UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

MICHAEL GESLER, et al. PLAINTIFFS

v. CIVIL ACTION NO. 3:99CV-464-S

FORD MOTOR COMPANY DEFENDANT

MEMORANDUM OPINION

This matter is before the Court on the motion of the Defendant, Ford Motor Company ("Ford"), to reconsider our order denying its motion for summary judgment. For the reasons set forth below, we will deny this motion be separate order entered this date.

FACTS and PROCEDURAL HISTORY

This case arises out of an accident which allegedly occurred during the demolition and replacement of the Phosphate/E-Coat System ("E-Coat System") at Ford's Louisville Assembly Plant ("LAP"). The relevant facts are detailed in our previous memorandum opinion regarding Ford's motion for summary judgment. In that order, we rejected Ford's argument that it acted as a "contractor" within the meaning of Kentucky's Workers' Compensation Act. *See* Ky. Rev. Stat. Ann. § 342.610 (2) (Michie 1997). The specific issue was whether the demolition and replacement of the E-Coat System was a "regular or recurrent part" of Ford's work. We found that Ford was not entitled to summary judgment on that issue.

Ford has moved to reconsider our ruling citing two cases which it contends we did not fully

address: *Fireman's Fund Insurance v. Sherman & Fletcher*, 705 S.W.2d 459 (Ky. 1986) and *Daniels v. Louisville Gas and Elec. Co.*, 933 S.W.2d 821 (Ky. App. 1996). It claims that these cases demonstrate that even infrequent, large scale projects are considered to be regular and recurring parts of one's business so long as the work would occur again at fixed intervals.

DISCUSSION

Motions for reconsideration are extraordinary in nature and so should only be granted sparingly. *Plaskon Electronic Materials v. Allied-Signal*, 904 F.Supp. 644, 669 (N.D.Ohio 1995)(citing *In Re August, 1993 Regular Grand Jury*, 854 F.Supp. 1403, 1406 (S.D.Ind. 1994) and *Bakari v. Beyer*, 870 F.Supp. 85, 88 (D.N.J. 1994)). There are three basic situations in which a court will reconsider its order: 1) there has been an intervening change in the controlling law, 2) there is new evidence which has become available, and 3) there is a need to correct clear legal error or to prevent manifest injustice. *Id*. (citing *Bermingham v. Sony Corp. of America, Inc.*, 834, 856 (D.N.J. 1992)). The court, in order to promote finality of decisions and judgments, should not consider such a motion when the moving party merely disagrees with the court's decision and attempts to reorganize and refocus its previous evidence and legal analysis. *Id*.

In this instance, Ford does not cite a change in the law or new evidence. Although this motion appears to be a reorganization and refocusing of its legal analysis, we note that Ford argues, essentially, that we have committed clear legal error. We disagree.

In *Sherman & Fletcher*, the accident victim was an employee of a subcontractor engaged to do framing work on a large construction project. 705 S.W.2d at 460. The court found, "the business or occupation of [the defendant] was building construction, and rough carpentry is work

of a kind which is a regular or recurrent part of the work of the business of building construction." *Id*. at 462. In other words, *Sherman & Fletcher* stands for the rather straight-forward proposition that building contractors regularly require rough carpentry work in framing the buildings they construct.

The analogy to this case, however, does not hold up. Ford is engaged in the business of manufacturing and selling automobiles. This process included an E-Coat System to protect the automobiles from rust. Thus, a person engaged in the process of "E-Coating" automobiles, whether employed by Ford or a subsidiary, would probably be engaged in a regular or recurring part of Ford's business. However, the Plaintiffs were employed to demolish the outdated E-Coat System and to help construct a replacement system. Ford did not demonstrate to our satisfaction that this specific activity was a regular or recurring part of its business.

Similarly, *Daniels* is distinguishable. In *Daniels*, the plaintiff was employed by a subcontractor to conduct emissions testing on LG&E's coal-fired generators as required by the EPA. 933 S.W.2d at 822. In holding that this work was regular and recurrent, the court focused primarily on the fact that the EPA mandated that it be done each time that LG&E installs or upgrades its pollution control equipment. *Id*. at 823-24. Also, that testing had been conducted *on the same facility* ten times in less than thirty years. *Id*. at 823. This particular E-Coat System at Ford had not been replaced or significantly revised for fifteen years, and its demolition and replacement is not required by law.

CONCLUSION

For the reasons stated, we will deny Ford's motion to reconsider by a separate order entered this date.

This _____ day of _____, 2001.

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CHARLES R. SIMPSON III, CHIEF JUDGE
UNITED STATES DISTRICT COURT

cc: Counsel of Record

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ORDER

For the reasons set forth in the memorandum opinion entered this date and the Court being otherwise sufficiently advised, **IT IS HEREBY ORDERED AND ADJUDGED** that the Defendant's motion to reconsider is **DENIED**.

IT IS SO ORDERED this _____ day of _____, 2001.

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CHARLES R. SIMPSON III, CHIEF JUDGE
UNITED STATES DISTRICT COURT

cc: Counsel of Record