

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

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

Plaintiffs,

v.

ALDRICH PUMP LLC, *et al.*

Defendants.

Miscellaneous Proceeding

No. 22-303 (JCW)

(Transferred from the District of Delaware)

In re:

ALDRICH PUMP LLC, *et al.*,¹

Debtors.

Chapter 11

No. 20-30608 (JCW)

**THIRD-PARTY ASBESTOS TRUSTS' OPPOSITION TO DEBTORS' MOTION FOR
REHEARING CONCERNING THE ISSUE OF SAMPLING ON
DCPF'S SUBPOENA-RELATED MOTIONS**

The ten asbestos settlement trusts identified below² (the "Trusts"), by and through their undersigned counsel, respectfully submit this response and opposition to Debtors Aldrich Pump LLC and Murray Boiler LLC's (together, "Aldrich") Motion for Rehearing Concerning the Issue

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 ten Trusts are: Armstrong World Industries, Inc. Asbestos Personal Injury Settlement Trust; The 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 Asbestos Personal Injury Settlement Trust; United States Gypsum Asbestos Personal Injury Settlement Trust; and WRG Asbestos PI Trust.



of Sampling on DCPF's Subpoena-Related Motions [Dkt. 54] (the "Motion" or "Reconsideration Mot."). In support of their opposition, the Trusts submit as follows:

INTRODUCTION

1. On November 30, 2022, this Court, acting as the compliance court, granted the Trusts' and Delaware Claims Processing Facility's ("DCPF") motions to quash [Dkts. 3-1 & 4-2], thereby limiting the production of Trust claimant data to a random 10% sample of the confidential claims data of the 12,000 mesothelioma victims (the "Trust Claimants") originally sought.

2. Now, approximately four months after the Court's ruling and after reaching an agreement with the ACC and FCR on a sampling protocol pursuant to the Court's November 30 ruling, Aldrich asks this Court for a do-over. Aldrich's Motion is procedurally baseless and substantively meritless. It must be denied.

3. First, despite Aldrich's failure to specify any legal basis or authority for the Motion, the Motion can only be construed as one for reconsideration. Regardless of how styled, a request for reconsideration must meet the scrutiny applied under Fed. R. Civ. P. 59(e). Aldrich fails to discuss, let alone meet, this high bar for relief. Instead, Aldrich recycles the same arguments it lost at the November 30 hearing.

4. Second, if the Court nevertheless reaches the merits of Aldrich's Motion despite these fatal defects, Aldrich cannot show that the Court erred in limiting the production to a 10% random sample. Throughout this litigation, the Trusts' core argument has been that the Aldrich Subpoenas were overbroad and failed to comply with Rule 45's proportionality requirement because Aldrich could discern the exact same patterns and conclusions from a random 10% sample as it could from data for the entire Trust Claimant population. Aldrich *never* rebutted this argument or articulated why it must have all 12,000 Trust Claimants' data or why sampling would not work.

Recognizing this, the Court adopted the random 10% sampling requirement, clearly stating “we’re getting more and more demands for a great deal of data and I want 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.” Nov. 30, 2022 Tr. 77 [Dkt. 35].

5. Yet, even while taking a second-bite at the apple, Aldrich still does not, and cannot, contend that it needs data from all 12,000 Trust Claimants or prove that a 10% sample would not provide it with the information it needs. The Motion presents only misdirection and Aldrich’s insatiable desire for more data without regard to the sensitive, confidential information of 12,000 sick, elderly, and/or deceased Trust Claimants. The Motion is meritless and must be denied.

BACKGROUND

A. Aldrich Subpoenas 20 Different Entities for the Data of 12,000 Trust Claimants

6. Like other Chapter 11 debtors before this Court, Aldrich moved this Court to estimate its liability for certain current and future mesothelioma claims. Trusts’ Mot. to Quash (“Trusts’ MTQ”) 8; *In re Bestwall*, No. 17-31795 (Bankr. W.D.N.C.) (“*Bestwall*”); *In re DBMP LLC*, No. 20-30080 (Bankr. W.D.N.C.) (“*DBMP*”).³ It now seeks evidence to support its theory that the dollar amount of its estimated liability for the present and future asbestos personal injury claims is lower than the dollar amount it paid in settlements prior to its bankruptcy. *Id.*

7. To obtain this evidence, under the cover of Federal Rule of Civil Procedure 45, Aldrich subpoenaed confidential, sensitive claims data concerning approximately 12,000 mesothelioma victims with whom Aldrich resolved claims through settlement or verdict prior to its bankruptcy (the “*Aldrich Subpoenas*”). Trusts’ MTQ, Exs. D & E. Aldrich directed its

³ The debtors in *Aldrich*, *Bestwall*, and *DBMP* are represented by overlapping counsel and the same expert consultant – Bates White. Nov. 30, 2022 Tr. 43-44.

subpoenas to, and sought data from, (i) the Delaware Claims Processing Facility; (ii) the Manville Personal Injury Settlement Trust; (iii) Verus Claims Services, LLC, which processes claims for eight other trusts; and (iv) Paddock Enterprises, LLC, another chapter 11 debtor seeking to resolve current and future claims relating to asbestos exposure. *Id.*, Ex. E ¶6. In total, Aldrich sought claims data for 12,000 claimants from a total of 20 individual sources whose data had never previously been comingled or combined into a single database. *Id.*

8. For each of the 12,000 claimants, the Aldrich Subpoenas sought the production of:
 - A. Claimant Pseudonym;
 - B. Claimant's law firm (with email and address of contact person);
 - C. Date claim filed against Trust;
 - D. Date claim approved by Trust, if approved;
 - E. Date claim paid by Trust, if paid;
 - F. If not approved or paid, status of claim; and
 - G. All exposure-related fields, including:
 - i. Date(s) exposure(s) began;
 - ii. Date(s) exposure(s) ended;
 - iii. Manner of exposure;
 - iv. Occupation and industry when exposed; and
 - v. Products to which exposed.

Id. ¶10. Once produced, Aldrich's expert, Bates White, will consolidate the data from each of the 20 subpoenaed entities into a single database, along with data from Aldrich's database. *Id.* ¶12(b).

9. Aldrich served its subpoenas on the Trusts and DCPF on July 5, 2022.

B. The Trusts and DCPF Move to Quash the Overbroad Aldrich Subpoenas

10. On July 25, 2022, the Trusts and DCPF timely moved to quash the Aldrich Subpoenas pursuant to Fed. R. Civ. P. 45(d)(3)(A), seeking, among other relief, to limit the production of Trust Claimant data to a random 10% sample.⁴

11. In support, the Trusts asserted the Aldrich Subpoenas were overbroad and disproportionate because Aldrich does not need the protected data of approximately 12,000 Trust Claimants. Trusts' MTQ 12-16; Trusts' Reply in Supp. of Mot. to Quash ("Trusts' MTQ Reply") 5-9 [Dkt. 6-2]. Specifically, Aldrich would be able to discern the exact same patterns and conclusions from a random 10% sample as it would from data for the entire claimant population (especially when balanced against the need to protect the sensitive, confidential information of 12,000 sick, elderly people). Trusts' MTQ 12-16; Trusts' MTQ Reply 5-9.

12. The Trusts further highlighted that Aldrich's counsel and Bates White had previously praised the use of sampling for Trust Claimant discovery and estimation, representing that it "provide[s] an efficient mechanism by which the parties and th[e] [Bankruptcy] Court can address issues presented by the estimation proceeding," "offers a practicable and fair way to proceed[, and] will save time and expense" Trusts' MTQ, Ex. G ¶24 (*Bestwall* Mot. to Approve Resolved Claim Sample). *Id.*, Ex. H ¶11 (Decl. of Jorge Gallardo-Garcia).

13. In compliment, DCPF argued the heavy burden the overbroad Aldrich Subpoenas imposed. DCPF Mot. to Quash ¶12. DCPF stated that the "[a]ll exposure fields" category that Aldrich sought was "particularly pernicious" because it "would capture claimants' narrative responses," which would include claimant "SSNs, names and addresses and other highly sensitive information." *Id.* Relying on a declaration from DCPF's Chief Operating Officer, DCPF noted

⁴ As Rule 45(d)(3)(A) mandates, the motions to quash were filed in the District of Delaware as the compliance court.

there was “no easy way to identify and remove or redact sensitive and confidential information contained in these narrative fields.” *Id.* Specifically, it would be a “herculean task” to do so because “each Trust collects information differently” and a DCPF employee “would be required to manually review all text fields” for all 150,000 claims – “a timely, costly and burdensome undertaking.” *Id.* (citing July 25, 2022 Decl. of Richard Winner [Dkt. 4-3]); DCPF Reply in Supp. of Mot. to Quash ¶¶7-11 [Dkt. 6-5].

14. In opposition, Aldrich focused on issues relating to the data’s purported relevance, DCPF’s production burden, and other confidentiality restrictions contained in the subpoenas, and attempted to analogize to *DBMP*. Aldrich’s Opp. to Mot. to Quash 11-13 (contending data is “relevant and necessary,” and there is a “minimal burden”) [Dkt. 4-9]; *id.* 16-17 (asserting Aldrich possesses claimant “PII” and there are other “protections provided in the Subpoenas”); *id.* (comparing Aldrich Subpoenas to those served in *DBMP*). Aldrich never responded to the Trusts’ argument that it did not need all of the Trust Claimants’ data or stated that a random 10% sample would render the data unusable for Aldrich’s intended purposes. *Id.* 15-20.

C. This Court Limits the Overbroad Aldrich Subpoenas at the November 30 Hearing

15. At the November 30, 2022 oral argument, the parties’ arguments tracked those made in the briefing. Counsel for the Trusts first argued the over breadth and disproportionality of the Aldrich Subpoenas. Nov. 30, 2022 Tr. 46-49 (“[The most important point here is that while the information may be relevant for the estimation proceedings, all of the information is not necessary ... Aldrich has failed to show why they need unfettered access to claimants’ sensitive information They’ve never argued that a sample would not work for them and they’ve never explained how it couldn’t work for them.”); *id.* 48 (“[S]ampling won’t modify the substance or quality of the data that Aldrich receives. It only decreases the volume, which is a really good

thing. Aldrich will be able to discern the exact same patterns from a sample as they would from reviewing all the data and a random sample of no more than 10 percent.”).

16. Afterward, DCPF’s counsel emphasized the heavy burden compliance with the Aldrich Subpoenas would impose. *Id.* 50-51. DCPF’s counsel reiterated that: (i) “[w]hether it was [Aldrich’s] intent or not,” Aldrich’s request captures “Social Security numbers and names and other sensitive information,” *id.* 50-51; (ii) nearly “150,000 claims” match the 12,000 Trust Claimants Aldrich identified with the potential for “multiple exposure records” being associated with “each” claim, *id.* at 51; and (iii) a DCPF employee would have to engage in the “very labor intensive” and “time consuming” “manual[] review[]” to “redact up to four exposure fields for each of the hundreds of thousands of exposure records associated with the nearly 150,000 claims,” *id.*

17. To illustrate this burden, DCPF’s counsel provided the Court with a three-page example of what DCPF would produce in response to the Aldrich Subpoenas and walked the Court through its review process. *Id.* 52-55 (“[T]he data produced looks like what I’ve handed up, but to get to that end product, the reviewer in this particular case had to review multiple separate exposure records. There’s no easy way to do it. It cannot be automated.”).

18. As DCPF’s counsel further informed the Court, this was the first time the Court received physical evidence illustrating the PII the Trust Claimant subpoenas capture and the extensive review process DCPF must undertake to produce such information.⁵ *Id.* 74 (“[T]he

⁵ Aldrich tries to impugn DCPF’s counsel and its argument at the November 30 hearing, contending DCPF’s burden argument was “not new.” Reconsideration Mot. ¶¶5-6. Aldrich’s baseless attack is nothing more than an attempt at misdirection. Aldrich cannot dispute that, prior to the November 30 hearing, this Court never had a firsthand demonstration and explanation of what the burden of compliance with Trust Claimant subpoenas looks like. The transcripts Aldrich cites from *DBMP* do not contradict this. *Id.* ¶¶5-6, 30-32. In none of the cited transcripts was the Court presented with clear, demonstrative evidence illustrating: (i) that Trust Claimant subpoenas *will* capture sensitive PII, and (ii) the scope and magnitude of redaction and review that DCPF must undertake to ensure no personally identifiable information is disclosed.

information presented today, that DCPF presented today, *the sample I provided, the explanation I provided*, has not been previously presented.” (emphasis added)).

19. In response, Aldrich’s counsel attempted to counter only DCPF’s burden argument, thereby failing, yet again, to address the Trusts’ sampling argument. *Id.* 64 (arguing purported “relevance and necessity”); *id.* 67-68 (arguing Aldrich “already possesses” the Trust Claimants’ “PII”); *id.* 64-65, 67-70 (arguing about Trust Claimant data sought in *Bestwall* and *DBMP*). As Trust counsel pointed out on rebuttal, Aldrich never even broached the Trusts’ sampling argument. *Id.* 73-74 (“They never said that they couldn’t make do with a 10 percent sample, that it wouldn’t provide them with all the information they need, and the reason, your Honor, that they didn’t do that is because they can’t make that argument.”).

20. In granting the motions to quash, the Court credited and adopted both DCPF’s burden argument *and* the Trusts’ sampling argument:

I’m adopting the 10 percent sampling Recognizing now that we’re going to see some of this information that is, in fact, PII, I want to reduce the harm there as much as possible.

I understand [Aldrich] would like to have as much information as possible, but ... I’m a little concerned about all of this is ballooning up and we’re getting more and more demands for a great deal of data and I want 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.

Id. 76-77.

Aldrich’s argument is merely an extension of the mischaracterizing statements made at the February 9, 2023 hearing in *DBMP*. There, *DBMP*’s counsel proceeded to read selectively from the November 30 hearing transcript to mischaracterize DCPF (and the Trusts) as having argued that the “exposure field PII [issue] was ‘new.’” Feb. 9, 2023 *DBMP* Tr. 69. Neither DCPF nor the Trusts made that argument, and *DBMP*’s counsel *never* provided a quote from the November 30 hearing showing otherwise. *Id.* 69-77. DCPF’s counsel only stated that this Court had never seen a production sample demonstrating the compliance burden on DCPF, which it had not. Nov. 30, 2024 Tr. 74. In fact, at the *DBMP* hearing, *DBMP*’s counsel *never* mentioned, let alone addressed, DCPF’s new exemplar evidence. Feb. 9, 2023 *DBMP* Tr. 69-77. That is because it did not fit the narrative *DBMP* sought to weave. It is irrefutable that the exemplar evidence DCPF presented to this Court on November 30, illustrating the PII the Aldrich Subpoenas captured and the extensive redactions DCPF must make to produce such information, had never been presented to this Court before. Perhaps recognizing as much, Aldrich drops this specious argument after its introduction. *Compare* Reconsideration Mot. ¶¶5-6, 8 (introduction), *with id.* ¶¶37-59 (argument).

21. Almost immediately, Aldrich's counsel began voicing its displeasure and attempting to frame the parties' arguments and the Court's decision as one turning solely on burden. *Id.* 79-80 ("So in light of your ruling, which I will admit we were slightly surprised by ... [t]he arguments we heard today on the number was all, as I understood it, based on burden."); *id.* 81-82 ("[T]he objection was based entirely, that I heard on burden").

22. Counsel for the Trusts immediately corrected Aldrich's counsel. *Id.* 82 ("[I]t's not just the burden argument. It's the fact that . . . it's not necessary for them to have a hundred percent of the claimants' data"). The Court agreed, stating that it "was thinking not only burden, but also of needless exposure of the possibility of a hack and, and having a lot of people's data affected." *Id.* 83.

23. The Court then directed the parties to confer regarding a sampling methodology before it entered a written order. *Id.* 79, 83-86.

D. Aldrich's Displeasure with the Court's Sampling Decision

24. On December 19, 2022, Aldrich sent the ACC, the FCR, the Trusts, and DCPF a proposed sampling methodology, which it characterized as "representative and efficient" and providing a "reliable cross-section" of Aldrich's "settlement history." Decl. of B. Moskowschnoll, Ex. A. After an initial meet and confer, the Trusts permitted the ACC and FCR – as the parties to the estimation proceeding – to lead the sampling discussions. The Trusts informed Aldrich that they did not intend to make an independent sampling proposal, but reserved their rights to review and comment on any proposal or agreement. *Id.*, Ex. B.

25. As reported to the Court, the sampling discussions progressed. Notwithstanding, Aldrich continued to voice its displeasure with the Court's November 30 ruling. Jan. 26 Tr. 30 ("And as the Court knows, ... we were surprised by the Court's order and we disagree with it.").

26. On February 10, 2023, despite the estimation parties being close to an agreed upon sampling methodology, Aldrich informed the Trusts again that it “disagree[d] with the Court’s oral ruling on November 30” and for the first time was “considering reconsideration.”⁶ Decl. of B. Moskow-Schnoll, Ex. C. Four days later, at the February 14, 2023 status hearing, counsel for Aldrich again stated its “disagree[ment] with the Court’s ruling on, on sampling,” and that Aldrich intended “to move for reconsideration of that particular order.” Feb. 14, 2023 Tr. 23-24.

27. On March 9, 2023, more than three months after the Court’s ruling and after reaching an agreement with the ACC and FCR on a sampling protocol pursuant to the Court’s November 30 ruling, Aldrich filed the Motion asking the Court to reconsider its sampling decision. Aldrich: (i) cites no basis for the “reconsideration” relief it seeks, *infra* §A; (ii) restates the same losing arguments it presented at the November 30 hearing and in briefing, *infra* §B; and (iii) tries to introduce “new” evidence from Bates White in alleged support of its recycled arguments through a declaration from Charles H. Mullin, PhD (the “Mullin Declaration”), *infra* §A.

ARGUMENT

A. Aldrich Fails to Meet the High Bar Necessary to Obtain Reconsideration and May Not Relitigate the Arguments it Previously Lost

28. The Motion completely fails to specify any legal basis or rule pursuant to which it seeks relief. Reconsideration Mot. ¶37. Despite styling the Motion as one for “rehearing,” the Motion cannot be analyzed as such because rehearing only exists in the context of an appeal. Fed. R. Bankr. P. 8022 (“The motion must state with particularity each point of law or fact that the movant believes the district court or BAP has overlooked or misapprehended and must argue in

⁶ There is no doubt that the genesis of Aldrich’s reconsideration was the argument made one day earlier in *DBMP*. *Supra* ¶18 n.8.

support of the motion. Oral argument is not permitted.”); Fed. R. App. P. 40 (providing substantially the same).⁷

29. Aldrich cannot simply file a baseless motion seeking to relitigate an issue decided nearly four months ago – particularly where, as here, the parties have expended time and resources diligently working to comply with, and in reliance on, the Court’s November 30 ruling. *Supra* ¶¶24-27. Thus, Aldrich’s Motion can only be construed as one for reconsideration. Indeed, Aldrich expressly stated on multiple occasions that its purpose in filing the Motion is to have this Court “reconsider” its November 30 ruling. Feb. 14, 2023 Tr. 23-24 (“[O]ur current intention is to move for *reconsideration* of that particular order.” (emphasis added)); Decl. of B. Moskowschnoll, Ex. C (Feb. 10, 2023 Email from M. Hirst) (“[W]e are strongly considering seeking *reconsideration* of Judge Whitley’s November 30 sampling ruling.” (emphasis added)).

30. Reconsideration comes in two forms: (i) reconsideration of an interlocutory order under Federal Rule of Civil Procedure 54(b); and (ii) reconsideration of a judgment under Federal Rule of Civil Procedure 59(e).⁸ Whether the Motion is construed under Rule 54(b) or Rule 59(e) is immaterial. It is well settled in this Circuit that the Rule 59(e) standard guides any request for a court to revisit a prior non-final ruling.⁹ *E.g., Burrell v. Bayer Corp.*, 260 F. Supp. 3d 485, 490

⁷ Even if the Motion could be construed as one for rehearing under Bankruptcy Rule 8022, the Motion does not comply with the procedural requirements of that rule. Fed. R. Bankr. P. 8022(B) (motion “must include a certificate under Rule 8015(h) and not exceed 3,900 words”).

⁸ Outside of reconsideration, there is no possible foundation for Aldrich’s Motion. The only other bases for a Court to revisit a prior trial or ruling include: (i) a motion for a new trial under Rule 59(a)(1)(B), or (ii) relief from a final judgment under Rule 60(b). Rule 59(a)(1)(B) relief is inapplicable as it only permits the grant of a new trial following a “nonjury trial.” Fed. R. Civ. P. 59(a)(1)(B) (“[T]he court may, on motion, grant a new trial on all or some of the issues—and to any party—as follows: after a nonjury trial”). No trial occurred in this matter. Similarly, Rule 60(b) applies only to final judgments and Aldrich fails to specify any basis for relief enumerated in Rule 60(b). Fed. R. Civ. P. 60(b) (“On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons.”).

⁹ While Rule 54(b) may provide for “broader flexibility” in applying the Rule 59(e) standard to account for “litigation develop[ments]” when “new facts or arguments come to light,” this flexibility is inapplicable here because, as discussed below, Aldrich offers neither new arguments nor facts that were unavailable at the time of the November

(W.D.N.C. 2017) (collecting cases; Rule 59(e) standard applies to Rule 54(b) reconsideration), *aff'd* 918 F.3d 372 (4th Cir. 2019). Aldrich falls woefully short of meeting this standard.

31. Reconsideration is “disfavored” and “an extraordinary remedy that should be applied sparingly.” *Mayfield v. Nat’l Ass’n for Stock Car Auto Racing, Inc.*, 674 F.3d 369, 378 (4th Cir. 2012) (Rule 59(e)); *U.S. Tobacco Coop. v. U.S.*, 2019 WL 8323614, at *1 (E.D.N.C. Nov. 8, 2019) (Rule 54(b)). A party cannot use reconsideration as a vehicle “to relitigate issues already ruled on.” *U.S. ex rel. Becker v. Westinghouse Savannah River Co.*, 305 F.3d 284, 290 (4th Cir. 2002) (Rule 59(e)); *U.S. Tobacco Coop.*, 2019 WL 8323614, at *1 (Rule 54(b)). Reconsideration, however sought, does not provide “an unhappy litigant” with “one additional chance to sway the judge.” *United States v. Garcia*, 2015 WL 7313425, at *3 (W.D.N.C. Nov. 19, 2015) (Rule 59(e)) (citation omitted); *accord Burrell*, 260 F. Supp. 3d at 490 (Rule 54(b)).

32. A court may only reconsider a prior decision in “three situations: (i) to accommodate an intervening change in controlling law; (ii) to account for new evidence not available at trial; or (iii) to correct a clear error of law or to prevent manifest injustice.” *E.g.*, *Mayfield*, 674 F.3d at 378; *U.S. Tobacco Coop. Inc. v. Big S. Wholesale of Va., LLC*, 899 F.3d 236, 258 (4th Cir. 2018) (Rule 54(b)). These circumstances are “so limited” that reconsideration is “typically denied.” *Baraya v. Baraya*, 2022 WL 4369987, at *1 (W.D.N.C. Sept. 21, 2022).

33. Aldrich cannot meet any of the narrow bases for reconsideration. There has been no change in controlling law, and Aldrich has failed to present any new evidence that was unavailable at the time of the November 30 hearing. While Aldrich attempts to shoehorn “new”

30 hearing. *U.S. Tobacco Coop. Inc. v. Big S. Wholesale of Va., LLC*, 899 F.3d 236, 256 (4th Cir. 2018); *infra* ¶¶33-38. As the Fourth Circuit recognized, Rule 54(b) is “subject to the caveat” that “where litigants have once battled for the court’s decision, they should neither be required, nor without good reason permitted, to battle for it again.” *Id.* at 257 (quoting *Official Comm. of the Unsecured Creditors of Color Tile, Inc. v. Coopers & Lybrand, LLP*, 322 F.3d 147, 167 (2d Cir. 2003)).

evidence into its reconsideration effort through the Mullin Declaration, the Mullin Declaration merely repeats the same arguments presented at the November 30 hearing and in Aldrich's briefing. Compare Mullin Decl. ¶¶16-18 (contending relevance and necessity, citing and interpreting *Garlock*); *id.* ¶¶19-22 (arguing burden based on "electronic format"); *id.* ¶¶24-25 (analogizing to *DBMP*); *id.* ¶¶27-30 (contending Aldrich already possesses "PII" and there are other protections provided in the subpoenas), *with* Nov. 23, 2022 Tr. 64 (arguing purported "relevance and necessity"); *id.* 67-68 (arguing Aldrich "already possesses" the Trust Claimants' "PII"); *id.* 64-65, 67-70 (arguing burden based on Trust Claimant data sought in *Bestwall* and *DBMP*), *and* Aldrich's Opp. to Mot. to Quash 11-13 (contending data is "relevant and necessary," and there is a "minimal burden"); *id.* 16-17 (asserting Aldrich possesses claimant "PII" and there are other "protections provided in the Subpoenas"); *id.* (comparing Aldrich Subpoenas to *DBMP*).

34. Moreover, Aldrich fails to prove, much less allege, a "legitimate justification for not presenting" the purportedly relevant Mullin Declaration at the November 30 hearing. *Ingle ex rel. Estate of Ingle v. Yelton*, 439 F.3d 191, 197 (4th Cir. 2006). Nor would it be credible for Aldrich to argue that it could not have obtained an opinion from *its own consultant* supporting the *same arguments* it previously raised until after the November 30 hearing. *Id.* at 197-98 (affirming denial of reconsideration when proffered evidence "was not new and [plaintiff's] proffered justifications for not presenting it sooner were 'strategic decision[s] for which the Plaintiff bears responsibility.'" (citation omitted)).

35. Finally, Aldrich never alleges that this Court committed a clear error of law or caused a manifest injustice that needs to be corrected. As discussed below, there is no credible basis to find that this Court made a clear error or caused manifest injustice by ordering a random 10% sample. *Infra* ¶¶39-49. There is no dispute that Aldrich can ascertain the exact same

conclusions and data from a sample as it could from all of the Trust Claimants’ data. *Id.*; *Sanchez v. McAleenan*, 2020 WL 6263428, at *5 (D. Md. Oct. 23, 2020) (reconsideration unavailable under clear error or manifest injustice standard unless decision “strike[s the court] as wrong with the force of a five-week-old unrefrigerated dead fish,” it is not even enough for the prior decision to be “just maybe or probably wrong.” (quoting *U.S. Tobacco Coop*, 899 F.3d at 258)).

36. In contrast, the only thing Aldrich attempts is to improperly relitigate a decision with which it is unhappy. It is no secret to this Court that Aldrich is dissatisfied with this Court’s November 30 ruling. Jan. 26, 2023 Tr. 30 (“[W]e were surprised by the Court’s order and we disagree with it.”); Decl. of B. Moskow-Schnoll, Ex. C (Feb. 10, 2023 Email from M. Hirst) (“[T]he Debtors disagree with the Court’s oral ruling on November 30”); Feb. 14, 2023 Tr. 23-24 (“[W]e disagree with the Court’s ruling on, on sampling”).

37. Channeling its dissatisfaction, Aldrich attempts to manufacture a basis for this Court to revisit the same issues Aldrich already lost, relying on the exact same arguments it already presented:

Motion for Rehearing [Dkt. 54]	November 30 Hearing [Dkt. 35]	Opposition to Motions to Quash [Dkt. 4-9]
¶¶39-49 – Asserting Trust Claimant data is “relevant and necessary” relying on <i>Garlock</i> , alleging production burden is minimal because production is “straightforward” and “at relatively low cost,” and contending “substantially overlapping data” was produced in <i>DBMP</i> .	Tr. 64-68 - “The relevance and – and your Honor, I think, spoke on the relevance and necessity of this information multiple times and I didn’t hear any credible argument that the information here is not relevant and necessary.”; “[W]e think it’s a substantially similar set of Matching Claimants [in <i>DBMP</i>]. So that is happening.”; “There’s no additional burden because it’s being done ... in <i>DBMP</i> .”	Pgs 11-13 – Contending the information sought is “relevant and necessary,” relying on <i>Garlock</i> , and there is a “minimal burden in collecting data through electronic searches” and Aldrich will “reimburse the reasonable costs of compliance.”

¶¶50-57 – Contending “no confidentiality goal” is furthered by sampling because “the Debtors already have [the claimants’] PII,” and the Aldrich Subpoenas contain “protections regarding the production and use of this data.”	Tr. 65, 68 – “We already have the PII.”; “There are wide, robust protections for this data. And, so in light of that, I think the confidentiality issues have been addressed”	Pgs 16-17 – Asserting Aldrich “already possess[es] PII regarding the Matching Claimants,” and that “protections provided in the Subpoenas eliminate[] the risk of harm.”
¶¶58-58 – Contending sampling is “neither necessary nor appropriate,” citing Trust Claimant data sought in <i>Bestwall</i> and <i>DBMP</i> .	Tr. 68 – “[T]his information is going to be produced in <i>DBMP</i> ... [and] in <i>Bestwall</i> .”	Pgs 1-3, 6-7, 16-17 – Comparing the Aldrich Subpoenas to those served in <i>DBMP</i> .

38. Aldrich adds absolutely nothing new.¹⁰ It merely rehashes its prior arguments hoping for “one additional chance to sway” the Court because it is “unhappy” with the Court’s November 30 sampling decision. *Garcia*, 2015 WL 7313425, at *3. This, however, is not a basis for reconsideration under any circumstance, and the Motion should be denied. *E.g.*, *U.S. v. Lane*, 194 F.3d 1306, 1307 (4th Cir. 1999) (affirming denial of reconsideration where movant sought to “reargue his position”); *Melendez v. Sebelius*, 611 F. App’x 762, 764-76 (4th Cir. 2015) (same); *Kurkowski v. Wells Fargo Bank, N.A.*, 2021 WL 9816245, at *1 (W.D.N.C. Dec. 13, 2021) (reconsideration denied where motion was “merely an attempt to relitigate”); *Burrell*, 260 F. Supp. 3d at 491 (reconsideration denied where plaintiff “largely reassert[ed] the same reasons articulated in the prior [motion] and now hopes for a different result”); *Sanchez*, 2020 WL 6263428, at *5 (“[D]isagreements with this Court’s [ruling] do not meet the standard for the ‘extraordinary’ relief requested.”); *McLaurin v. E. Jordan Iron Works, Inc.*, 666 F. Supp. 2d 590, 596 (E.D.N.C. 2009)

¹⁰ Even if Aldrich did, it cannot raise new theories in support of identical relief on a motion for reconsideration. *William Ives Consulting, Inc. v. Guardian IT Sys., LLC*, 2021 WL 7185218, at *2 (W.D.N.C. Feb. 9, 2021) (reconsideration “does not provide a party with a mechanism to just keep filing motions with new theories until it gets it right.” (quoting *Hanover Ins. Co. v. Corpro Cos., Inc.*, 221 F.R.D. 458, 460 (E.D. Va. 2004))).

(reconsideration denied where plaintiffs “waited almost two months to ask the court to reconsider its motion” and “neglected to respond to Defendants’ arguments” when the motion was pending).

B. This Court Did Not Err in Limiting the Production of Trust Claimant Data to No More Than a Random 10% Sample

39. In addition to the Motion’s procedural deficiencies, it lacks any substantive merit. Aldrich wholly fails to set forth any basis for this Court to find that it erred in limiting the production of Trust Claimant data to a random 10% sample. In fact, Aldrich incorrectly focuses only on this Court’s burden discussion at the November 30 hearing. *See, e.g.*, Reconsideration Mot. ¶¶3, 5-6, 38-49, 50. This argument, however, paints an incomplete picture of the Court’s decision and, for the *third* time, completely ignores the Trusts’ sampling argument. It was not only burden that supported this Court’s decision, but the fact that Aldrich does not need all 12,000 Trust Claimants’ data to undertake its planned analysis (especially when balanced against the need to protect the sensitive, confidential information of 12,000 Trust Claimants). Nov. 30, 2022 Tr. 77 (“[W]e’re getting more and more demands for a great deal of data and I want to make sure that ... we’re not getting any more than we need.”); *id.* 82-83 (rejecting Aldrich’s “only burden” characterization and stating “I was thinking not only burden”).

40. As discussed, in briefing and at the November 30 hearing, the Trusts’ principal argument was that the Aldrich subpoenas were overbroad and failed Rule 45’s proportionality test. Aldrich could undertake the same analysis and extract the same conclusions from a 10% sample of the Trust Claimants’ data as it could from all of the Trust Claimants’ data. *Supra* ¶¶10-23; Trusts’ MTQ 14-16; Trusts’ MTQ Reply 6-8; Nov. 30, 2022 Tr. 47-49 (“Aldrich has failed to show why they need unfettered access to claimants’ sensitive information They’ve never argued that a sample would not work for them and they’ve never explained how it couldn’t work for them.”); *id.* 73-74 (“[T]hey never addressed the sampling ... argument we made. They never said that they

couldn't make do with a 10 percent sample, that it wouldn't provide them with all the information they need, and the reason, your Honor, that they didn't do that is because they can't make that argument."); *id.* 82 ("[I]t's not just the burden argument. It's the fact that ... it's not necessary for them to have a hundred percent of the claimants' data ... 10 percent will get them everything they need and it should be a random sample.").

41. Adopting this argument, the Court's ruling was clear:

I understand [Aldrich] would like to have as much information as possible, but ... I'm a little concerned about all of this is ballooning up and we're getting more and more demands for a great deal of data and I want 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.

Nov. 30, 2022 Tr. 77.

42. Even while attempting to take a second bite at the apple in its Motion, Aldrich still does not say that it needs all 12,000 Trust Claimants' data or that a 10% sample is unworkable. That is because it cannot. Aldrich has already advocated for the use of sampling for discovery relating to its claims files. Debtors' Resp. to Motion of the FCR for an Order to Est. a Protocol for Determining a Representative Sample 2 [Dkt. 1365] ("Debtors agree with the FCR that creating a sample of the Debtors' individual claim files for discovery makes sense—and the Debtors intend to work with the ACC and the FCR on an acceptable sample for such purposes."). An argument that sampling is unworkable entirely undermines Aldrich's desire to limit the ACC's discovery of claims files to sample. *Id.* There is no credible argument that the ACC can extrapolate conclusions for estimation purposes from a sample of Aldrich's claims files, but Aldrich cannot do the same from a sample of the Trust Claimants' data. And, to be sure, Aldrich, its counsel, and its expert have already admitted they can do so. *Supra* ¶24 (Aldrich contending sample is "representative," "efficient" and provides a "reliable cross-section" of Aldrich's "settlement history"); Trusts'

MTQ, Ex. G ¶24 (Jones Day admitting that sampling “provide[s] an efficient mechanism” to address “issues presented by the estimation”); *id.*, Ex. H ¶11 (Bates White stating 10% sample is “reliable” “for performing analyses related to ... estimation.”).¹¹ Aldrich’s hypocrisy is clear.

43. The most Aldrich can muster in opposition to sampling are hypothetical assertions that sampling could “introduc[e] the *possibility* of sampling error,” or introduce a “cost of extrapolating [the] sample result,” which “*can* include litigation costs should the parties’ experts disagree about that methodology.” Reconsideration Mot. ¶44 (emphasis added). Neither of these concerns exist here. Sampling will occur in this estimation proceeding (as it will in other estimation proceedings before this Court), and Aldrich and its representatives have already represented that sampling is “representative and efficient,” “practicable,” “reliable,” and “fair way to proceed” through estimation. *Supra* ¶24; Trusts’ MTQ, Exs. G & H; Agreed Order with Respect to Scope of Est. Disc., Ex. A [*Bestwall* Dkt. 2878] (attaching “Agreement to Limit Discovery on Resolved Claims for the Two Discovery Samples ...”). Hypothetical fears about sampling error are disingenuous at best. Aldrich cannot credibly rely on possible “litigation costs” based on “experts disagree[ing] about [a sampling] methodology,” when the estimation parties and their experts have negotiated and agreed to a sampling methodology that would apply to the Aldrich Subpoenas.¹² Accordingly, this Court did not err in limiting the production of Trust Claimant data to a random 10% sample.

¹¹ Aldrich tries to distance itself from Bates White’s prior admissions with the Mullin Declaration. Through the Mullin Declaration, Aldrich tries to argue that Bates White’s prior representations to this Court are not relevant because, in *Bestwall*, “a population-level analysis was not feasible” as “the Delaware District Court had ordered a sample.” Mullin Decl. ¶32. This misses the point. Whether “a population-level analysis” is available has no bearing on whether a representative sample would provide sufficient information for Bates White to undertake its planned analysis. If sampling was truly unworkable as a general matter for analyzing the Trust Claimants’ data, Bates White could have raised and supported this point in *Bestwall* or at the November 30 hearing. Bates White did not.

¹² At the November 30 hearing, the Court stated that it did not order sampling in *DBMP* because “there might be, actually, more problems in agreeing on a random sample than there would be in just taking all the data.” Nov. 30, 2022 Tr. 76-77. This reason is not applicable given the estimation parties’ agreement to a sampling protocol.

44. Aldrich's Motion fails to provide any cognizable basis to find otherwise. The Motion rehashes three purported reasons (each of which it previously argued to this Court): (i) the claims data is "relevant and necessary," Reconsideration Mot. ¶¶38-50; (ii) "no confidentiality goal" is advanced by sampling, *id.* ¶¶50-57; and (iii) sampling is not "necessary" or "appropriate," *id.* ¶¶58-59.

45. First, as to the alleged relevance and necessity of the claims data, this has no bearing on whether this Court erred in limiting the production of Trust Claimant data to a 10% sample. Even limited to a 10% sample, Aldrich will still receive all the data it needs for its articulated purposes. Nov. 30, 2022 Tr. 47 ("[W]hile the information may be relevant for the estimation proceedings, all of the information is not necessary They've never argued that a sample would not work for them and they've never explained how it couldn't work for them."). Aldrich does not dispute this point. *Supra* ¶¶39-43.

46. Second, Aldrich's contention that sampling does not serve a "confidentiality goal" is false. As articulated in the Trusts' Motion to Quash and at the November 30 hearing, sampling plays a significant role in ensuring the confidentiality and protection of the Trust Claimants' data. Trusts' MTQ 14; Nov. 30, 2022 Tr. 47. As the Trusts' counsel explained:

DCPF undertakes significant security measures to try to protect all this data, but once it's produced to Aldrich and Bates White those measures can no longer control or protect that trust claimants' data that they and the Trusts have a duty to protect.

By limiting disclosure of the trust claimant data to no more than a 10 percent sample, the volume of data leaving DCPF's control and the Trusts' control is drastically reduced and, in turn, the risk of harm to the trust claimants through inadvertent disclosure or misuse of the data is reduced significantly.

Nov. 30, 2022 Tr. 47; Trusts' MTQ 14; *id.*, Ex. C ¶¶9-19; *id.*, Ex. F 55-56, 59 ("From the security standpoint and the confidentiality of the data, the goal, as much as possible, would be ... to reduce the number of claims that are being produced.").

47. Nothing Aldrich argues or alleges in the Mullin Declaration addresses this point. Rather, Aldrich again attempts to mislead the Court, arguing “they already have” the Trust Claimants’ PII and there are other “confidentiality provisions” in place. Reconsideration Mot. ¶¶52-56. But the value of sampling and its impact on confidentiality are distinct from what PII Aldrich holds or the other general confidentiality provisions. The fact remains the same – the less data that leaves DCPF’s control, the greater the security and confidentiality of the Trust Claimants’ sensitive and protected data. Nov. 30, 2022 Tr. 47; Trusts’ MTQ 14; *id.*, Ex. C ¶¶9-19; *id.*, Ex. F 55-56, 59. Aldrich cannot rebut this point.

48. Finally, Aldrich’s last-ditch effort is a bald assertion that sampling is not “necessary or appropriate.” Mot. ¶¶58-59. Aldrich cites no support for its proposition, merely contending that other debtors have received more data and it wants the same.¹³ *Id.* ¶59. This is yet another articulation of want – not need.

49. As such, not a single argument Aldrich raises addresses the Trusts’ core argument that this Court adopted at the November 30 ruling. The Aldrich Subpoenas were overbroad and failed Rule 45’s proportionality test because Aldrich could undertake the same analysis and extract the same conclusions from a 10% sample of the Trust Claimants’ data as it could from all of the Trust Claimants’ data. Trusts’ MTQ 14-16; Trusts’ MTQ Reply 6-8; Nov. 30, 2022 Tr. 47-49, 73-74, 77, 82. Aldrich therefore fails to set forth any credible basis for this Court to find that it erred in limiting the production of Trust Claimant data to a random 10% sample. Aldrich’s meritless Motion must be denied.

¹³ Aldrich strikingly fails to note that it subpoenaed claims data from more sources than the debtors in *Bestwall* and *DBMP*.

CONCLUSION

For the reasons set forth above, the Trusts respectfully request the Court enter an order denying Aldrich's Motion for Rehearing Concerning the Issue of Sampling on DCPF's Subpoena-Related Motions.

Date: March 23, 2023

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CERTIFICATE OF SERVICE

I certify that the foregoing THIRD-PARTY ASBESTOS TRUSTS' OPPOSITION TO DEBTORS' MOTION FOR REHEARING CONCERNING THE ISSUE OF SAMPLING ON DCPF'S SUBPOENA-RELATED MOTIONS was filed electronically in accordance with the local rules and was served electronically on those entities that have properly registered for such electronic service. Entities not registered for electronic service have been served by depositing a copy thereof in the United States mail, postage pre-paid:

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