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Successful Motions for Reconsideration Require Extraordinary Circumstances

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Introduction

Motions for reconsideration are not recognized under the Federal Rules of Civil Procedure (the "Rule(s)") or the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rule(s)").[1] A party seeking reconsideration of an order in the bankruptcy courts can file either: (1) a motion to alter or amend a judgment under Bankruptcy Rule 9023, if the order is interlocutory; or (2) a motion for relief from judgment under Bankruptcy Rule 9024, if the order is a final one.[2] The applicable rules to motions for reconsideration are different depending on whether the motion is for an interlocutory or final order.[3] There are various policies surrounding both types of motions for reconsideration.[4] These underlying polices have helped define which rules are applicable for either motion.[5]

The motion to reconsider standards are demanding and strict and thus a court faced with such a motion is most often likely to deny the motion. This presents the query – what extraordinary circumstances are required for a motion to reconsider to be granted. This article addresses how courts interpret the issue of which extraordinary circumstances are worthy of a

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[1] *See Williams v. Akers*, 837 F.3d 1075, 1077 n. 1 (10th Cir. 2016).
[2] *See id.*
[3] *See id.*
[4] *Calyon N.Y. Branch v. Am. Home Mortg. Corp.*, 388 B.R. 585, 589 (Bankr. D. Del. 2008).
[5] *See id.* at 589.

court's reconsideration of an order. Part I examines the circumstances surrounding reconsideration of an interlocutory order. Part II analyzes the circumstances surrounding reconsideration of a final order.

I. Motions to Reconsider Interlocutory Orders

There is no federal rule setting forth the standard for reconsidering an interlocutory order. Notwithstanding this absence, bankruptcy courts have universally recognized their inherent right to reconsider an order.[6] When reconsidering an interlocutory order, a court may apply any appropriate standard.[7] Confirming the broad authority of courts to vacate judgments when deemed appropriate and just, the Supreme Court has held that "[t]he Rule does not particularize the factors that justify relief, but we have previously noted that it provides courts with authority adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice, while also cautioning that it should only be applied in extraordinary circumstances."[8]

Motions to reconsider interlocutory orders are predominantly evaluated by Rule 59(e) as made applicable by Bankruptcy Rule 9023.[9] Further, motions for reconsideration of interlocutory orders are rarely granted and when such motions are granted there must be extraordinary circumstances. Rule 59(e), incorporated by Bankruptcy Rule 9023, allows a party to seek reconsideration where: (1) there has been an intervening change in the controlling law; (2) new evidence has become available; or (3) there is a need to prevent manifest injustice or to

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[6] 12 *Moore's Federal Practice*, § 59.30[7] (Matthew Bender 3d ed.); *see Williams*, 837 B.R. at 1077 n. 1.
[7] *See Anderson Living Tr. v. WPX Energy Prod., LLC*, 308 F.R.D. 410, 433 (D. N.M. 2015) (noting that a court "can review the earlier ruling de novo and essentially reanalyze the earlier motion from scratch, it can review the ruling de novo but limit its review, it can require parties to establish one of the law-of the-case grounds, or it can refuse to entertain motions to reconsider all together.").
[8] *Liljeberg v. Health Serv. Acquisition Corp.*, 486 U.S. 847, 863 (1988).
[9] *See, e.g.*, *Calyon N.Y. Branch v. Am. Home Mortg. Corp.*, 383 B.R. 585, 589 (Bankr. D. Del. 2008); *Colonial Bank v. Freeman* (*In re Pac. Forest Prods. Corp.*), 335 B.R. 910, 917 (S.D. Fla. 2005); *In re Energy Future Holdings Corp.*, 575 B.R. 616, 627–28 (Bankr. D. Del. 2017); *In re W.R. Grace & Co.*, 556 B.R. 113, 118 (Bankr. D. Del. 2016); *Williams*, 837 F.3d at 1077.

correct a clear error of fact or law.[10] In very few situations, a court will take the extraordinary step of granting a motion to reconsider under the third situation of this standard.[11]

In determining whether there was a manifest injustice or clear error, a movant bears a "heavy burden" to demonstrate that relief is appropriate.[12] As a result, courts rarely grant a motion to reconsider an interlocutory order.[13] There is no uniform application of agreed upon definitions of the meanings of "manifest injustice" and "clear error of law or fact."[14] However, some courts have concluded manifest injustice to mean "an error in the trial court that is direct, obvious, and observable . . . the record presented must be so patently unfair and tainted that the error is manifestly clear to all who view it."[15] Additionally, courts have found that a clear error of fact or law is a plain and indisputable error "that amounts to a complete disregard of the controlling law or the credible evidence in the record."[16]

Where a court has misapprehended the facts of a case, a court may grant a motion to reconsider an interlocutory order to prevent a manifest injustice.[17] Conversely, a motion to reconsider may not be used as a method to reargue issues the district court has decided upon or to advance any new arguments that a party forgot to argue before the judgment was made.[18] The Delaware bankruptcy court held that it is appropriate to allow parties to use a motion to reconsider when the court misapprehended the facts presented but not to reargue facts or law.[19] The policies underlying the standards governing a motion to reconsider focus on the fact that a litigant has already battled in court and thus should neither be compelled, nor without a good

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[10] Fed. R. Civ. P. 59(e); Fed. R. Bankr. P. 9023; *In re Conex Holdings, LLC*, 524 B.R. 55, 58 (Bankr. D. Del. 2015).
[11] *In re W.R. Grace & Co.*, 398 B.R. 368, 371–72 (D. Del. 2008).
[12] *Energy Future Holdings Corp.*, 575 B.R. at 634.
[13] *See id.* at 636–37.
[14] *Id.*
[15] *In re Titus*, 479 B.R. 362, 367–368 (Bankr. W.D. Pa. 2012).
[16] *Id.* at 368.
[17] *See In re Energy Future Holdings Corp.*, 575 B.R. at 636–37.
[18] *See id.*
[19] *Id.*

reason be permitted, to battle again.[20] "This is especially true in the bankruptcy context where the very nature of the practice involves the routine entry of interlocutory orders."[21]

In *In re Energy Future Holdings Corp.,* granting a motion for reconsideration, the Delaware bankruptcy court found the third prong of Bankruptcy Rule 9023 applicable where a termination fee was to be amended to prevent a manifest injustice and to correct a clear error of fact and law.[22] The court found that it had fundamentally misapprehended the facts as to when a termination fee would be payable due to an incomplete and confusing record on that essential point and further stated that it would have not approved the termination fee provision of a merger agreement if it had understood the critical facts.[23] The court noted that its misapprehension as to when the termination fee did and did not apply was based on "imprecise and incorrect" witness testimony, "incomplete responses by [] counsel" to the court's questions, and parties' "conspicuous and unhelpful silence."[24] The court explained that while it did "not believe the Debtors acted improperly or with malice," it was clear from the record that the parties "[were] happy to remain silent" and "made no effort to clarify the [misapprehended] record" to the court.[25] The interests of justice "require[] parties seeking relief from the Court to be accurate in their representations."[26]

On the other hand, in *In re W.R. Grace & Co.*, the district court denied a motion for reconsideration of an order denying leave to appeal because the parties failed to justify any of their claims and did not provide sufficient reason for reconsideration.[27] The party seeking reconsideration claimed "that the court's conclusions [were] not only premature but [also]

[20] *Calyon N.Y. Branch v. Am. Home Mortg. Corp.*, 388 B.R. 585, 589 (Bankr. D. Del. 2008).
[21] *Id.*
[22] *Energy Future Holdings Corp.,* 575 B.R. at 628.
[23] *Id.*
[24] *Id.* at 620.
[25] *Id.* at 633 n.79.
[26] *Id.* at 636.
[27] *In re W.R. Grace & Co.*, 398 B.R. 368, 370 (D. Del. 2008).

factually and legally erroneous."[28] However, the court found that the party's claims did not warrant reconsideration because the moving party did not provide evidence to establish that there were manifest errors of fact or law and merely wanted to reargue its case.[29] The court noted the strict standards surrounding motions to reconsider and that such motions are rarely granted.[30]

II. Motions to Reconsider Final Orders

If an order is a final one, Rule 60(b), incorporated by Bankruptcy Rule 9024, allows a party to seek relief from a judgment, order, or proceeding for the following reasons:

> (1) mistake, inadvertence, surprise, or excusable neglect;
> (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
> (4) the judgment is void;
> (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or
> (6) any other reason justifying relief from the operation of the judgment.[31]

A motion for reconsideration of a final order focuses on the balancing of the interests of justice and the interests of finality of an order.[32] The purpose of Rule 60(b) and Bankruptcy Rule 9024, is "to strike a proper balance between the conflicting principles that litigation must be brought to an end and that justice must be done" and the trial court has discretion to grant or deny relief.[33] To determine whether a motion to reconsider under Rule 60(b) should prevail, the motion must be filed timely within a "reasonable time."[34] However, if a party files a motion

[28] *Id.* at 372 (internal quotations omitted).
[29] *Id.* at 371-81.
[30] *Id.* at 371–72.
[31] Fed. R. Civ. P. 60(b); Fed. R. Bankr. P. 9024.
[32] *See In re New Century TRS Holdings, Inc.*, 07-10416 KJC, 2012 WL 38974 at *2.
[33] *Boughner v. Sec'y of Health, Educ., & Welfare*, 572 F.2d 976, 977 (3d Cir. 1978).
[34] Fed. R. Civ. P. 60(c).

under Rule 60(b)(1), (2) or (3), the motion is untimely *per se* if it is made more than one year from the entry of the judgment.[35]

Nevertheless, "[t]he framers of Rule 60(b) set a higher value on the social interest in the finality of litigation."[36] Thus, if a motion for reconsideration is filed within a reasonable time, a court will then look to the burden placed on the moving party.[37] The moving party "bears a heavy burden" to show that it should prevail under Rule 60(b).[38]

Though a court has discretion to invoke Rule 60(b) under any of the six situations delineated in the Rule and reconsider a judgment, there must still be extraordinary circumstances for a court to invoke the Rule.[39] The court must also balance Rule 60(b)'s competing interests: "'the desire to preserve the finality of judgment and the incessant command of the court's conscience that justice be done in light of all the facts.'"[40]

A motion for reconsideration of a final order focuses on the balancing of the interests of justice and the interests of finality of an order.[41] "Given a court's interest in the finality of it[s] judgments '[m]otions for . . . reconsideration should be granted sparingly and may not be used to rehash arguments which have already been briefed by the parties and considered and decided by the Court.'"[42] "Reconsideration is not permitted simply to allow a 'second bite of the apple.'"[43]

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[35] Fed. R. Civ. P. 60(c).
[36] *Merit Ins. Co. v. Leatherby Ins. Co.*, 714 F.2d 673, 682 (7th Cir. 1983).
[37] *Energy Future Holdings Corp.*, 575 B.R. at 630.
[38] *Id.* (citing *Bohus v. Beloff*, 950 F.2d 919, 930 (3d Cir. 1991)).
[39] *Budget Blinds, Inc. v. White*, 536 F.3d 244, 251, 255 (3d Cir. 2008).
[40] *Energy Future Holdings Corp.*, 575 B.R. at 630 (quoting *In re New Century TRS Holdings, Inc.*, No. 07-10416 KJC, 2012 WL 38974, at *2 (Bankr. D. Del. Jan 9, 2012), *aff'd*, No. ADV 09-52251 KJC, 2013 WL 1196605 (D. Del. Mar. 25, 2013) (internal quotations omitted)).
[41] *See, e.g.*, *In re Penn. Cent. Transp. Co.*, 771 F.2d 762, 767 (3d Cir. 1985) (finding that vacating a final order would be "unjust and unfair" because the purpose of bankruptcy law could not be realized if the order was "not complete and absolute; that if courts should relax the provisions of the law and facilitate the assertion of old claims . . . the policy of the law would be defeated" since the parties could not feel that the order was final).
[42] *In re W.R. Grace & Co.*, 398 B.R. 368, 371 (D. Del. 2008) (citing *Ciena Corp. v. Corvis Corp.*, 352 F. Supp. 2d 526, 527 (D. Del. 2005)).
[43] *Id.* at 372.

A motion for reconsideration of the judgment is only granted sparingly and thus, is considered an extraordinary remedy.[44] The main difference between motions to reconsider an interlocutory order versus a final order is the finality and reliance that a court places on a final order.[45] However, the "substance" of review under either Bankruptcy Rules 9023 or 9024 is that the purpose of a reconsideration motion "'is to correct manifest errors of law or fact or to present newly discovered evidence.'"[46]

Motions for reconsideration of final orders under Rule 60(b) and Bankruptcy Rule 9024, are rarely granted and when such motions are granted there must be extraordinary circumstances.

Conclusion

When determining whether or not to grant a motion for reconsideration of a judgment, courts most often err on the side of denying them. The standards courts have set regarding motions for reconsideration are demanding and strict. However, in the rare occasion when injustice can only be avoided through granting reconsideration, a court may be more likely to do so if the circumstances are extraordinary.

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[44] *See, e.g.*, *In re Conex Holdings, LLC*, 524 B.R. 55, 59 (Bankr. D. Del. 2015); *In re Titus*, 479 B.R. 362, 367–368, 373 (Bankr. W.D. Pa. 2012); *In re Catholic Diocese of Wilmington, Inc.*, 437 B.R. 488, 490 (Bankr. D. Del. 2010) (all concluding that the standard to support a motion for reconsideration is demanding and is the reason why it was not granted in any of these bankruptcy cases).

[45] *Energy Future Holdings Corp.*, 575 B.R. at 630.

[46] *Max's Seafood Café ex rel. Lou-Ann, Inc. v. Quinteros*, 176 F.3d 669, 677 (3d Cir. 1999) (quoting *Harsco Corp. v. Zlotnicki*, 779 F.2d 906, 909 (3d Cir. 1985)).