

As to the motion for reconsideration of the Order dismissing the First and Second Claims, the parties do not dispute that the Supreme Court's decision in Smith v. City of Jackson, 544 U.S. 228 (2005) constitutes an intervening change in the controlling law. Defendants' sole argument in opposition is that the Supreme Court published Smith in March of 2005, and that this Court should find Plaintiffs' delay of a year and one-half to be inexcusable. Defendants do not do more than state that there is no excuse for the delay; they do not claim to have suffered prejudice.

Defendants cite no legal authority to guide this Court in its determination of what delay is excusable. Although decided in a different context, it is helpful to look to the Supreme Court's analysis of excusable neglect in cases of filing delay in Pioneer Inv. Serv. Co. v. Brunswick Assocs. Ltd. Partnership, 507 U.S. 380, 395 (1993):

[In] determining what sorts of neglect will be considered "excusable," we conclude that the determination is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission. These include, as the Court of Appeals found, the danger of prejudice to the debtor, the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith.

Similarly, the matter before this Court calls for an equitable determination, taking into account all relevant circumstances. Defendants do not claim prejudice, nor that the delay will have a significant impact on the judicial proceedings, nor that Plaintiffs acted in bad faith.

In the absence of even a claim of prejudice, this Court does not perceive how delay alone provides a basis for denying a motion for reconsideration when controlling law has changed. Defendants cite no authority for their position that denial of reconsideration is compelled by the lack of excuse for the delay. Because there is no dispute that there has been an intervening change in the controlling law, Plaintiffs' motion for reconsideration of this Court's Order of June

29, 2000, dismissing with prejudice the First and Second Claims of the Amended Class Action Complaint, will be granted.

In contrast, with regard to the motion for reconsideration of this Court's Order of June 6, 2001, Plaintiffs cite no intervening change in controlling law. Plaintiffs do cite proposed Treasury regulations, since withdrawn, and a number of district court decisions, some in accord and some not. Plaintiffs do not cite any circuit cases whatever, no less Third Circuit or Supreme Court authority.

As there does not appear to have been an intervening change in controlling law, this Court is bound by the law of the case doctrine, which governs the disposition of this motion. This doctrine militates against re-deciding issues of law previously resolved in the same case, either expressly or by implication. Public Interest Research Group of N.J., Inc. v. Magnesium Elektron, Inc., 123 F.3d 111, 116 (3d Cir. 1997). As the Third Circuit has indicated, it is only when there are "extraordinary circumstances," such as an intervening change of controlling law, that a court's reconsideration of an issue decided earlier in the course of litigation is warranted. Id. at 116-17. In the absence of a showing of extraordinary circumstances, the law of the case doctrine bars re-deciding the issue of the dismissal of the Ninth Claim of the Second Amended Class Action Complaint, and Plaintiffs' motion for reconsideration of this Court's Order of June 6, 2001 will be denied.

For the reasons stated above,

IT IS on this 12th day of December, 2006:

ORDERED that Plaintiffs' motion for reconsideration (Docket Entry No. 287) is **GRANTED IN PART**, as to this Court's Order of June 29, 2000, dismissing with prejudice the First and Second Claims of the Amended Class Action Complaint; and it is further

ORDERED that this Court's Order of June 29, 2000 (Docket Entry No. 62) is hereby **VACATED IN PART** as to the dismissal of the First and Second Claims of the Amended Class Action Complaint; and it is further

ORDERED that Plaintiff's motion for reconsideration (Docket Entry No. 287) is **DENIED IN PART**, as to this Court's Order of June 6, 2001.

s/ Stanley R. Chesler
Stanley R. Chesler, U.S.D.J.