

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

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

Plaintiffs,

v.

DBMP LLC,

Defendant.

Case No. 22-00302 (JCW)
(Transferred from the
District of Delaware)

**REPLY BRIEF IN SUPPORT OF MOTION TO ALTER OR AMEND THE ORDER
DENYING NON-PARTY CERTAIN MATCHING CLAIMANTS' MOTION AND
JOINDER TO QUASH OR MODIFY SUBPOENAS AND KAZAN MCCLAIN
MATCHING CLAIMANTS' MOTION TO QUASH AND JOINDER IN THIRD PARTY
ASBESTOS TRUSTS' MOTION TO QUASH OR MODIFY SUBPOENAS**

The Certain Matching Claimants and the Additional Certain Matching Claimants¹ (together, the "Matching Claimants"²), by and through the undersigned counsel, respectfully submit this brief in reply to *DBMP LLC's Opposition to the Matching Claimants' Motion to Alter or Amend* [ECF No. 46] (the "Opposition") and in support of the Matching Claimants' *Motion to Alter or Amend the Order Denying Non-Party Certain Matching Claimant's Motion and Joinder to Quash or Modify Subpoenas and Kazan McClain Matching Claimants' Motion to Quash and*

¹ The Certain Matching Claimants are a discrete subset of claimants in the Trusts' databases whose injured party data fields or related claimant data fields match (or may match) any (a) nine-digit Social Security Number ("SSN") and (b) last name associated with a claimant in DBMP's database and who did not file their Trust claims pro se. *See In re DBMP LLC*, No. 20-30080, ECF No. 416, p. 22.

² Capitalized terms not otherwise defined have the meanings given to them in the Motion for Reconsideration.

Joinder in Third Party Asbestos Trusts’ Motion to Quash or Modify Subpoenas [ECF No. 33] (the “Motion for Reconsideration”), and respectfully state as follows:

1. In light of this Court’s recent decision in the *Aldrich Pump* AP, which held that a sample of the Trust databases was adequate and appropriate, the Matching Claimants renew their request that this Court reconsider and modify the *Order Denying the Motion to Quash* entered in this proceeding on November 29, 2022. On November 30, 2022, in *Armstrong World Industries, Inc. Asbestos Personal Injury Settlement Trust, et al. v. Aldrich Pump et. al*, Case No. 22-mc-00303, this Court heard arguments regarding similar motions to quash subpoenas to asbestos settlement trusts. Following the hearing, the Court granted in part and denied in part the subject motions to quash and modified the subpoenas to a random sampling of ten percent (10%) of the trust claim data originally requested. The Matching Claimants request that this Court reach a similar conclusion in the instant matter.

2. DBMP, in its Opposition, argues that the Matching Claimants “never made the argument they contend this Court misunderstood in denying their Motion to Quash.” [Opp. p. 2]. DBMP’s argument blatantly ignores the realities of these proceedings. The Matching Claimants joined in the Trusts’ motion to quash the DBMP Subpoenas and specifically joined in the objection surrounding the issue of sampling [ECF 4-5 and ECF 5-2].

As made clear by *Bestwall*, Rule 45(d)(3)(A)(iii) requires baseline protections with which subpoenas seeking confidential and sensitive Trust Claimant data must comply. The subpoenas must limit the production of Trust Claimant data “to a random sample of no more than 10% [of] the mesothelioma victims at issue,” and must authorize DCPF, or a neutral third party, to “anonymize the Trust Claimants’ data before producing it.” June 17, 2021 Order (*Bestwall* D.I. 33).

[ECF 4-5, Para. 21].

3. The fact that the Trusts later withdrew their motion to quash the DBMP Subpoenas following the *Bestwall* decision does not change the fact that the Matching Claimants had joined

in the Trusts' opposition and adopted the arguments for sampling as their own. As long as parties are similarly situated and independent filings would be redundant, joinders are generally allowed. 3d *Tatung Co., Ltd. v. Shu Tze Hsu*, 217 F. Supp. 3d 1138, 1151-52 (C.D. Cal. 2016); *Robinson v. Vivendi Universal*, 2005 WL 5748318, *7 (C.D. Cal. 2005) ("Motions to join summary judgment motions are commonplace . . ."). The Matching Claimants sought a motion to quash relief for themselves and made clear that they are not merely rooting from the sidelines by "joining" with the Trusts, but instead were seeking to echo the arguments in the Trusts' motion to quash.

4. The Court should also reject DBMP's conclusory argument that this Court should enforce the Anonymity Order (as defined in the Opposition) and strike or dismiss the Motion for Reconsideration because the Matching Claimants have not identified themselves. The Matching Claimants have not flouted this Court's order but have instead filed a *Motion for Stay Pending Appeal* (the "Motion to Stay") [3:22-CV-670, Dkt No. 2], which DBMP has opposed [3:22-CV-670, Dkt No. 5], and which is currently pending in the District Court. Furthermore, DBMP fails to cite to any case law precedent for its argument that the Court should enforce the Anonymity Order because the Matching Claimants did not identify themselves or obtain a stay from the District Court within thirty-one (31) days. The Matching Claimants are actively pursuing their appellate rights and have moved the District Court to grant a stay pending appeal.

5. Moving to the next argument set forth in the Opposition, the Matching Claimants' Motion to Quash is not rendered moot solely by the Trusts' compliance with the DBMP Subpoenas. The Court can form "meaningful relief by requiring that produced materials be returned." *Contour Data Sols. LLC v. Gridforce Energy Mgmt., LLC*, No. CV 20-3241, 2022 WL 3907530, at *1 (E.D. Pa. July 25, 2022). This Court can further form meaningful relief by tracking the relief granted to the Trusts, DCPF and the Matching Claimants in the *Aldrich Pump* AP and

by adopting a ten percent (10%) random sample to reduce the harm to the Matching Claimants. *See Aldrich Pump* AP 11/30/22 Hrg. Tr. 76:13-21.

6. DBMP argues that the redaction of the PII (as defined in the Opposition) eliminates the risk of inadvertent disclosure of PII, but the redaction of the Matching Claimants' PII does not eliminate the risk to the extent that a ten percent (10%) sample would. In fact, the Court recognized that it may have misunderstood the circumstances presented in the litigation related to the Matching Claimants' Motion to Quash:

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. 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.

76:21-15, 77:1-5 (emphasis added).

Where it appears that the Court had previously misunderstood the implications of compliance with the DBMP Subpoenas, the Motion to Reconsider is appropriate and should be granted in these circumstances. *See In re Greene*, No. 10-51071-SCS, 2013 WL 1724924, at *2 (Bankr. E.D. Va. Apr. 22, 2013), *aff'd* sub nom. *Greene v. U.S. Dep't of Educ.*, No. 4:13CV79, 2013 WL 5503086 (E.D. Va. Oct. 2, 2013), *aff'd*, 573 F. App'x 300 (4th Cir. 2014) (citation omitted) (“[a] motion to reconsider may also be appropriate where the Court has misunderstood a party”) (citation omitted).

7. DBMP's argument that the Matching Claimants, as nonparties, lack standing to challenge the *Order Denying the Motion to Quash* ignores the Matching Claimants' arguments regarding the burdens they face because of the disclosure of their PII to DBMP. DBMP argues that the Matching Claimants' sampling arguments “rest solely on the potential burden faced by

DCPF in redacting the PII.” [Oppos. p. 13]. This argument ignores the Matching Claimants’ arguments relating to the burdens imposed on them, independent of the burdens imposed on the Trusts, associated with the disclosure of the Matching Claimants’ PII. DBMP has consistently ignored the fact that it is the claims submission information of the Matching Claimants that it seeks from the Trusts, and that the Matching Claimants have identical privacy and economic considerations in these circumstances as implicated in the *Aldrich Pump* AP. Furthermore, compliance with the DBMP Subpoenas requires the Trusts to disclose a wealth of confidential, sensitive, and personal identifying information belonging to thousands of Matching Claimants—who are indisputably non-parties to the bankruptcy litigation—and would result in an extensive and costly review of responsive data by DBMP and its agents.

8. The Matching Claimants’ Motion to Reconsider is appropriate in these circumstances considering the findings and ruling issued by this Court in the *Aldrich Pump* AP on November 30, 2022—one day following the entry of the Order Denying the Motion to Quash. On that date, the Court heard arguments by counsel in the *Aldrich Pump* AP, a special proceeding analogous to this proceeding, and rendered a judgment inconsistent with the *Order Denying the Motion to Quash*. Specifically, the Court partially granted the motions to quash subpoenas issued by the debtor in that matter, though the motions raised nearly identical arguments to those raised in the Matching Claimants’ Motion to Quash. Nonetheless, the Court modified the subpoenas issued in *Aldrich Pump* to random sampling of ten percent (10%) of the trust data at issue. 11/30/22 Hrg. Tr. 76:8-25, 77:1-9.

9. In so ruling, the Court expressed concern regarding the confidential and sensitive nature of the information sought by the subpoenas. *See* 11/30/22 Hrg. Tr. at 76:15-16, 77:4-5 (stating that the Court was “sensitive to the disclosure of these non-parties’ information” and that

it “want[ed] to reduce the harm there as much as possible”). The Court also noted the economic and privacy concerns implicated by the expansive nature of the requests. *Id.* at 77:13-17 (stating that the Court was “a little concerned about all of this is [sic] ballooning up and we’re getting more and more demands for a great deal of data and ... to make sure that we are mindful of costs in these cases and of the privacy concerns and that we’re not getting any more than we need.”).

10. The result in the *Aldrich Pump* AP conflicts with, and runs contrary to, the Order Denying the Motion to Quash issued in this matter, though the very same privacy and economic considerations implicated in the *Aldrich Pump* AP are present in these circumstances. Compliance with the DBMP Subpoenas requires the Trusts to disclose a wealth of confidential, sensitive, and personal identifying information belonging to thousands of Matching Claimants—who are indisputably non-parties to the bankruptcy litigation—and would result in an extensive and costly review of responsive data by the Debtor and its agents.

11. Notably, the Court squarely acknowledged at the November 30, 2022 hearing that its position on the issue of a random sampling of data—which modification it had declined to order in this matter—had changed after hearing similar arguments of counsel at the *Aldrich Pump* AP:

[Y]ou 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. 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.

11/30/22 Hrg. Tr. 76:13-21.

12. Accordingly, where it appears that the Court previously misunderstood the implications of compliance with the DBMP Subpoenas, the Motion to Reconsider is appropriate and should be granted in these circumstances. *See Greene*, 2013 WL 1724924, at *2 (Bankr. E.D. Va. Apr. 22, 2013) (“[a] motion to reconsider may also be appropriate where the Court has

misunderstood a party”) (citation omitted); *Madison River Mgmt.*, 402 F.Supp.2d at 619 (“A motion to reconsider is appropriate when the court has obviously misapprehended a party’s position or the facts”); *Deitch*, 513 B.R. at 880 (“A motion for reconsideration is appropriate in instances where the court has patently misunderstood a party”) (internal quotations omitted).

13. Thus, the Court should adopt its ruling in the *Aldrich Pump* AP in these circumstances and amend the Order Denying the Motion to Quash to limit the DBMP Subpoenas to a random sampling of no more than ten percent (10%) of the Trust claims at issue.

CONCLUSION

For the reasons discussed, the Matching Claimants respectfully request that the Court grant this Motion to Reconsider, and amend the Order Denying the Motion to Quash to limit the DBMP Subpoenas to a random sampling of no more than ten percent (10%) of the Trust claims at issue, pursuant to Civil Rule 52 and Bankruptcy Rules 7052 and 9014, and order any further relief that the Court deems just and appropriate.

Respectfully submitted, this, the 2nd day of February, 2023.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that copies of the foregoing were filed in accordance with the local rules and served upon all parties registered for electronic service and entitled to receive notice thereof through the CM/ECF system.

Respectfully submitted this the 2nd day of February, 2023.

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