically be done with initial expert reports." *Id.* at 13:23-24. As the Committee previously argued, expert disclosures are required (i) "at least 90 days before the date set for trial or for the case to be ready for trial;" or (ii) "within 30 days after the other party's disclosure" if the expert is providing rebuttal testimony. Fed. R. Civ. P. 26(a)(2)(D)(i)-

⁵ "Progress can be made by the parties producing their initial analyses and valuations based on the discovery completed to date." Motion to Amend CMO ¶ 24. The Motion to Amend CMO also states that Initial Expert Reports were appropriate because they "may further focus and potentially narrow the issues in the case." *Id.* at ¶ 25.

(ii). In other words, expert reports are typically only created after fact discovery has closed and all parties have had the opportunity to incorporate complete information into their respective reports.⁶ Expert reports are not typically filed on the docket, as the Court itself has recognized. Rather, experts provide their analysis through testimony and the expert reports themselves are generally inadmissible hearsay evidence. *Polyzen, Inc. v. Radiadyne, LLC*, No. 5:11-CV-662-D, 2016 WL 5360576, at *14 (E.D.N.C. Sept. 23, 2016), *aff'd*, 726 F. App'x 819 (Fed. Cir. 2018); *see Lowe v. Walbro, LLC*, 147 F.4th 601, 610 (6th Cir. 2025) (expert report could not be offered as substantive evidence without applicable hearsay exception).

13. A court may order a different schedule. *See* Fed. R. Civ. P. 26(a)(2)(D). The Court did so here, setting September 15, 2025, as the date on which the Debtors and the Committee were required to exchange Initial Expert Reports (and the FCR could exchange his Initial Expert Report, if he chose to do so). The Committee complied with the Second Amended Estimation CMO and provided its Initial Expert Report to the Debtors and the FCR on September 15, 2025. As of the filing of this Motion, the Debtors, the Committee, and the FCR have developed a consensual protocol for exchanging expert reliance materials (and those materials have been, or shortly will be, exchanged).

14. This Motion asks this Court to again clarify its instruction that the typical procedures regarding expert discovery will apply. Apr. 15, 2025 Hr'g Tr. at 14:22-23.

⁶ *See, e.g., In re G-I Holdings, Inc.*, No. 01-30135 (RG), 2006 WL 2403531, at *23 (Bankr. D.N.J. Aug. 11, 2006) (after years of litigation concerning asbestos estimation protocols and discovery, allowing expert discovery to commence only after the conclusion of fact discovery); *see also Gore v. 3M Co.*, No. 5:16-CV716-BR, 2017 WL 5076021, at *2 (E.D.N.C. Nov. 3, 2017) (factual discovery concluded prior to expert discovery “so that the parties may rely on a complete factual record to inform their own experts and depose their opponents’ experts”); *Finjan, LLC v. Qualys Inc.*, No. 18CV07229YGR TSH, 2020 WL 6581836, at *2 (N.D. Cal. Nov. 10, 2020) (distinguishing discovery phases in patent infringement litigation); *Booker v. P.A.M. Transp., Inc.*, No. 2:23-CV18 WJ/KRS, 2024 WL 4664420, at *9 (D.N.M. Nov. 4, 2024) (experts entitled to know facts before forming opinions); *Tibor Design, Inc. v. Yantai Res. Fashion Co.*, No. 11 CIV. 2425 KBF, 2013 WL 541396, at *1 (S.D.N.Y. Feb. 5, 2013); *Occidental Chem. Corp. v. 21st Century Fox Am., Inc.*, No. CV1811273MCAJD, 2020 WL 1969898, at *6 (D.N.J. Apr. 24, 2020) (scientific methodologies in expert phase dependent on discoverable relevant factual information).

A. The Court Ordered an Exchange Between the Parties, Not Publication or Public Filing

15. It was the Court's view that the Initial Expert Reports would "be directly exchanged," and not filed, *see* Apr. 15, 2025 Hr'g Tr. at 14:22-25, because the purpose of the reports was "to facilitate, obviously, communications and negotiations *between the parties*." *Id.* at 14:25-15:2 (emphasis added). The Committee negotiated in good faith concerning the terms of the Second Amended Estimation CMO. The Committee agreed to incorporate the Protective Order in the Second Amended Estimation CMO based on its understanding that Initial Expert Reports would be used solely in the context of estimation in **these** proceedings and that the Debtors' justification for seeking the Initial Expert Reports was to facilitate negotiation among the Parties, potentially narrow the issues between the Parties, and continue progress towards estimation.

16. Subsequent communications and meet and confer discussions indicated that both the Debtors and the FCR intend to provide the Initial Expert Reports to the Court and to parties that are not involved in—and have no potential to be involved in—estimation-related negotiations between the Parties. Specifically, the FCR has stated that he believes that the Court should see the Initial Expert Reports "soon" for what is presently an unknown purpose. The Debtors, for their part, have indicated that they disagree that the Court did not intend for the Initial Expert Reports to be filed.

17. Provision of the Initial Expert Reports to the Court at this stage of the estimation case is, as the Court recognized, premature and atypical. At a later point in the estimation proceeding, the experts' conclusions will be presented to the Court through testimony, cross examination, and rebuttal. As the Debtors stated in their Motion to Amend CMO, "[t]he parties have significant disagreement about the appropriate methodology the Court should use for estimation." Motion to Amend CMO ¶ 21. To the extent *Daubert* motions challenging the experts'

methodologies are brought, those would typically be brought at the *conclusion* of expert discovery. To do otherwise would be a waste of the Court's time and of estate resources.

18. Of equal concern is that the Debtors have indicated their interest in providing the Initial Expert Reports to parties not involved in the estimation of *these Debtors'* asbestos liabilities. The Committee's Initial Expert Report cannot be provided to any non-party to the Protective Order without the Committee's consent, which has not been granted. However, it is the Committee's position that *none* of the Initial Expert Reports should be provided to a non-party to the Protective Order. Further disclosure of the Initial Expert Reports—even by a Party sharing its own report—with non-parties to the Protective Order, including other asbestos defendants, other debtors,⁷ or the press, would not materially advance the estimation cases and would conflict with the intent of the Initial Expert Reports to facilitate communication and negotiation amongst the Parties. *See* Apr. 15, 2025 Hr'g Tr. at 14:25-15:2. Neither the Debtors nor the FCR have articulated how broader publication of the Initial Expert Reports would assist in negotiations or other progress towards estimation.

B. The Estimation Parties Are Not Harmed By Keeping the Initial Expert Reports Off of the Docket and Strictly Confidential as to Third Parties

19. The Committee understands all Parties to agree that each Party may designate certain portions of its Initial Expert Report as PEO. For the portions of the Initial Expert Reports not designated as PEO, disclosure should be limited to the Parties to the Protective Order (including their Authorized Recipients who have executed the required acknowledgements, as defined in the Protective Order). Further, the permitted use of the Initial Expert Reports should be limited to the estimation in these proceedings, including any subsequent appeals. Should any Party

⁷ The Debtors have previously advised the Committee that they are operating under a common interest agreement with the Bestwall and DBMP debtors.

seek to disclose an Initial Expert Report, all other Parties would need to consent; in the alternative, disclosure could occur upon Court order, following ten business days' notice and a hearing.

20. The Committee's proposed procedures would modify the Protective Order to provide for these protections. The Protective Order never contemplated that Initial Expert Reports would precede the close of fact discovery, much less that Parties would attempt to disclose the Initial Expert Reports to non-parties to the Protective Order without the corresponding contextual procedures of rebuttal reports, expert depositions, or *Daubert* motions.

21. This proposed approach does not harm any Estimation Party because all parties to the estimation proceeding and relevant professionals would have full access to the Initial Expert Reports, and clients would likewise be able to review all portions of the Initial Expert Reports not designated PEO. Thus, as the Court directed, estimation-related negotiation and hearing preparation will proceed with the benefit of the Initial Expert Reports.

22. Nothing in what the Committee proposes below is novel; it is designed to provide the protections that normally accompany expert testimony in any litigation to the Initial Expert Reports in these cases. Third-party common-interest defendants who are not also parties to these Estimation Proceedings—and are proceeding through their own court-ordered and court-supervised estimation proceedings—are not entitled to view the Initial Expert Reports regarding these Debtors' asbestos-related liabilities.

C. The Committee's Proposed Protective Language

23. The Committee offered the following language to the Debtors and the FCR as an addendum to the Protective Order. The Debtors and the FCR rejected the language and decried any effort to enhance the protections surrounding the Initial Expert Reports as efforts to be “suppressive” or “secretive,” necessitating this Motion:

- T. Notwithstanding anything to the contrary contained herein, the Parties

shall use the Initial Expert Reports⁸ solely in connection with the Estimation Proceeding,⁹ and in any appeal related thereto.

- **U.** The Initial Expert Reports shall be used by the Parties and their Authorized Recipients solely and exclusively in accordance with Paragraphs T and V of this Protective Order, shall be kept confidential by the Parties and their Authorized Recipients, shall be protected by the Parties and their Authorized Recipients through the implementation of reasonable security measures and shall not be disclosed by the Parties or their Authorized Recipients to any other Person except:
 1. to those Authorized Recipients of a Party who have executed the acknowledgment attached hereto as Exhibit A and need the Initial Expert Reports for the purposes for which the Initial Expert Reports may be used; or
 2. to those Professional Vendors to whom disclosure is reasonably necessary, provide that, before disclosure an authorized representative of each Professional Vendor has executed the acknowledgment attached here to as Exhibit A on behalf of that Professional Vendor; or
 3. to any member of the Committee or such member's counsel.
- **V.** Initial Expert Reports shall not be filed with the Court; provided that filing may be permitted if: (x) all Parties provide written consent that such Initial Expert Report may be filed; (y) as ordered by the Court; or (z) at the times specified in a scheduling order issued in the Estimation Proceeding governing pre-hearing motions practice related to expert testimony. Initial Expert Reports shall not be produced, shared, or otherwise disclosed to any Person that is not a Party; provided that such disclosure may be permitted if: (x) all Parties provide written consent that such Initial Expert Report may be disclosed; or (y) as ordered by the Court.
 1. If any party seeks to file or disclose an Initial Expert Report or any portion or the contents thereof (the "Party Seeking Disclosure"), a minimum of ten (10) business days' notice must be provided to all Parties of such intent with identification of the portion (or portions) of the Initial Expert Report subject to potential disclosure. Any

⁸ "Initial Expert Report" shall have the same meaning as that term is defined in the Second Amended Case Management Order for Estimation of Asbestos Claims [Dkt. No. 2656]. "Initial Expert Reports" shall mean all Initial Expert Reports.

⁹ "Estimation Proceeding" shall mean the contested matter pursuant to which the Court will estimate the Debtors' aggregate liability for all current and future asbestos personal injury claims, which shall include an estimation of mesothelioma claims plus the application of an agreed upon calculation for non-mesothelioma claims as set forth in that certain Order Authorizing Estimation of Asbestos Claims [Dkt. No. 1127].

Estimation Party may object to such disclosure or decline to provide written consent. This provision does not restrict the use of information contained in an Initial Expert Report that is generally known or available to the public through sources other than an Initial Expert Report.

2. If the Party Seeking Disclosure does not receive unanimous consent to the filing or disclosure from the other Parties, then the Party Seeking Disclosure may file a motion with the Bankruptcy Court requesting a determination by the Bankruptcy Court as to whether such action may be taken. The Party Seeking Disclosure may seek to shorten notice of such motion and request a hearing on the motion on a date other than one previously scheduled as a hearing date in the Bankruptcy Proceedings and any other Party may object to such request to shorten notice.

- **X.** Other than as explicitly set forth in Paragraphs T, U and V above, any applicable limitations on the use or disclosure of the Initial Expert Reports pursuant to a designation under the balance of this Protective Order remain unaffected.

24. With slight modification the language proposed instead can be incorporated into the Second Amended Case Management Order:

- The Parties shall use the Initial Expert Reports solely in connection with the Estimation Proceeding,¹⁰ and in any appeal related thereto.
- The Initial Expert Reports shall be used by the Parties and their authorized recipients solely and exclusively as provided herein, shall be kept confidential by the Parties, shall be protected by the Parties through the implementation of reasonable security measures and shall not be disclosed by the Parties to any other Person except:
 1. to a representative of a Party who have executed an acknowledgment of the restrictions set forth herein and need the Initial Expert Reports for the purposes for which the Initial Expert Reports may be used; or
 2. to those professional vendors to whom disclosure is reasonably necessary, provide that, before disclosure an authorized representative of each professional vendor has an acknowledgment

¹⁰ “Estimation Proceeding” shall mean the contested matter pursuant to which the Court will estimate the Debtors' aggregate liability for all current and future asbestos personal injury claims, which shall include an estimation of mesothelioma claims plus the application of an agreed upon calculation for non-mesothelioma claims as set forth in that certain Order Authorizing Estimation of Asbestos Claims [Dkt. No. 1127].

of the restrictions set forth herein on behalf of that professional vendor; or

3. to any member of the Committee or such member's individual counsel.

- Initial Expert Reports shall not be filed with the Court; provided that filing may be permitted if: (x) all Parties provide written consent that such Initial Expert Report may be filed; (y) as ordered by the Court; or (z) at the times specified in a scheduling order issued in the Estimation Proceeding governing pre-hearing motions practice related to expert testimony. Initial Expert Reports shall not be produced, shared, or otherwise disclosed to any Person that is not a Party; provided that such disclosure may be permitted if: (x) all Parties provide written consent that such Initial Expert Report may be disclosed; or (y) as ordered by the Court.

1. If any Party seeks to file or disclose an Initial Expert Report or any portion or the contents thereof (the "Party Seeking Disclosure"), a minimum of ten (10) business days' notice must be provided to all Parties of such intent with identification of the portion (or portions) of the Initial Expert Report subject to potential disclosure. Any Estimation Party may object to such disclosure or decline to provide written consent. This provision does not restrict the use of information contained in an Initial Expert Report that is generally known or available to the public through sources other than an Initial Expert Report.

2. If the Party Seeking Disclosure does not receive unanimous consent to the filing or disclosure from the other Parties, then the Party Seeking Disclosure may file a motion with the Bankruptcy Court requesting a determination by the Bankruptcy Court as to whether such action may be taken. The Party Seeking Disclosure may seek to shorten notice of such motion and request a hearing on the motion on a date other than one previously scheduled as a hearing date in the Bankruptcy Proceedings and any other Party may object to such request to shorten notice.

- Other than as explicitly set forth in this Second Amended Case Management Order, any applicable limitations on the use or disclosure of the Initial Expert Reports pursuant to a designation under the Protective Order remain unaffected.

25. The proposed language appropriately balances the competing concerns identified

by the Committee, the Debtors, and the FCR while providing the Estimation Parties with the ability to continue preparing for the Estimation Hearing, engage in settlement negotiations, and narrow the remaining estimation-related issues.

CONCLUSION

WHEREFORE, for the reasons noted above, the Committee requests that the Court modify the Second Amended Estimation CMO and/or the Protective Order to include the above language to further protect the Initial Expert Reports and grant such other relief as may be just and proper.

Dated: October 10, 2025

Respectfully submitted,

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