

purposes of Cutone's Motion for Reconsideration.

II. STANDARD OF REVIEW

Pursuant to Local Rule of Civil Procedure 7.1(g), a party may move for reconsideration of any judicial ruling within ten days of it being entered. Motions for reconsideration will be granted only where: (1) new evidence becomes available; (2) there has been an intervening change in the controlling law; or (3) a clear error of law or manifest injustice must be corrected.¹

III. DISCUSSION

Cutone's Motion seeks reconsideration of the May 26th Order on the following grounds: (1) the Court's decision to sever Cutone's third-party claims without severing Plaintiffs' claims against Cutone "constitutes a miscarriage of justice"²; (2) the Court erred by severing rather than ordering separate trials; and (3) the Court erred by requiring Cutone to re-file his severed third-party claims in a separate action. Cutone's Motion alternatively seeks clarification of whether the May 26th Order provided for severance or separate trials of Cutone's third-party claims.

The first ground does not warrant reconsideration. At the outset, the Court notes that Cutone never filed a motion seeking severance of Plaintiffs' claims against him; the May 26th Order only acted upon motions by Plaintiffs and various third-party defendants seeking severance or separate trials of Cutone's third-party claims.

Furthermore, not only did Cutone never formally request severance of Plaintiffs' claims against him, Cutone's response to the motions for severance of his third-party claims barely

¹ Max's Seafood Café ex rel. Lou-Ann, Inc. v. Quinteros, 176 F.3d 669, 677 (3d Cir. 1999).

² Def.'s Memo. in Support of Mot. for Recons. 2.

developed the argument he now presses, i.e. that severing his third-party claims without also severing Plaintiffs' claims against him would be unfair.³ A motion for reconsideration is not an opportunity to present new arguments.⁴

Finally, the Court's decision to sever only Cutone's third-party claims was not manifestly unjust. In exercising its discretion to strike or sever under Federal Rule of Civil Procedure 14(a), the Court concluded that the late addition of thirty-four new parties alleged to have contributed to the pollution of Plaintiffs' property over a fifty-year period would render a single trial unmanageable, further delay resolution of this case, and prejudice Plaintiffs. In contrast, Plaintiffs' claims against Cutone, as the operator of Defendant Rick's Mushroom Service, go to the heart of Plaintiffs' case and are appropriate for resolution at the upcoming trial. The Court's pragmatic decision to require Cutone to litigate his contribution and indemnity claims against numerous third parties in a separate suit after first defending Plaintiffs' claims in this suit is not manifestly unjust.

Cutone's second ground for reconsideration also fails. He argues that the Court should have looked to Rule 21 and Rule 42 of the Federal Rules of Civil Procedure in deciding whether to sever or accord a separate trial. Rule 21 permits severance of claims against improperly joined parties. Rule 42(b) permits courts to order separate trials in the interests of judicial economy or fairness. Although Cutone does not challenge the Court's decision to try his third-party claims

³ The only allusion to this argument in Cutone's original response is as follows: "To permit the addition of Mr. Cutone while not permitting him to assert third-party actions and thus forcing him to engage in a multiplicity of actions and circuitry of claims would be a miscarriage of justice." Def.'s Resp. to Pls.' Mot. to Strike and/or Sever. However, that statement was made in support of Cutone's broader theory that he had an absolute right, as a newly joined party, to bring in third-parties.

⁴ See, e.g., Federico v. Charterers Mut. Assurance Ass'n Ltd., 158 F. Supp. 2d 565, 578 (E.D. Pa. 2001).

apart from Plaintiffs' claims,⁵ he contends that the Court should have ordered a separate trial under Rule 42 rather than ordering severance. Since Cutone's second ground for reconsideration is closely intertwined with his request for clarification, the Court addresses them together.

Contrary to Cutone's argument, Rule 14(a) expressly authorizes a party to "move to strike the third-party claim, or for its severance or separate trial."⁶ The 1963 Advisory Committee Note further explains that Rule 14(a) vests trial courts with the discretion to "sever the third-party claim or accord it separate trial if confusion or prejudice would otherwise result."⁷ Likewise, a leading civil procedure treatise discusses how Rule 14(a) codified a separate and independent basis for severance or separate trial:

Prior to the addition of the sentence [in Rule 14 permitting a motion to strike, sever, or order separate trials], the procedure commonly used was a motion under Rule 42(b) for a separate trial. The inclusion of the reference to the motion to strike, severance, and separate trial was a byproduct of the decision by the rulemakers to make it possible for defendant to implead a third party without leave of the court anytime within ten days after service of the original answer. According to the Advisory Committee Note to the 1963 amendment, it was felt that a specific statement in Rule 14(a) was necessary to make it clear that the court's discretionary power to refuse to entertain the third-party claim continued even though defendant might secure impleader without a court order.⁸

Thus, the Court properly ordered severance under Rule 14(a) and declines to grant Cutone's request for clarification of the May 26th Order. Moreover, since Rule 14(a) squarely governs the issues

⁵ See Defs.' Memo. in Support of Mot. for Recons. 2.

⁶ Fed. R. Civ. P. 14(a).

⁷ Fed. R. Civ. P. 14 advisory committee's note (1963).

⁸ 6 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 1460 (2d ed. 1990).

presented by the motions leading to the May 26th Order, the Court also declines to grant reconsideration on the basis that it should have granted a separate trial under Rule 42(b). The May 26th Order set forth the Court's application of Rule 14(a) and its reasons for deciding to sever: a motion for reconsideration will not be granted where it "ask[s] the Court to rethink what [it] had already thought through—rightly or wrongly."⁹

Cutone's final ground for reconsideration—that the May 26th Order should not have required him to refile his severed third-party claims—is unpersuasive. Although the Federal Rules do not specifically provide how severed claims should be handled, courts in this District and others have approved the sever-and-refile procedure.¹⁰ Therefore, while courts may be free to adopt a different procedure, this Court cannot conclude that the procedure set forth in its May 26th Order constituted clear legal error or resulted in manifest injustice.

IV. CONCLUSION

For the foregoing reasons, the Court denies Cutone's Motion for Reconsideration of this Court's May 26, 2006 Order, or Alternatively, for Clarification of that Order in its entirety.

⁹ Glendon Energy Co. v. Borough of Glendon, 836 F. Supp. 1109, 1122 (E.D. Pa. 1993) (quoting Ciba-Geigy Corp. v. Alza Corp., No. 91-5286, 1993 WL 90412, at *1 (D.N.J. Mar. 25, 1993)).

¹⁰ See Simmons v. Wyeth Labs., Nos. 96-6631, 96-6686, 96-6728, 96-6730, 1996 WL 617492, at *4 (E.D. Pa. Oct. 24, 1996) (Rendell, J.); accord Am. Fed. of Gov't Employees, AFL-CIO v. Loy, 281 F. Supp. 2d 59, 66 n.6 (D.D.C. 2003) ("Because the Court has severed Mr. Ferace's First Amendment complaint, his counsel must refile the complaint with the Clerk's office and pay the filing fee."); Reinholdson v. Minnesota, No. 02-795, 2002 WL 31026580, at *6 (D. Minn. Sept. 9, 2002), aff'd, 346 F.3d 847 (8th Cir. 2003); DIRECTV, Inc. V. Geenen, No. 03-3542, 2003 WL 22669021, at *2 (N.D. Ill. Nov. 10, 2003) (noting, in dicta, that a party who attempts to join new parties bears the risk of having to repay filing fees where claims against the parties are severed).

