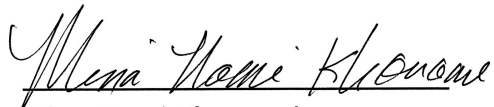


This document has been electronically entered in the records of the United States Bankruptcy Court for the Southern District of Ohio.

IT IS SO ORDERED.

Dated: February 3, 2026




Mina Nami Khorrami
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

In re:	:	Case No. 91-10100
	:	Chapter 11
Eagle-Picher Industries, Inc., et al.,	:	Judge Mina Nami Khorrami
	:	(Jointly Administered)
Debtors. ¹	:	

**ORDER DENYING MOTION OF PAFUNDI TO ALLOW
REVIEW OF A MALIGNANCY CLAIM (DKT. NO. 7108)**

I. Introduction

Before the Court is the *Motion of Pafundi to Allow Review of a Malignancy Claim* (the “Motion”) (Dkt. No. 7108), filed by Ted Joseph Pafundi (the “Movant”) on October 15, 2025.²

¹ The Debtors are Eagle-Picher Industries, Inc., Daisy Parts, Inc., Transicoil Inc., Michigan Automotive Research Corporation, EDI, Inc., Eagle-Picher Minerals, Inc., and Hillsdale Tool & Manufacturing Co. (collectively, the “Debtors.”).

² The Motion is opposed by the Eagle-Picher Industries, Inc. Personal Injury Settlement Trust (the “Trust”). Opp’n, Dkt. No. 7109. The Movant filed a response in support of the Motion. Movant’s Resp., Dkt. No. 7113.

The Movant is the son of Joseph Pafundi (“Mr. Pafundi”) who settled his non-malignancy claim in 2001 with the Trust. After the settlement, Mr. Pafundi was diagnosed with mesothelioma and he passed away in 2005.

The Court held a telephonic pretrial hearing to discuss the Motion on January 14, 2026 (the “Hearing”). The Movant appeared *pro se* and the Trust appeared through its counsel, Timothy Haggerty and Jason Rubinstein. At the Hearing, the Court indicated that the issues and arguments raised in the Motion had all been considered and resolved previously by Judge Humphrey and that there is no new basis to allow the Motion. The Court notified the parties that the matter will be considered based on the pleadings filed by the parties, without the need for further hearing.³ As discussed below, the Motion simply repeats arguments that the Court had rejected and therefore the Motion is barred by the doctrine of claim preclusion. And the Motion fails to state grounds to vacate the prior decision of the Court under Federal Rules of Civil Procedure 59 and 60.

II. Background

Prior to filing the Motion, on August 26, 2024, the Movant filed the *Motion of Pafundi to Allow Review of a Malignancy Claim* (the “Prior Motion”) (Dkt. No. 7060). The Prior Motion was denied by Judge Humphrey after full consideration on April 28, 2025. *In re Eagle-Picher Indus., Inc.*, 669 B.R. 590 (Bankr. S.D. Ohio 2025) (the “SJ Order”).⁴

Prior to issuing the SJ Order, the Court determined that it would evaluate the Prior Motion using the summary judgment process established by Rule 56 of the Federal Rules of Civil Procedure (the “Civil Rules”), which is made applicable in contested matters in bankruptcy by

³ After the Hearing, the Movant sent a letter to the Court via email to the Court’s staff. The Court directed that this letter be filed on the docket. Letter to Court, Dkt. No. 7114. The letter reiterates the arguments that the Movant made in the Motion and at the Hearing, and stresses that he seeks to invalidate a release given to the Trust by the Movant’s father in 2001 (the “Release”) and to have the Trust disregard the Release. Letter to the Court 2, Dkt. No. 7114.

⁴ The case was reassigned from Judge Humphrey to the current Judge on April 29, 2025, considering Judge Humphrey’s impending retirement. *Order Transferring Case*, Dkt. No. 7096.

Rule 9014(c) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”). *Eagle-Picher*, 669 B.R. at 594. The Court therefore allowed the parties a period for discovery, followed by the opportunity to submit evidence and supplemental briefing. *Id.*

The SJ Order recounts in significant detail the history of the Debtors, their bankruptcy cases, the Trust, the procedures established by the Trust for handling claims, the details of the Movant’s claim, and the proceedings on the Prior Motion. *Eagle-Picher*, 669 B.R. at 594-600. The Court will not restate its reasoning in the SJ Order, however, in the Prior Motion, the Movant sought an order compelling the Trust to process a claim for Mr. Pafundi without regard for the Release. Mr. Pafundi signed the Release upon the advice of his counsel in 2001 as part of the resolution of a non-malignancy claim that Mr. Pafundi had filed with the Trust. *Eagle-Picher*, 669 B.R. at 598.⁵

Judge Humphrey, in considering the Prior Motion first ruled that the Movant had failed to show standing. *Eagle-Picher*, 669 B.R. at 601-02. On the merits, the Court held that “[a]ll the evidence available supports that Mr. Pafundi's claim was handled in an appropriate manner following the Trust's mandatory procedures and was processed similarly to thousands of other claims over the decades.” *Id.* at 604. Further, the Court held that the Release was valid: “Mr. Pafundi had experienced counsel, there is no evidence he was deceived by the Trust, nor is there any evidence that the Trust played any role in his ultimate decision to choose the individualized review instead of the discounted cash option. Mr. Pafundi was responsible for the release that he

⁵ The Debtors’ *Third Amended Consolidated Plan of Reorganization* (the “Plan”) (Dkt. No. 5453) was confirmed on November 18, 1996. Order on Confirmation of Plan, Dkt. No. 5950; *Eagle-Picher*, 669 B.R. at 594. Under the confirmed Plan, the Trust was established for the primary purpose of resolving asbestos personal injury claims in accordance with the Plan. *Id.* at 594-95. As a result, the confirmation order created a permanent injunction against all asbestos personal injury claims against the Debtors, requiring such claims to be processed pursuant to the Trust provision. Mr. Pafundi settled his non-malignancy claim under the Trust. *Id.* at 595.

freely signed.” *Id.* at 604.⁶ Finally, the Court ruled that even without the Release, any malignancy claim arising out of Mr. Pafundi’s passing in 2005 was time-barred under any potentially relevant statute of limitations. *Id.* at 604-05 (“All the possibly relevant statutes of limitation have long passed.”). Accordingly, the Court granted summary judgment to the Trust and denied the Prior Motion. *Id.* at 605-06.

The Movant did not appeal. The time for such an appeal expired on May 12, 2025, fourteen days after entry of the SJ Order on April 28, 2025. Fed. R. Bankr. P. 8002(a). Instead, on October 15, 2025 – 170 days after the SJ Order was entered – the Movant filed the Motion, once again asking the Court to compel the Trust to process a malignancy claim without regard to the Release.

III. Contentions of the Parties

The Motion repeats the factual allegations of the Prior Motion, and it seeks the identical relief – for the Court to direct the Trust to consider a malignancy claim for Mr. Pafundi without regard for the Release. The Movant acknowledges the Prior Motion was denied after consideration by Judge Humphrey but asserts that the SJ Order “did not address the validity of the full release. Therefore, I am filing this motion asking for the court’s review of the Trust’s use of the full release to deny what is clearly a valid claim.” Mot. 1-2, Dkt. No. 7108.⁷

The Trust asserts that the SJ Order “rejected every argument that Movant advanced,” including the arguments based on the Release. Opp’n 10-14, Dkt. No. 7109. The Trust therefore asserts that the Motion is barred by the doctrines of claim preclusion, issue preclusion, and the law of the case. *Id.* The Trust further contends that the Motion does not state a valid basis for reconsideration of the SJ Order under Bankruptcy Rules 9023 or 9024, which respectively

⁶ The individualized review option chosen by Mr. Pafundi, as opposed to the discounted cash payment option, required a release. *Id.* at 596.

⁷ At the Hearing, the Court pointed out that the validity of the Release was addressed in the SJ Order. *See Eagle-Picher*, 669 B.R. at 603-05. The Movant stated that he believed that the denial of his claim was unfair and unjust.

incorporate Civil Rules 59 and 60. *Id.* at 15. The Trust finally asks for this Court to order that the Movant obtain leave of the Court before making any further filings regarding this matter. *Id.* at 19.

IV. Jurisdiction

Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1334(b) and the Amended General Order of Reference 05-02 entered by the United States District Court for the Southern District of Ohio, referring all bankruptcy matters to this Court. Because the Motion asks for an order directing the Trust to review a malignancy claim notwithstanding the Release signed by Mr. Pafundi, the Motion concerns the administration of the Trust, which is governed by the Plan. Thus, this matter is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (O). Venue is proper under 28 U.S.C. § 1409(a).

V. Analysis

Because of the similarity in the claims asserted and the facts alleged in the Motion and the Prior Motion, the Court will begin by analyzing whether the Motion is barred by the SJ Order under the doctrine of claim preclusion. The Court will then consider whether the Motion states valid grounds for relief from the SJ Order under Civil Rules 59 or 60, as made applicable here under Bankruptcy Rules 9023 and 9024, respectively.

A. The Motion is Barred By Claim Preclusion

Claim preclusion (sometimes called *res judicata*) prevents “successive litigation of the very same claim.” *Taylor v. Sturgell*, 553 U.S. 880, 892, 128 S. Ct. 2161, 171 L. Ed. 2d 155 (2008) (footnote omitted). Actions involve the same claim if they “arise from the same transaction” or “involve a common nucleus of operative facts.” *Lucky Brand Dungarees, Inc. v. Marcel Fashions Grp., Inc.*, 590 U.S. 405, 412, 140 S. Ct. 1589, 1594, 206 L. Ed. 2d 893 (2020) (citation modified).

“The critical consideration is operative factual overlap between the claims.” *Trs. of Operating Eng'rs Loc. 324 Pension Fund v. Bourdow Contracting, Inc.*, 919 F.3d 368, 384 (6th Cir. 2019) (citation modified).

Claim preclusion is not a mere rule of practice or procedure, but rather “is a rule of fundamental and substantial justice, of public policy and private peace, which should be cordially regarded and enforced by the courts.” *Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 401, 101 S. Ct. 2424, 2429, 69 L. Ed. 2d 103 (1981). “Public policy dictates that there be an end of litigation; that those who have contested an issue shall be bound by the result of the contest, and that matters once tried shall be considered forever settled as between the parties.” *FCA US, LLC v. Spitzer Autoworld Akron, LLC*, 887 F.3d 278, 288 (6th Cir. 2018) (quoting *Baldwin v. Traveling Men's Ass'n*, 283 U.S. 522, 525, 51 S. Ct. 517, 75 L. Ed. 1244 (1931)).

The Motion and the Prior Motion advance the same arguments and are based on the same facts. The parties and their claims are all the same. While the Movant argues that the SJ Order did not address the validity of the Release, a simple review of the SJ Order guides the Court to the contrary conclusion. The SJ Order held that the Release was valid, that it barred the relief Movant sought, and that the Movant had failed to establish that the Trust and its trustees had done “anything other than to observe their fiduciary duties to the Trust and strictly follow the mandatory procedures that govern the Trust.” *Eagle-Picher*, 669 B.R. at 605. The Movant’s disagreement with the SJ Order does not create an exception to preclusion. *Wheeler v. Dayton Police Dep’t*, 807 F.3d 764, 767 (6th Cir. 2015) (“And claim preclusion at all events, bitter though the medicine may be, applies to all final judgments, even those with which a party disagrees.”) (citation omitted).

The remedy in such a situation is to appeal, not to refile the same claim, arguing that the first decision was wrong. *Id.* The Motion is therefore barred by claim preclusion.⁸

B. The Motion Does Not Establish Grounds For Relief Under Bankruptcy Rules 9023 or 9024

Although the Motion does not explicitly invoke Civil Rules 59 or 60, the Court has considered whether the Motion states grounds for relief from the SJ Order under Civil Rules 59 and 60. But neither rule warrants relief here. Bankruptcy Rule 9023 requires that a motion seeking relief under Civil Rule 59 must be filed within fourteen days of the entry of that order. Here, the Motion was filed 170 days after the SJ Order was entered, and it is therefore untimely. Moreover, Rule 59 should not be used simply to repeat or rehash arguments already made and rejected. *Watts v. Lyon Cnty. Ambulance Serv.*, 23 F. Supp. 3d 792, 815 (W.D. Ky. 2014) (“[A] Rule 59 motion should not be used either to reargue a case on the merits or to reargue issues already presented.”). In this case, the Motion simply reasserts the same arguments that were rejected in the SJ Order, and therefore relief from the SJ Order is not appropriate under Rule 59.

Likewise, a motion under Rule 60, although it might have been filed timely here, is not to be used to relitigate issues that have already been considered and rejected. *Long v. Morgan*, 56 F. App’x 257, 258 (6th Cir. 2003) (“A Rule 60(b) motion must be denied if, as here, it is merely an attempt to relitigate the case.”) (citation omitted); *see also O’Connel v. Miller*, 8 F. App’x 434, 435 (6th Cir. 2001). The Sixth Circuit has held that Rule 60 cannot be used as a substitute for an appeal. *GenCorp v. Olin Corp.*, 477 F.3d 368, 373 (6th Cir. 2007). Put differently, “mere dissatisfaction with a Court’s ruling is an inappropriate and insufficient ground to support a motion for reconsideration. This doctrine reflects the sound policy that litigation should not be subject to

⁸ Because the Motion is barred by claim preclusion, the Court need not address the Trust’s alternative arguments based on issue preclusion and the law of the case doctrine.

instant replays but rather decided and put to rest.” *Libertarian Party of Ohio v. Wilhem*, 465 F. Supp. 3d 780, 785 (S.D. Ohio 2020) (citation modified). The Movant’s filings and his argument at the Hearing indicate that he disagrees with the SJ Order and wishes to have it reconsidered. Relief is thus not appropriate under Civil Rules 59 or 60(b).⁹

C. The Court Declines to Impose a Requirement for Prefiling Review Upon the Movant.

The Trust has further requested that the Court impose a requirement upon Mr. Pafundi that he not be permitted to make further filings in this case unless he is granted leave of Court to do so. Opp’n 19, Dkt. No. 7109. At the Hearing, the Court requested that the Movant not submit further filings that merely restate the same claims which have already been rejected. The Movant expressed that he understood. Accordingly, the Court will deny the request of counsel for the Trust without prejudice.¹⁰ The Court, however, advises the Movant that although parties representing themselves are given some leniency, “*pro se* litigants are not exempted from the duties of Rule 9011, including the obligation to put forth nonfrivolous arguments.” *In re Jones*, 632 B.R. 138, 147 (Bankr. S.D. Ohio 2021).

VI. Conclusion

For the reasons stated in this Order, the Motion is denied.

⁹ Civil Rule 60(a) authorizes relief where a court has overlooked an argument. *Waggoner v. Ohio Cent. R.R.*, No. 2:06-CV-250, 2007 U.S. Dist. LEXIS 95176, at *4 (S.D. Ohio Dec. 31, 2007). But that is not what happened here. The SJ Order fully addressed the Movant’s arguments, including his arguments about the Release. *Eagle-Picher*, 669 B.R. at 603-05.

¹⁰ The Court reiterates to the Movant that he should not contact Court personnel via email in order to present substantive arguments, a caution that has been provided to the Movant. *Eagle-Picher*, 669 B.R. at 599. Any future filings the Movant believes may be appropriate must follow the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of Ohio (“LBR”). “Filings may be made over the counter at the clerk’s office, by mailing, or by courier service. **Filings or other papers received on a court facsimile (fax) machine, by email, or by any other method will not be accepted for filing.**” LBR 5005-1(a) (emphasis added).

IT IS SO ORDERED.

copies to: Default List

Jason Charles Rubinstein (via ECF)

Timothy M. Haggerty (via ECF)

(Counsel for the Trustees of the Eagle-Picher Industries, Inc. Personal Injury Settlement Trust)