

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

THE CHASE MANHATTAN BANK, :
As Collateral Agent, :
 :
Plaintiff, :
 :
v. :
 :
IRIDIUM AFRICA CORPORATION; IRIDIUM :
CANADA, INC.; IRIDIUM CHINA (HONG KONG) :
LTD.; IRIDIUM INDIA TELECOM LTD.; IRIDIUM :
MIDDLE EAST CORPORATION; IRIDIUM :
SUDAMERICA CORPORATION; KHRUNICHEV :
STATE RESEARCH AND PRODUCTION SPACE :
CENTER; KOREA MOBILE TELECOMMUNICATIONS : Civil Action No:
CORPORATION; LOCKHEED MARTIN CORPORATION; : 00-564 JJF
MOTOROLA, INC.; NIPPON IRIDIUM (BERMUDA) :
LTD.; PACIFIC ELECTRIC WIRE & CABLE CO., :
LTD.; RAYTHEON COMPANY; SPRINT IRIDIUM, :
INC.; STET-SOCIETÁ FINANZIARIA TELEFONICA :
PER AZIONI; THAI SATELLITE :
TELECOMMUNICATIONS CO., LTD.; and VEBACOM :
HOLDINGS, INC., :
 :
Defendants. :

Stephen E. Jenkins, Esquire and Regina A. Iorii, Esquire of ASHBY & GEDDES, Wilmington, Delaware.
Of Counsel: Barry R. Ostrager, Esquire, Mary Kay Vyskocil, Esquire, and David J. Woll, Esquire of SIMPSON THACHER & BARTLETT, New York, New York.
Attorneys for Plaintiff The Chase Manhattan Bank, as Collateral Agent.

John S. Spadaro, Esquire of MURPHY SPADORO & LANDON, Wilmington, Delaware.
Of Counsel: Robert D. Mercurio, Esquire and Robert J. Malatak, Esquire of WINDELS MARX LANE & MITTENDORF, LLP, New York, New York.
Attorneys for Defendant Pacific Electric Wire & Cable Co., Ltd.

MEMORANDUM OPINION

July 8, 2004

Wilmington, Delaware

Farnan, District Judge.

Presently before the Court are two motions, The Chase Manhattan Bank's ("Chase") Motion To Reconsider That Portion Of The Court's February 13, 2004, Order Which Denied Chase's Request That Pacific Electric Wire & Cable Co. ("PEWC") Be Required To Post A Bond (D.I. 898), and PEWC's Motion For An Extension Of Time To Oppose Chase's Motion To Reconsider. (D.I. 903.) For the reasons set forth below, the Court will deny PEWC's Motion and grant Chase's Motion.

BACKGROUND

In the February 13, 2004, Opinion and Order (D.I. 892, 893) (the "February 13 Opinion"), the Court overruled Chase's objections to the Magistrate Judge's Report and Recommendation setting aside the default judgment entered against PEWC. Also in the February 13 Opinion, the Court denied Chase's request that the Court condition the set aside on PEWC's posting of a bond in the amount of the default judgment.

I. PEWC's Motion for an Extension to File an Opposition to Chase's Motion to Reconsider (D.I. 903)

PEWC's attorneys request an extension of time to file an opposition brief to Chase's Motion for Reconsideration because of difficulties they experienced in gathering information about PEWC's finances during a power struggle for control between PEWC's board of directors. PEWC maintains that Chase will not be unfairly prejudiced by any such extension. Chase responds that it will be prejudiced by

any further delay in resolving its Motion for Reconsideration because of the apparent precarious financial condition of PEWC.

After consideration of the parties' arguments, the Court finds that PEWC has had ample time by which to address the matters raised. Accordingly, the Court will deny the Motion for an Extension to ensure against dilatory tactics by PEWC.

II. Motion for Reconsideration (D.I. 898)

A. Standard of Review

"As a general rule, motions for reconsideration should be granted 'sparingly.'" Stafford v. Noramco of Delaware, Inc., 2001 WL 65738 at *1 (D. Del. Jan. 10, 2001) (quoting Karr v. Castle, 768 F. Supp. 1087, 1090 (D. Del. 1991)). The purpose in granting motions for reconsideration is to "correct manifest errors of law or fact or to present newly discovered evidence." Harsco Corp. v. Zlotnicky, 779 F.2d 906, 909 (3d Cir. 1985) (citing Keene Corp. v. Int'l Fidelity Ins. Co., 561 F. Supp. 656, 665 (N.D. Ill. 1983)). Parties should remain mindful that a motion for reconsideration is not merely an opportunity to "accomplish [the] repetition of arguments that were or should have been presented to the court previously." Karr, 768 F. Supp. at 1093 (citing Brambles U.S.A., Inc. v. Blocker, 735 F. Supp. 1239, 1240-41 (D. Del. 1990)). However, a court should reconsider a prior decision if it overlooked facts or precedent that reasonably would have altered the result. Id. (citing Weissman v. Fruchtman, 124 F.R.D. 559, 560 (S.D.N.Y. 1989)).

B. Contentions

Chase contends that the Court's decision not to require PEWC to post a bond as a condition of setting aside the default judgment was in error. Chase maintains that a reconsideration is appropriate because there is both an error of fact and because new facts have developed demonstrating the financial problems and instability of PEWC. In addition, Chase contends that PEWC's evasive tactics in the past support the requirement that PEWC post a bond.

C. Decision

The Court concludes that new evidence has arisen that requires reconsideration of the decision refusing to order PEWC to post a bond. Rule 60(b) of the Federal Rules of Civil Procedure provides that a court may grant relief from a default judgment "upon such terms as are just." Fed. R. Civ. P. 60(b). Pursuant to Rule 60(b), courts may require that a defendant post a bond to secure the amount of the default judgment pending a trial on the merits. Wokan v. Alladin Int'l, Inc., 485 F.2d 1232, 1234 (3d Cir. 1973) (citing Thorpe v. Thorpe, 364 F.2d 692, 694 (D.C. Cir. 1966)); see also Charles Alan Wright & Arthur R. Miller, et al., 10A Federal Practice & Procedure § 2700 (noting that a court may ease the burden of reopening a default judgment by requiring the defaulting party to post a bond).

Chase has presented the Court with various news articles about PEWC that the Court views as strongly questioning PEWC's ability to satisfy a judgment entered against it in the future. A September 26,

2003, article reported that PEWC's chairman stepped down following PEWC's declaration of \$734.4 million in losses. (D.I. 897, Ex. F.) Further, on March 10, 2004, it was reported that PEWC would be delisted from the Taiwan Stock Exchange due to its failure to comply with disclosure requirements. (D.I. 921, Ex. A.) Moreover, in an affidavit submitted by PEWC, which included a September 30, 2003, financial statement, PEWC represented that it had assets totaling \$737,907,000 - which, as Chase noted, is approximately a 63% decrease from PEWC's earlier representation that it had assets totaling \$2.072 billion. In addition, PEWC's current ratio, calculated from the financial statements submitted by PEWC, is 0.6:1, which demonstrates that PEWC may have difficulty in covering the claims of short-term creditors with its current assets. See Charles R. Wright, Understanding and Using Financial Data: An Ernst & Young Guide for Attorneys 114 (2d ed. 1996).

Further supporting the requirement that PEWC post a bond is that its liability has already been determined by the Court. In the March 2, 2004, Memorandum Opinion and Order, the Court sustained Chase's objections to the Magistrate Judge's Report and Recommendation denying Chase summary judgment on its breach of contract claim. (D.I. 895.) And, as discussed in the February 13 Opinion, even if PEWC had transferred its interests in Iridium LLC to Pacific Asia Communications Ltd. ("Pacific Asia"), pursuant to the Agreement of Indirect Owner, PEWC contractually agreed to serve as the surety for

Pacific Asia's obligation to pay its RCC obligations to Chase upon a proper demand. (D.I. 892 at 4-5; D.I. 647, Tab 1 at Ex. D.)

Accordingly, PEWC may be responsible for the RCC obligation regardless of a transfer of its membership interests in Iridium LLC to Pacific Asia.

In sum, the Court is persuaded that newly discovered evidence and the grant of summary judgment against Defendants justifies reconsideration of the decision that PEWC not be required to post a bond as a condition of the setting aside of the default judgment entered against it on November 14, 2000.

CONCLUSION

For the reasons discussed, the Court will deny the Motion for an Extension filed by PEWC (D.I. 903) and grant the Motion for Reconsideration filed by Chase. (D.I. 898.)

An appropriate Order will be entered.

3) PEWC is ordered to post a bond for the amount of \$10,872,999.05, plus interest accruing at a rate of 6.241 percent from November 14, 2000.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE