UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF OKLAHOMA

CHAMBERS OF
WAYNE E. ALLEY
JUDGE

January 2, 1991

OKLAHOMA CITY 73102

To Oklahoma Lawyers:

For some reason motions to reconsider rulings on pretrial motions in civil cases are on the rise, to the point where they seem to flow in almost automatically. Is there some misapprehension widely held in the bar that our court, in ruling on a motion after it is fully briefed, is just hitting a fungo? Many of the motions have as their tenor: 'Aw come on, give us a break,' or 'You ruled against us so *ipso facto* you were wrong,' or 'You just didn't understand the issue,' or its variant 'You are just so stupid that you didn't understand the issue.'

These paraphrased examples misconstrue the office of a motion for reconsideration. The right and wrong ways to construe this proper office are presented in portions of a recent order set out below.

Wayne Alley

WAYNE E. ALLEY
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

Plaintiff, v. Defendant.
No. CIV-90- -A

ORDER

On September 28, 1990, the Court granted partial summary judgment to plaintiff on the issue of the priority of two of three insurance policies. The parties had agreed that one policy was primary, and so only the priority of the two other policies was at issue. The Court set out its reasoning and the law on which it relied in a thirteen-page Order. Defendant has now moved the Court, in essence, to vacate the grant of partial summary judgment to plaintiff, and to reconsider granting summary judgment to defendant. For the reasons stated below, the Court emphatically denies defendant's motion.

Initially, the Court notes with dismay the alarming practice and regularity with which motions to reconsider are filed after a decision unfavorable to a party's case. This trend has been noticed not only by this judge, but by other judges within the Western District of Oklahoma as well. The Court has expressed its displeasure before, and will continue to do so, with what the attorneys apparently believe to be a "second chance" at a decision in their favor.

As this Court has stated, "despite what [defendant] appears to think, this Court's opinions are not intended as mere first drafts, subject to revision and reconsideration at a litigant's pleasure. Motions such as this reflect a fundamental misunderstanding of the limited appropriateness of motions for reconsideration. . . ." citing *Quaker Alloy Casting Co. v. Gulfco Industries, Inc.*, 123 F.R.D. 282, 288 (N.D. Ill. 1988).

The motion to reconsider was also reviewed by the court in *Above The Belt, Inc. v. Mel Bohannan Roofing, Inc.*, 99 F.R.D. 99 (E.D. Va. 1983), where the appropriate circumstances for its use were considered. "The motion to reconsider would be appropriate where, for example, the Court has patently misunderstood a party, or has made a decision outside the adversarial issues presented to the Court by the parties, or has made an error not of reasoning but of apprehension. A further basis for a motion to reconsider would be a controlling or significant change in the law or facts since the submission of the issue to the Court. Such problems rarely arise and the motion to reconsider should be equally rare." 99

F.R.D. at 101. Then, finding that the motion to reconsider filed by the plaintiff was outside the proper scope of the motion, the court dismissed it.

Further commentary on the motion to reconsider was made by the court in *Settino v. City of Chicago*, 642 F. Supp. 755, 759 (N.D. Ill. 1986). "Plaintiffs' counsel betray an all-too-prevalent misconception of the litigation process, in which the knocked-out combatant seeks to portray what has taken place as a mere warmup rather than as the main event. This Court has often had occasion to point out the truly restricted role of the motion for reconsideration - motions mentioned nowhere in the Federal Rules of Civil Procedure, but erroneously perceived by some lawyers as matters of routine in every lawsuit."

Defendant has raised absolutely nothing new — no new law and no new fact — and its time would be better spent briefing the issues thoroughly and correctly the first time. Given the vacuous nature of defendant's motion to reconsider, one can only be led to suspect that such a motion is motivated in no small part by defense counsel's timesheet. The Court believes this motion to reconsider to be an excellent example of counsel's failure to identify the "main event" described in *Settino*.

For this reason, counsel are ordered to show cause in writing no later than November 9, 1990 why costs and attorney's fees of their motion to reconsider should not be assessed against them under 28 U.S.C. §1927 for vexatiously multiplying the litigation. It is so ordered this ____ day of October, 1990.

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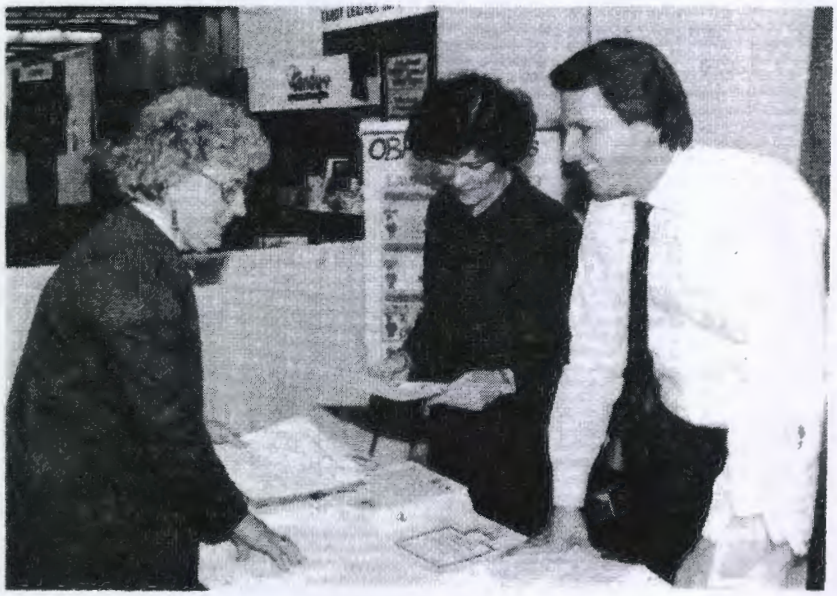
BOOTH AT CONVENTION — Members of the OBA Law Related Education and Law Day Committees staffed a booth during the Annual Oklahoma Education Association meeting in Oklahoma City. James E. Golden, Jr., (right) Oklahoma City, Chairperson of the OBA/LRE Committee, and Sally Spencer, Oklahoma City, member of the OBA Law Day Committee, assist a teacher in selecting educational materials provided by the Association.



OFFICIAL ROSTER CHANGES MUST BE COMMUNICATED IN WRITING

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