

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

WILLIAM H. TOBIN, ET AL.	:	CIVIL ACTION
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
GENERAL ELECTRIC CO., ET AL.	:	
	:	
Defendants.	:	No. 95-4003

MEMORANDUM

VanARTSDALEN, S.J.

Plaintiffs, nine former employees of General Electric Company ("GE"), have filed a Motion for Reconsideration, pursuant to Federal Rule of Civil Procedure 59(e) and Local Rule of Civil Procedure 7.1, of my Memorandum and Order entered December 11, 1996 partially granting defendants' Motion for Attorney's Fees and Expenses. For the following reasons, the motion will be denied.

I. INTRODUCTION

As the background of this case is fully discussed in both my Memorandum and Order dated September 24, 1996 granting defendants' Motion for Summary Judgment and my Memorandum and Order dated December 11, 1996 partially granting defendants' Motion for Attorney's Fees and Expenses, I will only discuss the background of this case very briefly. Plaintiffs instituted this action against defendants, GE, the GE Pension Trust, and GE's Chief Executive Officer, John F. Welch, Jr., in June of 1995. Plaintiffs alleged that defendants wrongfully denied their claims

for plant closing benefits under ERISA § 502, 29 U.S.C. § 1132(a)(1)(B). Plaintiffs further claimed discrimination by GE and Welch in violation of ERISA § 510, 29 U.S.C. § 1140.

By Memorandum and Order entered September 24, 1996, defendants' Motion for Summary Judgment was granted and defendants moved for an award of attorneys' fees and expenses pursuant to ERISA § 502(g)(1), 29 U.S.C. § 1132(g)(1). On September 30, 1996, I received notice that plaintiffs filed an appeal from the order granting summary judgment to the United States Court of Appeals for the Third Circuit.

For the reasons set forth at length in my Memorandum and Order entered December 11, 1996, I granted the defendants' Motion for Attorney's Fees and Expenses to the extent that the defendants incurred legal fees in defense of the claims asserted against Mr. Welch. Defendants' motion was denied, however, insofar as the fees were attributable to the defense of the remainder of plaintiff's claims.

Subsequently, plaintiffs filed the present motion seeking reconsideration of my partial grant of attorney's fees and expenses. In February of last year, I stayed plaintiffs' Motion for Reconsideration pending resolution of their appeal. The appellate process concluded, following the Third Circuit's affirming of the grant of summary judgment and the Supreme Court's denial of certiori. In the present motion, plaintiffs seek reconsideration of the partial award of attorney's fees and expenses for essentially two reasons. First, plaintiffs contend that I applied the wrong standard of review for determining

liability under § 502 of ERISA. Second, plaintiffs contend that they presented sufficient evidence to support their claims against Mr. Welch. For these two reasons, plaintiffs argue that I improperly granted defendants' Motion for Attorney's Fees and Expenses with respect to the defense of Mr. Welch under the five (5) part test set forth in Ursic v. Bethlehem Mines, 719 F.2d 670 (3d Cir. 1983).

II. STANDARD OF REVIEW

The standards controlling a motion for reconsideration are set forth in Federal Rule of Civil Procedure 59(e) and Local Rule of Civil Procedure 7.1. "The purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence." Harsco Corp. v. Zlotnicki, 799 F.2d 906, 909 (3d Cir. 1985). The moving party must establish one of three grounds: (1) the availability of new evidence not previously available; (2) an intervening change in controlling law; or (3) the need to correct a clear error of law or to prevent manifest injustice. Smith v. City of Chester, 155 F.R.D. 95, 96-97 (E.D. Pa. 1994). A party may not submit evidence which was available to it prior to a court's grant of summary judgment. Id. at 97. A motion for reconsideration is also not properly grounded on a request that a court rethink a decision it has already made. Glendon Energy Co. v. Borough of Glendon, 836 F.Supp. 1109, 1122 (E.D. Pa. 1993).

III. ANALYSIS

Section 502 of ERISA provides that "the court in its discretion may allow a reasonable attorney's fee and costs of action to either party." In determining whether to award fees and expenses, a court must consider the factors enumerated in Ursic v. Bethlehem Mines, 719 F.2d 670, 673 (3d Cir. 1983): (1) the offending party's bad faith or culpability; (2) the offending party's ability to satisfy the award; (3) the award's deterrent effect; (4) the benefit conferred on members of the plan as a whole; and (5) the relative merits of the parties' positions.

Plaintiffs argue that I applied the wrong standard of review to determine whether they acted in bad faith or with culpability under the first prong of the Ursic test. It should be noted again, as it was in my Memorandum and Order dated December 11, 1996, that this factor does not require that the losing party acted with a sinister purpose or motive. McPherson v. Employees' Pension Plan of American Re-Ins. Co., Inc., 33 F.3d 253, 256 (3d Cir. 1994). Rather, the Third Circuit has held that a losing party may be culpable under § 502 of ERISA without having acted with an ulterior motive if they pursued a groundless or meritless position. Id.

The plaintiffs contend that I applied the wrong standard of review in determining whether the continued pursuit of their § 510 claim against Mr. Welch constituted culpable conduct under § 502. Plaintiffs assert that their § 510 claim against Mr. Welch was not groundless or meritless and plaintiffs

continue to argue, as they repeatedly have in the past, that they adduced sufficient evidence to support a viable claim against Mr. Welch under § 510. I disagree.

Plaintiffs contend that I made a clear error of law by applying the test set forth by the Third Circuit in Gavalik v. Continental Can Co., 812 F.2d 834 (3d Cir. 1987) for determining whether they satisfied their prima facie burden for establishing a § 510 claim against Mr. Welch. Plaintiffs argue that I should have applied the test set forth by Judge Aldisert in Furcini v. Equibank, 660 F.Supp. 1436 (W.D. Pa. 1987). Plaintiffs assert that under the Furcini standard, in order to satisfy their prima facie burden, they need only show that: (1) they were candidates for ERISA benefits; (2) that they were denied benefits; and (3) that they met the conditions for receiving benefits. Id.

Plaintiffs, however, fail to articulate any clear error of law or compelling reason why I should depart from the unequivocal standard set forth by the Third Circuit in the Gavalik decision. A careful reading of the Furcini decision reveals that Judge Aldisert's holding is limited to a very narrow factual situation which is not present in this case. On page 1442 of his opinion, Judge Aldisert specifically states that his departure from the prima facie case requirements set forth by the Third Circuit in Gavalik is "limited to the facts before us" and is "not intended to sweep broadly over other factual situations."

As the second basis for reconsideration, plaintiffs again assert that they adduced sufficient evidence to support a

viable claim against Mr. Welch under § 510. This argument represents nothing more than a rehash of the arguments previously advanced by the plaintiffs in their brief in opposition to defendants' Motion for Attorney's Fees and Expenses. A motion for reconsideration is not properly grounded on a request that a court reconsider repetitive arguments that have been fully examined by the court or a request to raise arguments that could have previously been asserted. I have already fully considered and rejected these arguments in my Memorandum and Order dated December 11, 1996. For this reason alone, the Motion for Reconsideration could be denied. I will, however, consider plaintiffs' argument on the merits.

Plaintiffs named Mr. Welch as an individual defendant, alleging in substance that he willfully and maliciously characterized the SPCO shutdown as a "product line exit" to avoid paying plaintiffs' plant closing benefits. Plaintiffs again contend that defendant Welch approved the use of the restructuring funds, that he wanted to keep the restructuring costs down, that the SPCO closure had once been denied restructuring funds, and that defendant Welch had personal knowledge that the SPCO closure was being called a product line exit.

This purported "evidence" is insufficient to support a viable claim under § 510 against Mr. Welch. As I stated in my Memorandum and Order dated December 11, 1996, the mere fact that Mr. Welch as CEO approved a restructuring and had knowledge of

the closing is simply not a legally sufficient factual basis to support a claim under § 510 of ERISA against Mr. Welch. Plaintiffs' "evidence" against Welch amounts to nothing more than an unsupported allegation that as CEO he had ultimate oversight responsibilities and knowledge of company operations. Allegations of this nature could be leveled against any corporate executive.

Over defendants' objection, plaintiffs were given the opportunity to take Mr. Welch's deposition, but failed to obtain any evidence implicating Mr. Welch personally in any decision that would effect plaintiffs' ERISA claims. Despite their failure during the course of discovery to obtain any evidence implicating Mr. Welch, plaintiffs continued to pursue their claims against him. Throughout this litigation, plaintiffs have been made repeatedly aware of the lack of evidence against Mr. Welch yet continued to pursue their claim against him, unnecessarily driving up the cost of litigation for the defendants.

The complete lack of evidence against Mr. Welch renders plaintiffs' § 510 claim against him meritless and clearly indicates that plaintiffs acted culpably under § 502 by pursuing the claim. Under the Ursic test, the defendants were properly entitled to attorney's fees and expenses incurred as a result of the defense of Mr. Welch. Accordingly, plaintiffs' Motion for Reconsideration will be denied.

Because movants have not come forward with any newly discovered evidence, do not cite an intervening change in controlling law and fail to point out any clear error of law or manifest injustice, I will deny movants' Motion for Reconsideration.

The final issue I must address is that of the amount of attorney's fees and costs. The defendants have moved to amend the calculation of attorney's fees incurred in the defense of Mr. Welch to include the additional costs incurred as a result of plaintiffs' Motion for Reconsideration. At oral argument, defendants contended that the stipulation as to the amount of attorney's fees and costs reached with plaintiffs, which I have not yet been provided, only covered the time period until January 31, 1997 and does not include attorney's fees and costs associated with the present Motion for Reconsideration. Although I have not yet been provided with this stipulation, if defendants assertions are indeed correct, which I have no reason to believe they are not, then defendants would be entitled to the additional attorney's fees and costs associated with the present Motion for Reconsideration.

An appropriate order follows.

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ORDER

For the reasons set forth in the accompanying memorandum, it is hereby **ORDERED** that plaintiff's Motion for Reconsideration (doc. number 39) is **DENIED**.

BY THE COURT:

Donald W. VanArtsdalen, S.J.

January 22, 1998