

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

IN RE: URETHANE
ANTITRUST LITIGATION

No. 04-md-1616-JWL-DJW

This Order Relates to:
Polyether Polyol Cases

MEMORANDUM AND ORDER

Pending before the Court is Plaintiffs' Motion for Limited Reconsideration (doc. 428). For the reasons set forth below, Plaintiffs' Motion will be denied.

Relevant Background

In this antitrust suit, Plaintiffs allege a conspiracy among Defendants to fix, raise, maintain or stabilize prices and to allocate customers and markets for polyether polyol products. Plaintiffs purport to bring this action on behalf of themselves and all persons or entities who purchased polyether polyol products in the United States from January 1, 1999 to present.

In May 2006, Defendants filed a joint motion seeking to compel Plaintiffs to respond to certain discovery requests. In a Memorandum and Order dated August 25, 2006 (doc. 423), this Court granted Defendants' Joint Motion to Compel in large part and directed Plaintiffs to respond to six of the eight document requests and one interrogatory. With regard to this directive, Plaintiff now asks the Court to reconsider limited portions of the August 25 Memorandum and Order. More specifically, Plaintiff requests the Court find that in complying with this directive, Plaintiffs are not required to (1) produce product formulas; or (2) identify its more than 3,000 customers.

Discussion

Pursuant to D. Kan. Rule 7.3, motions seeking reconsideration of non-dispositive orders must be based on “(1) an intervening change in controlling law, (2) the availability of new evidence, or (3) the need to correct clear error or prevent manifest injustice.”¹ Reconsideration may be appropriate “where the court has misapprehended the facts, a party’s position, or the controlling law.”² With that said, a motion to reconsider is not a second chance for the losing party to ask the Court to revisit issues already addressed or to consider new arguments and facts that could have been presented originally.³ Nor is a motion to reconsider to be used as “a second chance when a party has failed to present its strongest case in the first instance.”⁴ Whether to grant or deny a motion for reconsideration is soundly committed to the court’s discretion.⁵

In support of reconsideration, Plaintiffs rely exclusively on Judge Lungstrum’s recent class certification decision in the *Polyester Polyols Antitrust Litigation*. Plaintiffs assert Judge Lungstrum did not consider the *Polyester* Plaintiffs’ product formulas or customer identities in determining whether class certification in the *Polyester* case was appropriate. Plaintiffs further assert that although Judge Lungstrum issued the *Polyester* class certification decision on August 16, 2006, the undersigned Magistrate Judge did not cite to the class certification decision in the August 25, 2006

¹The Tenth Circuit has adopted the same standard. See, e.g., *Servants of Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000).

²*Sonnino v. Univ. of Kan. Hosp. Auth.*, 221 F.R.D. 661, 664 (D. Kan. 2004); *Servants*, 204 F.3d at 1012.

³*Servants*, 204 F.3d at 1012

⁴*Sonnino*, 221 F.R.D. at 664.

⁵*Id.*

Memorandum and Order requiring Plaintiffs to produce and identify product formulas and customers. Based on these circumstances, Plaintiffs argue reconsideration is justified on grounds that

- Judge Lungstrum’s class certification decision in *Polyester Polyols Antitrust Litigation* constitutes an “intervening change in controlling law” and/or constitutes “new evidence” with respect discovery of product formulas and customer identities; and
- Failure of the undersigned Magistrate Judge to cite to Judge Lungstrum’s August 16, 2006 class certification decision was clearly erroneous and manifestly unjust.

A. “Intervening Change In Controlling Law” or “New Evidence”

The “controlling law” for decisions relating to class certification is Federal Rule of Civil Procedure 23.⁶ While committed to the broad discretion of the trial court, inquiries under Rule 23 are driven by circumstances unique to each individual case.⁷ Thus, the fact that Judge Lungstrum did not consider product formulas or customer identities in reaching his decision regarding class certification in the *Polyester* case has no bearing on whether product formulas or customer identities are relevant or likely to lead to the discovery of admissible evidence with regard to class certification in the *Polyether Polyol* case. Simply put, Plaintiffs have failed to establish that Judge Lungstrum’s August 16, 2006 Memorandum and Order works to change the controlling law or qualifies as new evidence in this regard.

⁶See, e.g., Judge Waxse’s August 25, 2006 Memorandum and Order at pp. 5, 9-11 (doc. 423); see also Judge Lungstrum’s August 16, 2006 Memorandum and Order dated at pp. 4-5 (doc. 420) (“Polyester Class Order”).

⁷See Polyester Class Order at p.4 (doc. 420) (“The court must perform a rigorous analysis of whether the proposed class satisfies the requirements of Rule 23”) (citing *Gen. Tel. Co. v. Falcon*, 457 U.S. 147, 155 (1982)).

B. “Clear Error Or Manifest Injustice.”

Plaintiffs argue the Court erred in failing to consider Judge Lungstrum’s August 16, 2006 Memorandum and Order when it granted Defendants’ Motion to Compel and directed Plaintiffs to produce product formulas and identify customers. In support of this argument, Plaintiffs assert the same relevancy objections already resolved in this Court’s Memorandum and Order dated August 25, 2006. It is well settled that a motion to reconsider is not a second chance for the losing party to ask the Court to revisit issues already addressed or to consider new arguments and supporting facts that could have been presented originally. Simply put, Plaintiffs’ assertions here are precisely the type of “second chance” submission that this Court has indicated is not proper under D. Kan. Rule 7.3(b).

Conclusion

For the reasons set forth above, Defendant’s Motion to Reconsider (doc. 426) is denied.

IT IS SO ORDERED.

Dated in Kansas City, Kansas on this 17th day of January, 2007.

s/ David J. Waxse
David J. Waxse
United States Magistrate Judge

cc: All counsel and *pro se* parties