IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

In re ALDRICH PUMP LLC, *et al.*, Debtors.	Misc. No. 1:22-MC-00080-TJK-RMM Underlying Case: *In re Aldrich Pump LLC*, No. 20-30608 (JCW) (U.S. Bankruptcy Court Western District of North Carolina, Charlotte Division)

ALDRICH PUMP LLC AND MURRAY BOILER LLC'S
REPLY BRIEF IN SUPPORT OF THEIR MOTION TO TRANSFER
SUBPOENA-RELATED MOTIONS TO THE ISSUING COURT

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PRELIMINARY STATEMENT[1]

The Debtors' Opening Brief [D.I. 7-2] thoroughly demonstrated why transferring these Subpoena-related motions to the issuing court is warranted under Rule 45(f). The Manville Matching Claimants' Opposition [D.I. 11] does not dispute any of the principal facts rendering this a textbook case for transfer, namely:

- The Bankruptcy Court has extensive familiarity with the Manville Matching Claimants' objections to the Subpoena, having previously considered and ruled upon similar objections while presiding over the Debtors' contested motion for authorization to serve the Subpoena. *See* Opening Brief at 8–10, 19–20.

- There are substantially similar Subpoena-related motions pending in federal courts throughout the country, creating a serious risk of inconsistent rulings. *Id*. at 17–18, n. 13–16.

- The sole venue where consolidation of all pending Subpoena-related motions is possible is the Bankruptcy Court. *Id.* at 3.

- The consolidation of all Subpoena-related motions before the Bankruptcy Court would preserve judicial resources, particularly given what the Manville Matching Claimants have themselves described as the "unquestionably complicated procedural history" of the Debtors' bankruptcy case.[2] Opening Brief at 19–20.

- There is no suggestion, let alone admissible evidence, of any local interest of the District Court for the District of Columbia in adjudicating the Subpoena-related motions, let alone a compelling one. *Id.* at 21.

- Under substantially similar circumstances, subpoena-related motions filed by certain "Manville Matching Claimants" in the *DBMP* bankruptcy were recently transferred under Rule 45(f) to the Bankruptcy Court. *In re DBMP LLC*, No. 1:22-mc-00009 (E.D. Va. May 31, 2022) [D.I. 42] at 3.

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[1] Capitalized terms not otherwise defined have the meanings given to them in Aldrich Pump LLC and Murray Boiler LLC's Combined Memorandum of Law in Support of their Motion to Transfer Subpoena-Related Motions to the Issuing Court, and in Opposition to the Manville Trust Matching Claimants' Motion to Quash or Modify Subpoena, or Alternatively, for Protective Order [D.I. 7-2] (the "Opening Brief").

[2] *See* Motion to Quash [D.I. 2] at 10.

Faced with essentially the same set of facts, just last week another court transferred a nearly identical subpoena enforcement action to the Bankruptcy Court. *See In re Aldrich Pump LLC*, Misc. No. 22-308-CFC, 2022 WL 4465202 (D. Del. Sept. 26, 2022). This time it was the District of Delaware, which had issued the (since-overturned) decision in *Bestwall* featured prominently in the Manville Matching Claimants' Motion to Quash.

The Manville Matching Claimants ignore these undisputed facts and instead advance two straw-man arguments. First, they defend the filing of their Motion to Quash in this Court as the appropriate "court of compliance." The Debtors never suggested otherwise. The Debtors, of course, filed their own Motion to Transfer in this Court. Second, the Manville Matching Claimants argue that the doctrine of issue preclusion does not "bar" their Motion to Quash.[3] The Debtors never said that it did. Rather, the Debtors demonstrated that the Bankruptcy Court had already considered and rejected the exact same arguments that the Manville Matching Claimants make here—even if they decided against appearing before the Bankruptcy Court for strategic purposes—one of the principal reasons transfer is warranted here. In any event, neither of the Manville Matching Claimants' arguments has any relevance to the determination this Court is tasked with under Rule 45(f) and the body of case law interpreting the Rule.

The Debtors have come forward with numerous judicially-recognized reasons supporting transfer to the Bankruptcy Court. The Manville Matching Claimants have placed nothing of relevance to oppose it. Accordingly, the Rule 45(f) balancing test weighs decidedly in favor of transferring the Subpoena-related motions to the Bankruptcy Court.

[3] Movants The Manville Trust Matching Claimants' Memorandum in Opposition to Motion to Transfer this Action to the United States Bankruptcy Court for the Western District of North Carolina [D.I. 11] (the "Opposition") at 3–4.

ARGUMENT

I. THE MANVILLE MATCHING CLAIMANTS DO NOT DISPUTE ANY OF THE KEY FACTS THAT MAKE THIS A TEXTBOOK CASE FOR TRANSFER UNDER RULE 45(F).

Exceptional circumstances are present here to warrant transferring the Subpoena-related motions to the Bankruptcy Court.

A. Absent Transfer, There Is a Genuine Risk of Inconsistent Rulings.

As noted in the Debtors' Opening Brief, both forms of potential inconsistent rulings contemplated by Rule 45 are present here: the issuing court "has already ruled on [the] issues presented by" the Motion to Quash[4] and "the same issues are likely to arise in discovery in many districts."[5] *See* Advisory Note. The Manville Matching Claimants do not contend otherwise.

Just last week, heeding the Third Circuit's recent warning regarding inconsistent rulings, the District of Delaware transferred subpoena-related motions arising out of *Bestwall*, *DBMP*, and *Aldrich* bankruptcies to the Bankruptcy Court. *See In re Aldrich Pump LLC*, 2022 WL 4465202, at *4–5. The court reasoned:

> 13. As the Third Circuit (in *Bestwall*) noted, "the drafters of Rule 45 contemplated exactly the situation presented by the motions to quash the subpoenas issued pursuant to both the Aldrich 2004 Order and the DBMP 2004 Order, "saying it may not be appropriate of the court asked to enforce a subpoena to resolve a motion to quash if the issuing court 'has already ruled on issues presented by the motion.'" *In re Bestwall LLC*, 2022 WL 3642106 at *7 (quoting Advisory Note). "The specific situation contemplated by the committee is the situation here: the issuing court 'has already ruled on issues presented by' the motion to quash." *Green v. Cosby*, 216 F. Supp. 3d 560, 565 (E.D. Pa. 2016) (citing Advisory Note).
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[4] *See* Opening Brief at 17 (comparing Motion to Quash with Paddock Objection [D.I. 7-2 Ex. E] and ACC's Objection [D.I. 7-2 Ex. D]).

[5] *See id.* at 18 n. 13–16.

> 17. Additionally, "Courts have routinely found exceptional circumstances that warrant transfer when there is a risk that the courts will enter orders inconsistent with those entered by the judge presiding over the case." *United States ex rel. Simpson v. Bayer Corp.*, 2016 WL 7239892, at *2 (E.D. Pa. Dec. 15, 2016) (collecting cases). Risk of inconsistent rulings comes in two forms: (1) when the issuing court "has already ruled on the issues," and (2) when "the same issues are likely to arise in discovery in many districts." Advisory Note. Both situations contemplated in the Advisory Note are present here. The Issuing Court considered the same arguments when it previously overruled objections to issuance of the subpoenas. In addition, the other recipients of subpoenas that were authorized by the 2004 Order, not before this Court, have all recently filed motions in districts around the country. If these subpoena-related motions are not consolidated before a single court, there is a genuine potential for inconsistent rulings concerning essentially the same discovery, not only between this Court and the Issuing Court, but also between this Court and other district courts. The sensible solution is for this Court to transfer all subpoena-related motions to the Issuing Court for resolution.

In re Aldrich Pump LLC, 2022 WL 4465202, at *4–5.

Although the Manville Matching Claimants devoted significant attention in their Motion to Quash to the same Delaware District Court's earlier (since-overturned) 2021 decision quashing more expansive subpoenas in *Bestwall*, their Opposition omits any discussion of that same court's ruling from last week.

Nor do the Manville Matching Claimants address any of the numerous decisions from within this District, cited in the Debtors' Opening Brief, finding that "exceptional circumstances" exist when there is a risk of inconsistent rulings. *See, e.g.*, *Honeywell Int'l Inc. v. L. Offs. of Peter T. Nicholl*, Misc. No. 21-151 (CKK), 2022 WL 43494, at *3 (D.D.C. Jan. 5, 2022); *Duck v. United States Sec. & Exch. Comm'n*, 317 F.R.D. 321, 325 (D.D.C. 2016); *Google, Inc. v. Digital Citizens All.*, Misc. No. 15-00707 JEB/DAR, 2015 WL 4930979, at *2 (D.D.C. July 31, 2015); *Wultz v. Bank of China, Ltd*, 304 F.R.D. 38, 46 (D.D.C. 2014).

Similarly, the Manville Matching Claimants ignore the Eastern District of Virginia decision transferring subpoena-related motions in the *DBMP* bankruptcy, which considered

similar facts and similar objections raised by Manville Trust matching claimants in that case.[6] The *DBMP* decision noted that "all factors weigh[ed] in favor of transfer." *In re DBMP LLC*, No. 1:22-mc-00009 (E.D. Va. May 31, 2022) [D.I. 42] at 3. As here, the issues before that court had "already been argued, considered, and ruled on by the [DBMP] bankruptcy court," and "nearly identical motions to quash, transfer, and proceed anonymously" were filed in the District of Delaware "regarding the exact same subpoena, presenting the same arguments." *Id.* The motions "thus present[ed] a great risk of inconsistent rulings—not only between [the compliance court] and the Bankruptcy Court but between [the compliance court] and the District of Delaware." *Id.* at 3–4. Tellingly, although the set of matching claimants here and in *DBMP* no doubt overlap and are potentially the same, the Manville Matching Claimants do not explain in their Opposition why the result here should be any different than it was in *DBMP*.

Instead, the Manville Matching Claimants cite to a recent decision by the Bankruptcy Court for the District of Delaware, which they contend did not "seem[] concerned with 'inconsistent rulings." Opposition at 5. Yet that Court **denied Motions to Quash an identical subpoena** served by the Debtors on Paddock Enterprises, LLC, a recently-emerged Chapter 11 debtor before that Court. The Manville Matching Claimants ignore that the *Paddock* court's denial of the motions to quash was **entirely consistent** with the Bankruptcy Court's ruling authorizing the same subpoena, *see id.*, and that the Debtors filed their motion to transfer the *Paddock* proceedings in the "compliance court," the Eastern District of Michigan.[7] *See In re*

[6] So similar are the Manville Matching Claimants' motions here to those in *DBMP* that the motions inadvertently (and repeatedly) refer to parties and relevant dates from the *DBMP* bankruptcy. *See* Motion to Quash [D.I. 2] at 2; Opposition at 2.

[7] *See* Motion to Transfer this Proceeding to the Bankruptcy Court for the Western District of North Carolina, or Alternatively, Compel Paddock Enterprises LLC to Comply with

Paddock Enterprises, LLC, No. 20-10028-LSS, 2022 WL 4396358, at *2 (Bankr. D. Del. Sept. 22, 2022) ("None of the cases cited by Paddock convince me that I, as the court sitting in Delaware and not the compliance court under Rule 45, can rule on the motion to quash if I were relying solely on Rule 45 for authority.").[8] None of the circumstances that led the District of Delaware to adjudicate the subpoena-related motions practice in *Paddock* exist here.[9]

At present, subpoena-related motions are currently pending before this Court, the Bankruptcy Court, the District of New Jersey, and the Eastern District of Michigan. To avoid inconsistent rulings, the Debtors urge this Court to follow the leads of the courts in the Eastern District of Virginia and District of Delaware, and transfer the Subpoena-related motions to the Bankruptcy Court.

B. Judicial Economy Strongly Weighs In Favor of Transfer.

The Manville Matching Claimants ignore the Bankruptcy's Court's substantial prior consideration and rulings in connection with the Subpoena. Unlike the vast majority of subpoenas, which are signed by an attorney and served without judicial intervention or approval (or, in most cases, knowledge), the Subpoena here was served: (1) after extensive litigation

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Subpoena, *Aldrich Pump LLC v. Paddock Enterprises, LLC*, No. 22-MC-51346-GAD-JJCG (E.D. Mich. Aug. 19, 2022) [D.I. 1].

[8] The Manville Matching Claimants devote nearly half of their Opposition to an argument that the Motion to Quash is properly before this Court. *See* Opposition at 2–4. The Debtors agree that the Motion to Quash is properly before this Court under Rule 45. That the Motion to Quash was initially filed in the correct court has no bearing on whether the Transfer Motion should be granted. Indeed, it is exactly what the Rule contemplates. *See generally* Fed. R. Civ. P. 45(f).

[9] The Manville Matching Claimants also point out that while the *Paddock* bankruptcy court ruled in the Debtors' favor by "declin[ing] to quash the subpoenas, she did require that Paddock be reimbursed by Aldrich for the reasonable expense of production," Opposition at 5—something the Debtors were already required to do under the Bankruptcy Court Order and have already agreed to do concerning the Subpoena here. *See* Bankruptcy Court Order [D.I. 7-2 Rider to Ex. A] ¶ 19.

before the Bankruptcy Court; (2) after the Bankruptcy Court found that the Subpoena was "relevant and necessary" to the Debtors' estimation proceeding;[10] and (3) after the Bankruptcy Court approved the Subpoena's extensive confidentiality and use provisions.[11] The Third Circuit, considering substantially similar facts, found that transfer under Rule 45 is appropriate in such a situation, as the issuing court "ha[d] already ruled on issues presented by the motion[.]" *In re Bestwall LLC*, 47 F.4th 233, 246 (3d Cir. 2022) (quoting Advisory Note).[12]

In its recent transfer ruling on identical subpoenas served by Aldrich on another set of trusts, the District of Delaware emphasized that the Bankruptcy Court's prior rulings related to the Subpoena was an important factor favoring transfer:

> 15. The oppositions to the Aldrich Motion to Transfer argue that the subpoenas issued under the Aldrich 2004 Order do not include the protections ordered by this Court in Bestwall, and that although the Third Circuit reversed this Court's decision in Bestwall, it did so on procedural grounds not present here—collateral estoppel based on DCPF's appearance and objection in the Issuing Court. But the Aldrich motions to quash raise nearly identical issues as those overruled in the DBMP 2004 Order. The Issuing Court has already ruled on these issues, and, accordingly, transfer is warranted. *Green v. Cosby*, 216 F. Supp. 3d at 565 (transferring motion to quash to the issuing court).
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> 16. Moreover, the Issuing Court overruled objections to the similar, albeit far more expansive, subpoenas in Bestwall—subpoenas which the Third Circuit ruled are to be enforced on their terms. As a result of the Third Circuit's ruling, the Trusts and DCPF have now been ordered to produce similar, albeit more expansive information in response to the Bestwall subpoenas. As issuance of these subpoenas or substantially similar subpoenas has been approved in three

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[10] *See* Bankruptcy Court Order [D.I. 7-2 Rider to Ex. A] ¶ 5.

[11] *See id.* ¶¶ 12–18.

[12] In their Motion to Quash, the Manville Matching Claimants repeatedly cite to the district court's decision in *Bestwall*, arguing that the Subpoena should incorporate *Bestwall*'s sampling requirement, and that this Court should issue a protective order adopting other portions of the *Bestwall* district court's ruling. Notably, after the Third Circuit reversed the *Bestwall* district court's decision quashing the subpoenas, and in light of the Third Circuit's decision, the *Bestwall* district court transferred the proceedings to the issuing court to "resolve any remaining requests for relief with respect to the original subpoenas." *In re Bestwall LLC*, Misc. No. 21-141-CFC (D. Del. Sept. 26, 2022) [D.I. 76] ¶¶ 7–8.

> different cases, on the basis that the information sought was relevant and necessary to the proceedings in their courts, further litigation of the subpoenas in this Court serves no purpose.

In re Aldrich Pump LLC, 2022 WL 4465202, at *4–5. *See also In re DBMP LLC*, No. 1:22-mc-00009 (E.D. Va. May 31, 2022) [D.I. 42] at 3 (transferring subpoena-related motions where the issues before that court had "already been argued, considered, and ruled on by the bankruptcy court"); *Duck*, 317 F.R.D. at 325; *Wultz*, 304 F.R.D. at 46.

The Manville Matching Claimants rely largely on cases outside this circuit to argue that the Bankruptcy Court's greater familiarity with the facts of the *Aldrich* bankruptcy is not enough to justify transferring these proceedings. *See* Opposition at 4–5 (citing *Isola USA Corp. v. Taiwan Union Tech. Corp.*, No. 15-MC-94003-TSH, 2015 WL 5934760 (D. Mass. June 18, 2015); *Sorrento Therapeutics, Inc. v. Roger Williams Med. Ctr.*, No. 3:17-cv-2442-WQH-NLS, 2018 WL 788899 (S.D. Cal. Feb. 8, 2018); *CMB Expert, LLC v. Atteberry*, No. 3:14-mc-51-B-BN, 2014 WL 2197840, at *2 (N.D. Tex. May 27, 2014)). None of these decisions support this Court adjudicating the Motion to Quash.

The *CMB Expert* court declined to transfer subpoena-related proceedings only after the parties agreed to consolidate the only other subpoena-related action before the same court. *See CMB Expert*, 2014 WL 2197840, at *2. *Isola* and *Sorrento Therapeutics* stand for the unremarkable proposition that familiarity alone—without a significant risk of inconsistent rulings or disruption of the underlying litigation—does not necessarily warrant transfer. *See Isola*, 2015 WL 5934760, at *3 (finding that the "potential for inconsistent rulings" and "disruption of management of the [underlying] litigation" was "minimized"); *Sorrento Therapeutics*, 2018 WL 788899, at *3 (finding that transfer was inappropriate because, although there were multiple subpoena-related motions pending in separate districts, "the specific requests

for documents or topics" were not "identical or substantially similar" such that they did not present a risk of inconsistent rulings). Neither case is remotely similar to the situation here.

The Manville Matching Claimants also cite *FDIC v. Galan-Alvarez*, No. 1:15-mc-00752 (CRC), 2015 WL 5602342 (D.D.C. Sept. 4, 2015), for the proposition that subpoena-related motions raising purely legal issues should not be transferred. The issue before the *Galan-Alvarez* court was whether high-ranking government officials were legally protected from testifying about their official actions—a legal question "severable from the merits of the underlying litigation." *Id.* at *3. In declining to transfer the case, the *Galan-Alvarez* court stressed three facts that make the case completely inapposite. First, because the legal question presented was separate from the merits of the underlying litigation, the issuing court "ha[d] not ruled on the issues presented in the motion, [and was] in no better position than [the compliance court] to decide it." *Id.* Here, the Bankruptcy Court has already ruled on the same objections the Manville Matching Trust assert. *See* Opening Brief at 17 (comparing Motion to Quash with Paddock Objection [D.I. 7-2 Ex. E] and ACC's Objection [D.I. 7-2 Ex. D]). Second, the subpoenaed documents' relevance—which "would have required the Court to delve into the intricacies of the underlying dispute"—was not at issue. *Id.* Here, the Manville Matching Claimants argue that the information sought by the Subpoena is irrelevant to the estimation proceeding. *Cf.* Motion to Quash at 11–12 ("Aldrich falls far short of the heightened showing of relevance and need required to command production of confidential information."). And third, where "the issues presented by the motion [were] not likely to be replicated in other jurisdictions," there were no efficiency concerns that weighed "in favor of consolidation with the judge presiding over the underlying litigation." *Id.* As already discussed *supra,* Subpoena-related motion practice is pending in numerous districts. *FDIC* is inapposite.

The Bankruptcy Court carefully considered the merits of the objections advanced in *DBMP* (both before and after the *DBMP* subpoenas' issuance) and *Aldrich* when it ruled, multiple times, that the subpoenas were proper. Ruling on the Motion to Quash here would require a careful, time-consuming review and analyses of those records. The Bankruptcy Court's familiarity with those records, the complexity of the underlying suit, and the potential disruptions to the Bankruptcy Court's case management schedule, if not dispositive on their own, all weigh in favor of transferring these proceedings to the issuing court.[13]

II. THE SUBPOENA DOES NOT RAISE ANY LOCAL ISSUES.

As noted in the Debtors' Opening Brief, the Manville Matching Claimants have made no showing that the District Court for the District of Columbia is *their* "local court." Their Opposition did nothing to change that. *See DBMP* [D.I. 42] at 2, 4 (finding that the Eastern District of Virginia "has a limited interest in resolving this litigation, as there is no evidence that the [matching claimants] seek to quash the subpoena even live in this district").

Indeed, the sole reason that the Subpoena was served in this District (thus rendering this District the "court for the district where compliance is required" under Rule 45) is because the Manville Trust, as the target of the Subpoena, is located within the subpoena power of this District. *See* Subpoena [D.I. 7-2 Ex. A]. But the Manville Trust has not moved to quash the

[13] In their Opposition, the Manville Matching Claimants argue at length that the Debtors try "to paint the Motion to Quash as an improper collateral attack" on the Bankruptcy Court Order "authorizing the Subpoena." Opposition at 2. Although the Manville Trust had notice of the Debtors' Bankruptcy Court Motion, *see* [D.I. 7-2 Ex. I], it instead let others "carry the fight in the first instance." *Bestwall*, 47 F.4th at 246. That neither the Manville Trust nor the Manville Matching Claimants appeared makes no difference: "[t]he issuing court considered the[se] same arguments when it previously overruled objections to issuance of the subpoenas." *In re Aldrich Pump LLC*, 2022 WL 4465202, at *4 (overruling parties' objections that transfer was inappropriate because they had not appeared before the Bankruptcy Court and collateral estoppel did not apply).

Subpoena. As the only party resisting transfer, the Manville Matching Claimants must explain how **they** would be burdened by litigating these Subpoena-related motions before the issuing court. *Duck*, 317 F.R.D. at 326 (transferring motion to compel in part because defendant "fail[ed] to identify any burden that might exist from arguing [its motion] before the [issuing] district court"). They have not even attempted to do so. And even if this District were the local district for some small portion of the Manville Matching Claimants (and there is no evidence that it is), the exceptional circumstances outlined above and in the Debtors' Opening Brief outweigh the "interests of the nonparty served with the subpoena in obtaining local resolution of the motion." Advisory Note.[14]

CONCLUSION

For the foregoing reasons, the Court should grant the Debtors' Motion to Transfer.

[14] It is also telling that, as the only party with a local interest in this District, the Manville Trust has agreed that, in the event this Court orders transfer of these proceedings to the Bankruptcy Court, the Manville Trust will consent, pursuant to Rule 45(f), to likewise resolve any motion relating to the Subpoena in which it becomes a party before the Bankruptcy Court.

Dated: October 4, 2022

Respectfully submitted,

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