

2021 WL 4220780

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United States District Court, N.D. Ohio, Eastern Division.

[Jennifer MILLER](#), Plaintiffs,

v.

Michael J. ANDERSON, et al., Defendants.

CASE NO: 5:20CV1743

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Signed 09/16/2021

Attorneys and Law Firms

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ORDER AND DECISION

[JOHN R. ADAMS](#), UNITED STATES DISTRICT JUDGE

*1 Pending before the Court are numerous motions filed by various parties and non-parties. The Court now reviews those motions.

Defendants filed a motion to dismiss the original complaint on October 9, 2020. Doc. 21. Given the intervention in this matter, that motion is DENIED AS MOOT.

On October 13, 2020, Leslie Katz moved for permissive intervention. Doc. 22. Given the intervention of the institutional investors and Katz' subsequent state court lawsuit, the motion to intervene is DENIED.

On October 30, 2020, Defendants moved to dismiss the amended complaint. Doc. 44. On June 17, 2021, Defendants moved to dismiss the intervenor's shareholder derivative complaint. Doc. 83.¹ The Court notes that Defendants now seek to dismiss a complaint that is substantively identical to the complaint filed in the Southern District of Ohio. On May 11, 2021, the judge presiding over that matter issued a thorough and comprehensive 44-page opinion denying the motion to dismiss. This Court has carefully reviewed that order and finds no basis to arrive at any other conclusion. Accordingly, the Court hereby adopts the reasoning espoused by the Southern District, and the motions to dismiss (Docs. 44 and 83) are DENIED.

Finally, Defendant First Energy Corp. seeks to stay these proceedings for six months to allow its "newly-formed Special Litigation Committee" the time to evaluate this lawsuit and determine whether the company should pursue those claims on its own. Doc. 96. Upon review, the motion is DENIED.

The SLC makes much of the fact that discovery has not yet commenced in this matter and therefore little prejudice will accrue through a six-month delay. However, the SLC ignores that this matter was filed on August 7, 2020. Before the motion to stay was filed – nearly more than 11 months after the complaint – 95 other filings occurred in the matter. Undoubtedly, hundreds of hours have been devoted to briefing the myriad issues that were raised before even a case management conference could be conducted in this matter.

Moreover, the SLC offers no genuine justification for the delay in its creation. This matter, along with the companion cases in the Southern District, have now been pending for more than a year. In fact, the SLC was not formed until July 1, 2021 – more than five weeks after the Southern District of Ohio denied FirstEnergy's motion to dismiss the derivative action located there. By all appearances, FirstEnergy was willing to go without an SLC up until it realized these matters would not be dismissed at the pleadings stage. As a result, the Court will not stay the matter an additional six months to allow "investigation" of the claims. The motion to stay is DENIED.

A case management conference will be scheduled in the immediate future via separate order of the Court.

***2 IT IS SO ORDERED.**

All Citations

Slip Copy, 2021 WL 4220780

Footnotes

- ¹ Numerous individual defendants moved to join in the motion. Docs. 85, 86, 87, and 88. Those motions are GRANTED. Similarly, the motions to join in later briefing of that motion (Docs. 104, 105, 107, and 109) are GRANTED.