

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

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

Plaintiff(s),

vs.

ALDRICH PUMP LLC, *et al.*,

Defendant(s).

In re:

ALDRICH PUMP LLC, *et al.*,¹

Debtors.

Miscellaneous Proceeding

No. 22-00303 (JCW)

(Transferred from District of Delaware)

Chapter 11

Case No. 20-30608

MOTION TO RECONSIDER RULING GRANTING MOTION TO STRIKE

The Certain Matching Claimants, as non-parties, by and through the undersigned counsel, respectfully move the Court to alter or amend its Ruling² on *Debtors' Motion to Strike Pleadings filed by Non-Party Certain Matching Claimant* (Dkt.³ 84) (the "Motion for Strike").⁴

The Certain Matching Claimants file this motion (the "Motion for Reconsideration") pursuant to Rule 52 of the Federal Rules of Civil Procedure (the "Civil Rules"), made applicable to this contested matter by Rules 7052 and 9014 of the Federal Rules of Bankruptcy Procedure

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 Court has not yet entered an order memorializing the ruling made on March 30, 2023.

³ "Dkt." refers to pleadings in this miscellaneous proceeding, Armstrong World Indus., Inc. Asbestos Pers. Inj. Settlement Tr. v. Aldrich Pump LLC, Miscellaneous Proceeding No. 22-303 (JWC) (Bankr. W.D.N.C.).

⁴ Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Motion to Strike.



(the “Bankruptcy Rules”). In support of this request, the Certain Matching Claimants respectfully state as follows:

I. JURISDICTION AND VENUE

1. The Bankruptcy Court has jurisdiction over this matter pursuant to 28 USC §§ 157 and 1334.
2. Venue is proper in this district pursuant to 28 USC §§ 1408 and 1409.
3. This is a core proceeding pursuant to 28 USC § 157(b)(2).
4. The District Court has jurisdiction to hear this matter pursuant to 28 USC § 158(a)(3).

II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

5. On June 18, 2020, Aldrich Pump LLC and Murray Boiler LLC (“Aldrich Pump” or the “Debtors”) filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code, 11 USC §§ 101, et seq., commencing Case No. 20-30608 (the “Bankruptcy Case”) before this Court.⁵

6. Aldrich Pump moved the Bankruptcy Court for authority to subpoena the Delaware Claims Processing Facility (the “DCPF”), an entity holding confidential data owned by ten asbestos settlement trusts (collectively, the “Trusts”).⁶ In the subpoena, Aldrich Pump sought electronically stored data concerning approximately 12,000 mesothelioma claimants who settled

⁵ On June 25, 2020, the Court granted the Debtors’ Motion to jointly administer the Aldrich Pump LLC and Murray Boiler LLC cases, with the lead case captioned: Aldrich Pump LLC et al., Case No. 20-30608. [Bankr. Dkt. 114].

⁶ The ten trusts include Armstrong World Industries, Inc. Asbestos Personal Injury Settlement Trust; 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 Personal Injury Settlement Trust; United States Gypsum Asbestos Personal Injury Settlement Trust; and WRG Asbestos PI Trust. [Dkt. 3-1].

with Aldrich Pump prior to the commencement of the Bankruptcy Case and filed a claim against one or more of the Trusts. [Bankr. Dkt.⁷ 1111].

7. On July 1, 2022, the Court granted Aldrich Pump's subpoena request and entered the *Order Granting Motion of the Debtors for an Order Authorizing the Debtors to Issue Subpoenas on Asbestos Trusts and Paddock Enterprises, LLC*. [Bankr. Dkt. 1240].

8. On July 5, 2022, Aldrich Pump served the subpoenas on the Trusts and DCPF (the "Aldrich Pump Subpoenas").

9. On July 25, 2022, the Trusts moved the District Court of Delaware to enter an order quashing or modifying the subpoenas served upon them and the DCPF (the "Trusts' Motion to Quash"), commencing Case No. 1:22-mc-00308-CFC (the "Delaware Proceeding").

10. On July 26, 2022, DCPF filed *DCPF's Motion to Quash or Modify Subpoena and (II) Joinder* ("DCPF's Motion to Quash") in the Delaware Proceeding. [Dkt. 4-2].

11. On August 23, 2022, the Certain Matching Claimants filed their *Non-Party Certain Matching Claimants' Motion and Joinder to Quash or Modify Subpoenas* (the "Matching Claimants' Motion to Quash"). In that motion, the Matching Claimants argued that the Court should quash the Aldrich Pump Subpoenas because compliance would require the Trusts to disclose a wealth of confidential, sensitive, and personal identifying information belonging to thousands of Certain Matching Claimants who had long since settled their claims against Aldrich Pump or its predecessors, the former Trane Technologies Company LLC, successor by merger to Ingersoll-Rand Company (a former New Jersey Corporation), or Murray Boiler LLC's predecessor, the former Trane US Inc. [Dkt. 5-3].

⁷ "Bankr. Dkt." refers to pleadings in the base case, *In re Aldrich Pump LLC*, Case No. 20-30608 (Bankr. W.D.N.C.).

12. On August 23, 2023, the Certain Matching Claimants filed their *Non-Party Certain Matching Claimants' Motion To Proceed Anonymously* (the “Motion to Proceed Anonymously”), making similar arguments as made in the Matching Claimants’ Motion to Quash. [Dkt. 5-4].

13. On August 31, 2022, Aldrich Pump moved to transfer the Delaware Proceeding to the Bankruptcy Court (the “Motion to Transfer”). [Dkt. 5-7].

14. On or about September 26, 2022, the Delaware Court granted Aldrich Pump’s Motion to Transfer and entered an order transferring the Delaware Proceedings to this Court. [Dkt. 7].

15. On October 4, 2022, the above-captioned miscellaneous proceeding commenced before this Court.

16. On November 30, 2022, this Court held a hearing on the Certain Matching Claimants’ Motion to Quash. 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 Court has not yet entered an order.⁸

17. On November 30, 2022, the Court held a hearing on the Motion to Proceed Anonymously.

18. The Court entered an *Order Denying Non-Party Certain Matching Claimants’ Motion to Proceed Anonymously and Joinder of the Kazan McClain Matching Claimants to Non-Party Certain Matching Claimant's Reply in Support of Motion to Proceed Anonymously* (the “Order Denying the Motion to Proceed Anonymously”) on February 6, 2023. [Dkt. 42]. The Order Denying the Motion to Proceed Anonymously provided that “[t]he requirement that any Movants

⁸ The Debtors filed a *Motion for Rehearing Concerning the Issue of Sampling on the DCPF’s Subpoena-Related Motions* on March 9, 2023. See ¶ 21.

identify themselves shall be stayed until the 31st day following entry of this Order to permit such Movants (if desired) to seek a stay pending appeal from the district court.” [Dkt. 42].

19. The Certain Matching Claimants appealed the Order Denying the Motion to Proceed Anonymously on February 20, 2023, commencing Case No. 3:23-cv-00099-MOC (the “District Court Appeal”).

20. On March 8, 2023 – within 31 days of the Order Denying the Motion to Proceed Anonymously had been entered – the Certain Matching Claimants filed a *Motion for Stay Pending Appeal* in the United States District Court for the Western District of North Carolina (the “Stay Motion”) [District Ct. Dkt.⁹ 2].

21. On March 9, 2023, the Debtors filed their *Motion for Rehearing Concerning the Issue of Sampling on DCPF's Subpoena-Related Motions* (the “Debtors’ Rehearing Motion”) [Dkt. 54].

22. Various parties filed Objections and Motions to Strike to the Debtors’ Rehearing Motion [Dkt., *inter alia*, 58-78]

23. Certain Matching Claimants filed the following pleadings relating to the Debtors’ Rehearing Motion (the “Certain Matching Claimants’ Pleadings”):

- a. *Non-Party Certain Matching Claimants’ Opposition to the Debtors’ Motion for Rehearing Concerning the Issue of Sampling on DCPF’s Subpoena-Related Motions* [Dkt. 63];
- b. *Joinder to Motion of Third-Party Asbestos Trusts’ Motion for Adjournment and Related Relief* [Dkt. 66] filed on behalf of Certain Matching Claimants; and

⁹ “District Ct. Dkt.” refers to the district court case, Non-Party Certain Matching Claimants v. Aldrich Pump LLC, Case No. 23-cv-00099-MOC (W.D.N.C.).

c. *Joinder to Motion of Third-Party Motion for Adjournment on Behalf of Verus Trust* [Dkt. 67].

24. On March 27, 2023, the Debtors filed the *Motion to Strike the Certain Matching Claimants' Pleadings*.¹⁰

25. At the hearing on March 30, 2023, the Court granted the Debtors' Motion to Strike, focusing on the fact that the Certain Matching Claimants had not obtained a stay in the district court. See Transcript of Proceedings Before the Honorable J. Craig Whitley, United States Bankruptcy Judge, dated March 30, 2023 ("03/30/23 Hrg. Tr.") 134:17-25, 135:1-17, selected excerpts attached as **Exhibit A**.

26. An order memorializing the Court's March 30, 2023, ruling granting the Debtors' Motion to Strike has not been entered.

27. At the March 30, 2023 hearing, the Stay Motion had only been fully briefed for one day.¹¹

28. On April 26, 2023, the Honorable United States District Court Judge Max O. Cogburn entered the Order attached as **Exhibit B**, granting the Stay Motion, staying the Order Denying Anonymity Motion pending the appeal of the Motion to Proceed Anonymously (the "District Court Stay Order"). [District Ct. Dkt. 6].

III. **RELIEF REQUESTED**

29. The Certain Matching Claimants respectfully request that the Court reconsider its March 30, 2023, ruling granting the Debtors' Motion to Strike as the Certain Matching Claimants

¹⁰ Pleadings filed by the Non-Party Certain Matching Claimants in AC&S Asbestos Settlement Trust et al. v. Aldrich Pump LLC et al., Case No. 23-00300, were also the subject of the Debtors' Motion to Strike. Non-Party Certain Matching Claimants in this miscellaneous proceeding also have a Motion to Stay pending appeal the District Court, Non-Party Certain Matching Claimants v. Aldrich Pump LLC, 23-cv-00144.

¹¹ The Debtors filed the Debtors' *Opposition to Motion for Stay Pending Appeal* [District Ct. Dkt. 3] on March 22, 2023. On March 29, 2023, the Certain Matching Claimants filed a *Reply In Support of the Motion for Stay Pending Appeal* [District Ct. Dkt. 5].

have obtained a Stay from the Order Denying Anonymity Motion from the United States District Court for the Western District of North Carolina, entered on April 26, 2023.

IV. ARGUMENT

30. Civil Rule 52, applicable to this contested matter by Bankruptcy Rules 7052 and 9014, provides that, on a party's motion, "the court may amend its findings—or make additional findings—and may amend the judgment accordingly." Fed. R. Civ. P. 52(b). Bankruptcy Rule 7052 requires that a motion made under Civil Rule 52(b) "shall be filed no later than 14 days after entry of judgment."¹² Fed. R. Bankr. P. 7052.

31. The purpose of a Civil Rule 52(b) motion to amend findings by the court is "to correct manifest errors of law or fact or to present newly discovered evidence." In re Houck, Case No. 11-51513, 2019 WL 2246542, at *1 (Bankr. WDNC May 23, 2019) (quoting, in part, Wahler v. Countrywide Home Loans, Inc., Case No. 1:05-cv-349, 2006 WL 3327074, at *1 (WDNC 2006).

32. The Matching Claimants' Motion to Reconsider is appropriate in these circumstances considering the entry of the District Court Stay Order. The District Court Stay Order – issued *after* the hearing on the Debtors' Motion to Strike – grants the Certain Matching Claimant's Stay Motion and stays the Order Denying Anonymity Motion pending the appeal of the Order Denying the Motion to Proceed Anonymously. As such, as of April 27, 2023, the Certain Matching Claimants are now able to proceed anonymously and should be allowed to do so in the remainder of the proceedings related to the Debtors' Rehearing Motion and the related matters.¹³

¹² This Motion for Reconsideration is timely, as the Order Denying the Motion to Strike has yet to be entered.

¹³ The Rehearing Motion relating to Miscellaneous Pleading Nos. 22-00303 (JCW) and 23-00300 (JCW) is currently scheduled for June 6, 2023, at 9:30 a.m. Eastern Standard Time.

33. The District Court Stay Order is precisely the newly discovered evidence anticipated by Civil Rule 52(b) because it did not exist at the time of the Motion to Strike hearing. Denying the Certain Matching Claimants the opportunity to participate in the Debtors' Rehearing Motion and related pleadings after the issuance of the District Court Stay Order is erroneous and is exactly the injustice Civil Rule 52(b) seeks to rectify. See, In re El-Amin, 252 BR 652, 656 (Bankr. E.D. Va. 2000) ("the purpose of these rules [Rule 52(b)] is the correction of an egregious error of law or fact"). Thus, in light of the District Court Stay Order, this Court should reverse its previous ruling granting the Debtors' Motion to Strike.

CONCLUSION

For the reasons discussed, the Certain Matching Claimants respectfully request that the Court grant this Motion to Reconsider and reverse its ruling granting the Motion to Strike, 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 4th day of May, 2023.

**WALDREP WALL BABCOCK
& BAILEY PLLC**

/s/ Thomas W. Waldrep, Jr.

Thomas W. Waldrep Jr. (NC State Bar No. 11135)

Jennifer B. Lyday (NC State Bar No. 39871)

Diana S. Johnson (NC State Bar No. 40050)

Natalia L. Talbot (NC State Bar No. 55328)

370 Knollwood Street, Suite 600

Winston-Salem, NC 27103

Telephone: (336) 717-1280

Facsimile: (336) 717-1340

Email: notice@waldrepwall.com

HOGAN♦McDANIEL

/s/ Daniel K. Hogan

Daniel K. Hogan (DE State Bar No. 2814)

1311 Delaware Avenue

Wilmington, DE 19806
Telephone: (302) 656-7540
Facsimile: (302) 656-7599
Email: dkhogan@dkhogan.com
(Admitted pro hac vice)

Counsel for the Certain Matching Claimants

EXHIBIT A

*Official Court Transcript of the hearing held on March 30, 2023
before the Bankruptcy Court
[Selected Portions]*

ARMSTRONG WORLD INDUSTRIES, : Miscellaneous Pleading
INC. ASBESTOS PERSONAL INJURY : No. 22-00303 (JCW)
SETTLEMENT TRUST, et al., : (Transferred from District
of Delaware)

Plaintiffs, :

v. :

ALDRICH PUMP LLC, et al., :

Defendants, :

: :

AC&S ASBESTOS SETTLEMENT : Miscellaneous Pleading
TRUST, et al., : No. 23-00300 (JCW)
: (Transferred from District
Petitioners, New Jersey)

v. :

ALDRICH PUMP LLC, et al., :

Respondents, :

VERUS CLAIM SERVICES, LLC, :

Interested Party, :

NON-PARTY CERTAIN MATCHING
CLAIMANTS, :

Interested Party.

: :

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE J. CRAIG WHITLEY,
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES :

For Debtors/Defendants,
Aldrich Pump LLC and Murray
Boiler LLC:

Rayburn Cooper & Durham, P.A.
BY: JOHN R. MILLER, JR., ESQ.
MATTHEW TOMSIC, ESQ.
C. RICHARD RAYBURN, JR., ESQ.
227 West Trade St., Suite 1200
Charlotte, NC 28202

1 THE COURT: All right. Let's try it.

2 MR. EVERT: All right, your Honor. So No. 6, next up
3 -- Michael Evert for the debtors.

4 No. 6, next up, the Debtors' Motion to strike the
5 Pleadings filed by the Non-Party Certain Matching Claimants.

6 THE COURT: Right.

7 MR. EVERT: I'm going to try to start a trend for the
8 afternoon here, this Honor, your Honor, and I think we're, I'm
9 going to try to do this in two minutes. This one's pretty
10 simple.

11 The Court ruled that the Matching Claimants needed to
12 identify themselves and the Court denied their motion to
13 proceed anonymously. The Court entered an order that said,
14 "Tell you what I'll do. I'll give you guys 30 days to go to
15 the District Court and see if you can get a stay of my ruling
16 in the District Court so you don't have to identify yourself to
17 be heard in this Court." On, depending upon which particular
18 Matching Claimant group you're talking about, on about the 27th
19 or 28th or 29th day, they filed a motion for stay in the
20 District Court which still sits pending at the District Court.

21 So what we have is is we have a pending motion to stay
22 and no order on that motion to stay and the debtors have moved
23 to strike the Matching Claimants because, inconsistent with the
24 Court's order, they've not identified themselves and the 30
25 days has since expired. Pretty much it.

1 THE COURT: Okay.

2 MR. EVERT: Thank you, your Honor.

3 THE COURT: All right.

4 MR. HOGAN: Good afternoon, your Honor. Daniel Hogan
5 of Hogan McDaniel on behalf of the Non-Party Certain Matching
6 Claimants. Your Honor, thanks for your time today. I
7 appreciate it.

8 THE COURT: Sure.

9 MR. HOGAN: Your Honor, this motion is predicated on a
10 hearing that happened before your Honor on November 30th of
11 last year. The order was entered on February 6th, the order
12 denying the anonymity. We appealed that order on February 20th
13 and we filed the motion to stay with the District Court on
14 March 8th. Interestingly, curious timing, the debtors filed
15 their motion for rehearing on March 9th. We find that curious,
16 your Honor. Debtors are essentially attempting to relitigate
17 the motion to quash. At the time that we argued the motion to
18 quash you had not ruled on the anonymity order.

19 THE COURT: Uh-huh (indicating an affirmative
20 response).

21 MR. HOGAN: So we have a temporal disconnect here,
22 your Honor. We are essentially going back in time to argue the
23 motion to quash, yet we're being prevented, or the debtors are
24 attempting to prevent us from participating in rearguing the
25 motion to quash predicated on an order that we've appealed and

1 for which we have moved to stay that order pending the appeal.

2 Your Honor, I don't relish having to point to the
3 language of your order. I've made this argument to you
4 before --

5 THE COURT: Uh-huh (indicating an affirmative
6 response).

7 MR. HOGAN: -- but I have to create a record, as you
8 know.

9 THE COURT: Sure. Go ahead.

10 MR. HOGAN: Your order provides that we had 31 days,
11 30 days to seek a stay and we did that. And so all we are
12 looking to do, your Honor, by participating in this motion for
13 rehearing is to be heard, like we were heard initially when the
14 motion to quash was argued before your Honor on November 30th.
15 That's what the debtors are seeking by their rehearing motion.
16 They want to go back in time and let's hear it again. Let --
17 give you everything again, maybe make some new arguments, maybe
18 point to some different factors --

19 THE COURT: Uh-huh (indicating an affirmative
20 response).

21 MR. HOGAN: -- and from our perspective, they should
22 not be permitted to allow for our pleading to be struck. We
23 should be heard if this matter's going to be heard again. Your
24 Honor, they're really looking to silence us, as we see it, and
25 they've really demonstrated no basis. The courts see this type

1 of relief as a drastic type of relief, your Honor, and the
2 courts typically disfavor these type motions to strike. And so
3 from our perspective, your Honor, we should be heard.

4 We see this as, essentially, a Groundhog-Day argument
5 where we're going back to November 30th now, except they're
6 trying to quiet us. They're trying to silence us from making
7 arguments counter to their arguments on the sampling. And so
8 we believe that you should deny the motion to strike.

9 You have any questions for me, your Honor?

10 THE COURT: No thank you.

11 MR. HOGAN: Thank you.

12 MS. JOHNSON: Good afternoon. Diana Johnson with
13 Waldrep Wall Babcock & Bailey. We are local counsel to Joe
14 Lemkin, who is on the phone.

15 In his pleading he has joined the arguments Dan made
16 and I just wanted to clarify the dates for his -- his -- in the
17 Miscellaneous Proceeding. Their order denying the motion to
18 proceed anonymously was entered on February 22nd. The appeal
19 to the District Court was on March 7th. They filed their
20 motion for stay on March 24th and that matter is not yet fully
21 briefed.

22 So we also ask that the motion to strike be denied.

23 Thank you.

24 THE COURT: Okay.

25 Any response to that?

1 MR. EVERT: Your Honor, just a couple of quick points
2 just so I can satisfy any curiosity.

3 We filed the rehearing motion on March 9th 'cause that
4 was the deadline in order for the March 30th omnibus hearing.
5 So that was the --.

6 THE COURT: Uh-huh (indicating an affirmative
7 response).

8 MR. EVERT: -- reasoning behind that filing date.

9 And, and your Honor, look, our only point is the Court
10 said to the anonymous claimants, "Look, for you to be here,
11 heard, we got to, you got to identify yourselves so I can
12 understand exactly who you are and what you're doing and where,
13 what your perspective is," and all those kinds of things. And,
14 and so, that's, that's the premise of our motion.

15 THE COURT: Okay.

16 That got it?

17 Well, I, I appreciate what you're saying, but unless
18 you want to identify your clients, I can't let you participate.
19 I, I thought I was stretching a point to, to give any sort of
20 stay at all. I didn't see grounds for it. The motion to
21 proceed anonymously, to me, looked very clear and we didn't
22 have facts that would justify the apprehensions that give rise
23 to anonymous proceedings and, of course, the general rule is
24 quite the opposite that, that parties are to be known on the
25 record.

1 I understand you disagree with that, but I was,
2 effectively, saying I don't think I could have granted the stay
3 myself and rather than waste time filing the motion with me, I
4 wanted to give you a little bit of an opportunity to see if the
5 District Court thought there was egregious error here, perhaps,
6 that they would intervene. But frankly, I just don't see it
7 and the bottom line is while they may be talking -- and I don't
8 know yet whether I'm going to reconsider the earlier ruling on
9 sampling -- but the bottom line is it's a question of
10 participating in the case after the 30 days and without knowing
11 who your clients are, I don't think I'll allow you to do that.

12 So with all respect for what your clients have argued
13 and what they want to do, I, I think the fact that there's a
14 reconsideration motion is no different than any other kind of
15 motion that you might have an interest in in the case.

16 So I'm going to have to ask you. Do you wish to, to
17 identify or do you want to stand down for today's purposes?

18 MR. HOGAN: Your Honor, Daniel Hogan of Hogan McDaniel
19 on the record.

20 We are not prepared at this time to identify the
21 12,000 plus to your satisfaction. I think the, the record
22 would be, would take, you know, the remainder of the day even
23 if I, you know, was Evelyn Wood at this point, your Honor.

24 THE COURT: Well, I was just trying to anticipate that
25 there might have been a written document that just in case and

1 I wanted to ask the question. I understand.

2 MR. HOGAN: Thank you, your Honor.

3 THE COURT: All right. Thank you.

4 Motion granted. I'll ask the debtor for a proposed
5 order.

6 MR. EVERT: Thank you, your Honor.

7 I do commend the Evelyn Wood reference, though, your
8 Honor. That's, that's taking us a ways back.

9 So up next, your Honor, is Docket No. 7 and 8, Third
10 Party Asbestos Trusts' Motion for Adjournment and Related
11 Relief and Motion of Third Party Verus Claim Services for
12 Adjournment and Related Relief, your Honor.

13 THE COURT: Uh-huh (indicating an affirmative
14 response).

15 Who would like to lead off?

16 MR. HOUSTON: Good afternoon, your Honor. Andy
17 Houston for the Verus Trusts. And I've got Lynda Bennett, my
18 co-counsel from Lowenstein Sandler, here with me this
19 afternoon.

20 MS. BENNETT: Good afternoon --

21 THE COURT: All right.

22 MS. BENNETT: -- your Honor.

23 THE COURT: Good afternoon.

24 MS. HOBSON: Good afternoon, your Honor. Anna-Bryce
25 Hobson here for Verus Claims Services. I've got Zach Wellbrock

EXHIBIT B

Order Granting Motion to Stay Pending Appeal

[23-cv-00099, District Ct. Dkt. 6].

The Appellants are approximately 12,000 mesothelioma victims, whose personal information is sought as nonparties through a subpoena served by Aldrich Pump LLC and Murray Boiler (“Aldrich” or “Appellee”) on ten asbestos bankruptcy trusts (the “Trusts”) and their Delaware-based administrator (the “Delaware Claims Processing Facility” or “DCPF”).

The subpoena targets personal identifying information belonging to thousands of asbestos victims who have settled their claims against the Debtor, or its predecessor. (Subpoena Proceeding, Doc. No. 3). On July 25, 2022, the Trusts commenced a miscellaneous proceeding in the United States District Court for the District of Delaware (the “Delaware District Court”) to quash or modify such subpoena pursuant to Rules 26 and 45 of the Federal Rules of Civil Procedure (the “Civil Rules”). (Subpoena Proceeding, Doc. No. 3). On July 26, 2022, DCPF filed a motion to quash the subpoenas. (Subpoena Proceeding, Doc. No. 4-2). The Appellants joined the motions to quash on August 23, 2022. (Subpoena Proceeding, Doc. No. 5-3). The same day, the Appellants also filed a Motion to Proceed Anonymously (the “Anonymity Motion”) in that proceeding. (Subpoena Proceeding, Doc. No. 5-4). On August 31, 2022, the Debtor filed a Motion to Transfer this Action to the United States Bankruptcy Court for the Western District of North Carolina (the “Motion to Transfer”). (Subpoena Proceeding, Doc. No. 5-7).

On or about September 26, 2022, the Delaware District Court granted the Motion to Transfer, and this action was transferred to the Bankruptcy Court, the same court which commenced the Subpoena Proceeding. (Subpoena Proceeding, Doc. No. 1). On November 30, 2022, the Bankruptcy Court held a hearing on the Anonymity Motion. The Bankruptcy Court denied the motion.

On February 6, 2023, the Bankruptcy Court entered the Order Denying Anonymity, directing the Appellants to identify themselves by full name, but the Court stayed that requirement for 31 days to allow the Appellants to seek a stay pending appeal from this Court. (Subpoena Proceeding, Doc. No. 42). On February 20, 2023, the Appellants appealed the Order Denying Anonymity Motion. (Subpoena Proceeding, Doc. No. 49). The Appellants, through this Motion, seek a stay of the Order Denying Anonymity Motion pending their appeal. Appellee has filed a response opposing the motion to stay, and Appellants have filed a Reply. (Doc. Nos. 3, 5).

II. DISCUSSION

Pursuant to Bankruptcy Rule 8007, a motion for stay pending appeal may be filed “in the court where the appeal is pending[.]” though the movant must first show that filing such motion in the bankruptcy court would be impracticable. FED. R. BANK. P. 8007(b). When considering a motion to stay pursuant to Bankruptcy Rule 8007, courts in the Fourth Circuit consider the requisite factors for a preliminary injunction. Specifically, the movant must establish “[1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest.” Real Truth About Obama, Inc. v. Fed. Election Comm’n, 575 F.3d 342, 346 (4th Cir. 2009), cert. granted, judgment vacated, 559 U.S. 1089 (2010), and adhered to in part sub nom. The Real Truth About Obama, Inc. v. F.E.C., 607 F.3d 355 (4th Cir. 2010) (citing Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7 (2008); In re Kaiser Gypsum Co., No. 3:20CV537-GCM, 2021 WL 3476138, at *1 (W.D.N.C. Aug. 6, 2021) (citing cases in which the preliminary injunction standard is applied to a motion to stay pending appeal).

The decision to grant a stay pending appeal is within the sound discretion of the court. In re Franklin, No. 19-80661, 2020 WL 603900, at *3 (Bankr. M.D.N.C. Feb. 6, 2020). Here, the

Court finds that all four factors weigh in favor of a stay in favor of the Appellants. As to the first factor—the likelihood of success on appeal—this factor weighs in favor of a stay. In Manville Trust Matching Claimants v. Aldrich Pump LLC, the United States District Court for the District of Columbia granted a virtually identical motion to proceed anonymously, ruling that “weighed against the minimal apparent interest in disclosure, movants’ significant and ‘legitimate interest in anonymity’ and in maintaining the privacy of their personal information are more than sufficient to overcome “countervailing interests in full disclosure.” Manville Trust Matching Claimants v. Aldrich Pump LLC, 1:22-mc-00080-TJK (D.D.C. Aug. 25, 2022) (Doc. No. 2 at 3-6). Because a similar motion to proceed anonymously has already been granted in a parallel proceeding, the Appellants have demonstrated a strong likelihood of success on the Motion for Anonymity.

Furthermore, the issues that will be presented in this appeal are of first impression. As the Appellants note, while Fourth Circuit authority is clear that “compelling concerns relating to personal privacy or confidentiality may warrant some degree of anonymity in judicial proceedings, including use of a pseudonym,” Doe v. Public Citizen, 749 F.3d 246, 273 (4th Cir. 2014), the Fourth Circuit has not addressed this issue in the context of a debtor in a Chapter 11 proceeding seeking confidential information from potential claimants to create a section 524(g) trust. As an issue of first impression for the Fourth Circuit, “[t]his factor weighs in favor of granting a stay because clear precedent from the Court of Appeals does not dictate the outcome of the substantive issue decided by this court and presented by the appeal.” United States v. Fourteen Various Firearms, 897 F. Supp. 271, 273 (E.D. Va. 1995) (citing Goldstein v. Miller, 488 F. Supp. 156, 176 (D. Md. 1980)).

The Appellants have also demonstrated that the second factor—irreparable harm to the movant in the absence of a stay—weighs in favor of a stay. Here, the Appellants have shown that they will suffer irreparable harm if the court denies the motion, as their appeal will be mooted and their identities as mesothelioma victims, many of whom have engaged in confidential settlement agreements with the Debtor or its predecessors, will be placed on the public record. This could violate the Appellants’ right to privacy, as guaranteed by the Fourteenth Amendment, and constitutes irreparable harm. See Hirschfeld v. Stone, 193 F.R.D. 175, 187 (S.D.N.Y. 2000) (“The harm at issue here -- disclosure of confidential information -- is the quintessential type of irreparable harm that cannot be compensated or undone by money damages.”); see also Sec. Indus. & Fin. Mkts. Ass’n v. Garfield, 469 F. Supp. 2d 25, 41 (D. Conn. 2007) (holding that “[i]rreparable harm is defined as certain and imminent harm for which a monetary award does not adequately compensate. Thus, only harm shown to be non-compensable in terms of money damages provides the basis for awarding injunctive relief.”). Granting the stay maintains the status quo and preserves the Appellants’ right to review on the merits without first requiring the Appellants to disclose the highly personal information they are seeking to keep confidential. See In re Charles & Lillian Brown’s Hotel, Inc., 93 B.R. 49, 53 (Bankr. S.D.N.Y. 1988) (emphasizing the “critical role a stay pending appeal plays, not only in maintaining the status quo, but in preserving the right to review on the merits.”).

The third factor for a preliminary injunction—the balance of equities—also supports a stay. Granting the stay will not harm or prejudice the Debtors or any non-moving party. The Debtors have already obtained all the information concerning the Appellants that it sought by subpoena when the Bankruptcy Court denied the Appellants’ Motion to Quash. In other words, there is no need for the Appellants to be publicly identified in this proceeding. See (Subpoena

Proceeding, Doc. Entry dated November 30, 2022; Courtroom Recordings (Subpoena Proceeding, Doc. Nos. 32–34)).¹ On the other hand, if the Motion to Stay is denied, the Appellants’ appeal will be mooted, as they will be forced to place their names on the public record. See Becker v. United States, 451 U.S. 1306, 1311 (1981) (describing that the balance of equities tips heavily in favor of applicants where, if a stay is not granted, appeal may be mooted).

The fourth factor—the public interest—also weighs in favor of a stay. A stay will not hinder the administration of the underlying bankruptcy case. In any event, the expedient administration of a bankruptcy case does not outweigh the public interest in judicial accuracy. See CW Capital Asset Mgmt., LLC v. Burcam Capital II, LLC, Case Nos. 5:13-CB278-F, 5:13-CV-279-F, 2013 WL 3288092, at *9 (E.D.N.C. June 28, 2013) (finding that “denying a stay in this case will likely moot appellate review of the bankruptcy court’s order. The ability to appeal the bankruptcy court’s order is a substantial and important right”) (internal citations omitted).

Here, there is significant public interest in granting the motion to stay. The Appellants comprise approximately 12,000 mesothelioma victims. Disclosure in the public record of the Appellants’ identities as mesothelioma victims and likely recipients of significant confidential settlements increases the Appellants’ risk of identity theft and violates their right to privacy. Accordingly, the interests of thousands of potential claimants, and/or their estates, will be affected by the outcome of this appeal. This factor weighs in favor of granting the motion to stay.

III. CONCLUSION

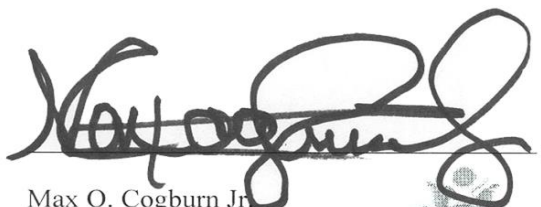
¹ The Court has not yet entered an Order Denying/Modifying the Motion to Quash or Modify.

For the reasons stated herein, the Court finds that a stay is appropriate. The Court will therefore enter a stay of the Order Denying Anonymity Motion pursuant to Bankruptcy Rule 8007.

ORDER

IT IS THEREFORE ORDERED THAT the Motion to Stay Pending Appeal, filed by Non-Party Certain Matching Claimants (the “Appellants”), (Doc. No. 2) is **GRANTED**, and the Order Denying Anonymity Motion is **STAYED** pending Appellants’ appeal.

Signed: April 26, 2023



Max O. Cogburn Jr.
United States District Judge

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing MOTION TO RECONSIDER RULING GRANTING MOTION TO STRIKE was 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 4th day of May, 2023.

**WALDREP WALL BABCOCK
& BAILEY PLLC**

/s/ Thomas W. Waldrep, Jr.

Thomas W. Waldrep Jr. (NC State Bar No. 11135)
370 Knollwood Street, Suite 600
Winston-Salem, NC 27103
Telephone: (336) 717-1280
Facsimile: (336) 717-1340
Email: notice@waldrepwall.com

Counsel for the Certain Matching Claimants