

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

JOHN A. PARKINS, JR.
JUDGE

NEW CASTLE COUNTY COURTHOUSE
500 NORTH KING STREET, SUITE 10400
WILMINGTON, DELAWARE 19801-3733
TELEPHONE: (302) 255-2584

May 25, 2012

Ian Connor Bifferato, Esquire
David W. deBruin, Esquire
Thomas F. Driscoll, III, Esquire
Bifferato, LLC
800 North King Street, Plaza Level
Wilmington, Delaware 19801

Nicholas Skiles, Esquire
Joseph S. Naylor, Esquire
Swartz Campbell LLC
300 Delaware Avenue, Suite 1130
P.O. Box 330
Wilmington, Delaware 19899

In Re: Asbestos Litigation

**Michael Galliher and his wife,
Darcel Galliher
C.A. No. 10C-10-315 ASB**

Dear Counsel:

The parties have each filed motions for reconsideration under Superior Court Civil Rule 59(e) in the above captioned case. The standard for reargument under Superior Court Civil Rule 59(e) is well settled.

On a motion for reargument, the only issue is whether the court overlooked something that would have changed the outcome of the underlying decision. The Court will generally deny the motion unless a party demonstrates that the Court has overlooked a controlling precedent or principle of law, or unless the Court has misapprehended the law or facts in a manner that affects the outcome of the decision. A motion for reargument is

not intended to rehash the arguments that already have been decided by the Court.¹

Neither party argues the court overlooked any binding legal authority, instead the parties reiterate and expand their factual arguments. The parties' motions contain arguments that are a rehash or should have been presented during oral argument. "A motion for reargument should not be used for 'raising new arguments.'"² The "moving party has the burden of demonstrating 'newly discovered evidence, a change in the law or manifest injustice.'"³ Having not done so, the Motions for Reconsideration are hereby, **DENIED** except as to payment of the sanction.

The court will amend its May 9, 2012 in one respect. Defendant "respectfully requests that imposition of the Court's sanction be as to 'defense counsel' and that there be no restrictions on payment of the sanction."⁴ The court imposed the sanction on out-of-state counsel on the supposition that he, as lead counsel, made the decisions leading to the imposition of sanctions. Such suppositions can be dangerous, as apparently again proven by this case. At the risk of stirring an internecine fight among defense counsel, the court will revise its order to impose the sanction on defense counsel generally. Therefore, Defendant's request is **GRANTED**. The \$5,000 sanction is to be paid by defense counsel to the court's

¹ *Bernhardt v. Ford Motor Co.*, 2010 WL 3005580, at *2 (Del. Super.) (citations and internal quotations omitted).

² *Lovett v. Cheney*, 2007 WL 1175049, at *1 (Del. Super.) (citations omitted).

³ *Id.* (citations omitted).

⁴ R.T. Vanderbilt Company, Inc.'s Motion for Reconsideration, at 4.

Prothonotary no later than June 15, 2012 and it is not to be recouped from Defendant or its insurance carrier.

The court would be remiss if it did not make one factual correction. In Plaintiffs motion for reconsideration they assert, “there is no finding that plaintiffs did anything wrong.”⁵ In the court’s written ruling, it stated, “Plaintiff has some culpability in this matter because she did not provide Mr. Fitzgerald’s report until after the expert deadline, albeit with Defendant’s consent.”⁶ While the court understands that parties will routinely reach agreements for extensions in asbestos litigation on matter such as the deadline of interrogatory answers, they are not free to change deadlines imposed by the Master Trial Scheduling Order (“MTSO”) without court approval. Here Plaintiffs, in conjunction with defense counsel, took it upon themselves to disregard the court’s MTSO. They are mistaken, therefore, when they assert there was no finding “Plaintiffs did anything wrong.” Plaintiffs’ reliance on this agreement with opposing counsel is why the court did not sanction Plaintiffs beyond those inherent in the delay of trial.

IT IS SO ORDERED.

Very truly yours,

John A. Parkins, Jr.

oc: Prothonotary
cc: Loreto P. Rufo, Esquire, Hockessin, Delaware via efile

⁵ Plaintiffs’ Motion to Reconsider Written Order of May 10, 2012, at 3.

⁶ *In re Asbestos Litig.: Galliher*, C.A. No. 10C-10-315 ASB, at 5 (Del. Super. May 9, 2012) (Parkins, J.).