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KERR-McGEE CHEMICAL, LLC,	)	
a Delaware limited liability company,	)	
and KERR-McGEE CHEMICAL	)	
WORLDWIDE, LLC, as successor to	)	
KERR-McGEE CORPORATION,	)	
a Delaware Corporation,	)	
	)	CIVIL ACTION
Plaintiffs,	)	
	)	FILE NO. 03-191-GMS
v.	)	
	)	
KEMIRA PIGMENTS OY,	)	
a Finnish private limited liability	)	
company and	)	
KEMIRA OYJ,	)	
a Finnish public limited liability	)	
company,	)	
	)	
Defendants.	)	
	)	

## I. INTRODUCTION

Presently before the court is the plaintiffs’ motion for reconsideration of the court’s decision to compel arbitration. The plaintiffs, Kerr-McGee Chemical, LLC, and Kerr-McGee Chemical Worldwide, LLC, (collectively “Kerr-McGee”), argue that reconsideration and vacatur are appropriate for two reasons: one, Kerr-McGee claims that the defendants, Kemira Pigments OY and Kemira OYJ (collectively “Kemira”), have repudiated their prior position that the fraud claim is arbitrable; and, two, the court failed to analyze the “Jurisdiction and Consent to Service” clause in the contract. (D.I. 54). For the reasons stated below, the court concludes that there is no basis for reconsideration.

## **II. STANDARD OF REVIEW**

As a general rule, motions for reconsideration should be granted only "sparingly." *Karr v. Castle*, 768 F. Supp. 1087, 1090 (D. Del. 1991). In this district, these types of motions are granted only if it appears that the court has patently misunderstood a party, has made a decision outside the adversarial issues presented by the parties, or has made an error not of reasoning, but of apprehension. *See, e.g., Shering Corp. v. Amgen, Inc.*, 25 F. Supp. 2d 293, 295 (D. Del. 1998); *Brambles USA, Inc. v. Blocker*, 735 F. Supp. 1239, 1240 (D. Del. 1990) (citing *Above the Belt, Inc. v. Mel Bonhannan Roofing, Inc.*, 99 F.R.D. 99 (E.D. Va. 1983)); *see also Karr*, 768 F. Supp. at 1090 (citing same). Moreover, even if the court has committed one of these errors, there is no need to grant a motion for reconsideration if it would not alter the court's initial decision. *See Pirelli Cable Corp. v. Ciena Corp.*, 988 F. Supp. 424, 455 (D. Del. 1998). Finally, motions for reconsideration "should not be used to rehash arguments already briefed." *TI Group Automotive Systems, (North America), Inc. v. VDO North America L.L.C.*, 2002 U.S. Dist. LEXIS 1018, 2002 WL 87472 (D. Del. 2002) (citation omitted); *see also Quaker Alloy Casting v. Gulfco Industries, Inc.*, 123 F.R.D. 282, 288 (N.D. Ill. 1988) ("This Court's opinions are not intended as mere first drafts, subject to revision and reconsideration at a litigant's pleasure.").

## **III. BACKGROUND**

The present action arose out of a stock purchase transaction of a chemical plant in Savannah, Georgia, between the plaintiffs as purchasers and the defendants as sellers. The contract, memorialized by a Stock Purchase Agreement (the "Agreement"), was dated February 13, 2000, and signed by both parties. The Agreement contained, *inter alia*, a broad arbitration clause, a "Jurisdiction and Consent to Service" clause, and an "Exclusive Remedies" clause. In dispute is the

interpretation of these provisions, and their effect on the scope of the arbitration clause.

Almost one-and-one-half years after the closing of the Agreement, on September 28, 2001, the plaintiffs Kerr-McGee, then represented by both in-house counsel and an outside law firm, sent a letter to the defendants alleging various breaches of warranties and representations. The parties attempted to resolve the dispute and engaged in an informal exchange that took place over the course of the next year-and-one-half.

The informal negotiations were unsuccessful and, ultimately, on February 11, 2003, Kerr-McGee initiated arbitral proceedings against Kemira alleging claims for indemnification and breach of contract at the London Court of International Arbitration (“LCIA”) pursuant to the arbitration clause. On February 12, 2003, fearful that the statute of limitations would preclude any breach of contract claims, Kerr-McGee also filed a complaint in this court alleging substantially the same. However, Kerr-McGee’s then counsel acknowledged that it filed the complaint merely as a precaution to avoid the running of the statute of limitations. Counsel also indicated that out of courtesy and a genuine desire to resolve the dispute amicably Kerr-McGee would not effectuate service at that time. Continued negotiations proved unsuccessful and the parties began to discuss how to proceed with the arbitration.

On June 4, 2003, Kerr-McGee, under new representation, filed an amended complaint. In the amended complaint, Kerr-McGee reaffirmed its claims for indemnification and of breach of contract, and added an additional count alleging fraudulent misrepresentation. This time, the plaintiffs served the complaint.

The defendants filed a motion to compel arbitration and to dismiss or stay the case. Upon careful review of the Agreement and the relevant law, the court determined that the arbitration

clause governed the fraud claim and compelled arbitration accordingly.

### **III. DISCUSSION**

Kerr-McGee now moves for reconsideration claiming that Kemira has reversed its prior position that the fraud claim is arbitrable and represents to the LCIA that the fraud claim is not properly before it. Kerr-McGee also argues that reconsideration is appropriate because the court omitted from its analysis the relevancy of the Jurisdiction and Consent to Service clause. Kerr-McGee asserts that should the court reconsider the clause and its effect on the Agreement, the outcome would be different. The court disagrees for the following reasons.

The court's opinion and order of October 7, 2003, resolved the issue of whether the fraud claim was arbitrable. The court determined that in this case, the arbitration agreement governed the fraud claim. As a result, the court declined to consider the substantive validity of the fraud claim. The issue is properly before the LCIA. Thus, the defendants may exercise their right to challenge the validity of the claim before the arbitral panel. It is not inconsistent to argue that the fraud claim is arbitrable, and then to challenge its validity before the LCIA on other grounds. Such a challenge does not constitute a repudiation of the position Kemira took in support of its motion to compel arbitration.

The court also disagrees with Kerr-McGee's second argument that a more probative evaluation of the Jurisdiction and Consent to Service clause would yield a different understanding of the scope of the arbitration agreement. Were the court to reconsider this clause in more depth within the context of the contract as a whole, the outcome would be the same. In deciding to compel arbitration, the court deemed the jurisdiction clause to have little relevance on the issue of whether the fraud claim was arbitrable. The court reasoned that the purpose of the clause was to provide the

parties an exclusive forum in the event that the arbitral proceedings or award were challenged. The clause also anticipated the parties' potential need to seek injunctive relief or judicial intervention in support of the arbitration. Further analysis of the jurisdiction clause would not support a different conclusion. Moreover, given that the contract contained a merger clause, the court may not consider the progression of negotiations that Kerr-McGee argues are key to an accurate understanding of the parties' intent.

#### **IV. CONCLUSION**

For the foregoing reasons, the court will deny the plaintiffs' motion for reconsideration.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

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KERR-McGEE CHEMICAL, LLC,  
a Delaware limited liability company,  
and KERR-McGEE CHEMICAL  
WORLDWIDE, LLC, as successor to  
KERR-McGEE CORPORATION,  
a Delaware Corporation,

Plaintiffs,

v.

KEMIRA PIGMENTS OY,  
a Finnish private limited liability  
company and  
KEMIRA OYJ,  
a Finnish public limited liability  
company,

Defendants.

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CIVIL ACTION

FILE NO. 03-191-GMS

**ORDER**

IT IS HEREBY ORDERED that:

1. The plaintiffs' motion for reconsideration is DENIED.

Dated: February 24, 2004

Gregory M. Sleet  
UNITED STATES DISTRICT JUDGE