IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

CHEMTURA CORPORATION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. N14C-12-210 MMJ CCLD
	)	
CERTAIN UNDERWRITERS AT LLOYD'S, *et al.*,	)	
	)	
	)	
Defendants.	)	

Submitted: May 11, 2016
Decided: June 20, 2016

Upon Defendants' Motion for Reargument
DENIED

ORDER

David J. Baldwin, Esq., Michael B. Rush, Esq., Potter Anderson & Corroon LLP, Helen K. Michael, Esq., Erica J. Dominitz, Esq., Kilpatrick Townsend & Stockton LLP, Attorneys for Plaintiff Chemtura Corporation

John S. Spadaro, Esq., John Sheehan Spadaro, LLC, Stephen T. Roberts, Esq., Thomas J. Quinn, Esq., Alexander Mueller, Esq., Mendes & Mount, LLP, Attorneys for Defendants Certain Underwriters at Lloyd's London and Various London Market Insurance Companies

JOHNSTON, J.

1. By Opinion dated April 27, 2016, the Court granted Plaintiff's Motion to Determine Applicable Law Regarding Allocation and denied Defendants' Cross-Motion for Choice of Law Determination. The Court held:

> There are two locations at issue in this case: Arkansas and Ohio. The risk in question is the responsibility for the environmental remediation costs. Arkansas and Ohio have the most significant relationships to the environmental contamination and remediation. No other state has a more significant relationship under [Restatement (Second) of Conflict of Laws] Section 193.
>
> Insurers' reliance on case precedent involving nationwide products liability claims, and overwhelming corporate nexus, is misplaced. This case is an environmental dispute stemming from contamination at two locations. It is not a nationwide products liability case. Further, no state has such an overwhelming corporate nexus to overcome the law of the site presumption.
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> Therefore, the Court finds that Restatement (Second) of Conflict of Laws Section 193—the law of the site—applies. Additionally, considering the Section 188 and Section 6 factors, the Court finds that Arkansas and Ohio, the states with environmental contamination sites, have the most significant relationships.[1]

2. Defendants have moved for reargument. Defendants contend that the Court failed to consider an additional ten years of coverage, from 1965–1975, during which Uniroyal's principal place of business was New York. Defendants argue that the Court also failed to fully credit the twenty-year period that Uniroyal was headquartered in New York and the fact that Uniroyal made its insurance purchasing decisions from New York during this time period. Defendants argue

[1] *Chemtura Corp. v. Certain Underwriters at Lloyds*, C.A. No. N14C-12-210 MMJ CCLD (Del. Super. Apr. 27, 2016) (Trans. ID 58919422).

that if the Court had considered these New York contacts, it would have found that New York had the most significant relationship to the dispute. Further, Defendants argue that the Court improperly considered Chemtura's present status as a Delaware corporation, with places of business in Connecticut and Pennsylvania, when conducting its choice of law analysis.

3. Defendants also challenge the Court's finding that Arkansas is an "all sums" jurisdiction. Defendants argue that the case on which the Court relied, a twenty-one year old trial court ruling, has no precedential authority under Arkansas law. Defendants argue that whether Arkansas is an "all sums" jurisdiction is a legal determination that should await separate briefing.

4. Finally, Defendants argue that the Court overlooked critical facts in its collateral estoppel ruling. The Court's April 27, 2016 Opinion stated: "[C]overage was not sought for environmental clean-up at the Arkansas and Ohio sites [in Defendants' prior cases]."[2] However, Defendants argue, the Vertac site in Arkansas that is at issue in this case was specifically placed at issue in the prior litigation. Defendants contend that if the Court had considered that both Arkansas and Ohio law were potentially at issue in the prior litigation, it is likely that the Court would have found that Chemtura was collaterally estopped from opposing the application of New York law in this dispute.

[2] *Id.*

5. The Court recognizes that it failed to include in footnote 2 of its April 27, 2016 Opinion the coverage period from 1965–1975 with New York contacts. However, the Court did consider that coverage period in making its determination. The parties made extensive references to the full coverage period in briefing and in oral argument. Further, while the Court stated that Chemtura is presently incorporated in Delaware, that fact was not given undue weight in determining the most significant relationship to the dispute. In finding that there is no overwhelming corporate nexus to overcome the Section 193 law of the site presumption, the Court considered: (1) Uniroyal's contacts with New York from 1952–1975; (2) Uniroyal's contacts with Connecticut from 1975–1986; (3) the incorporation of Uniroyal subsidiaries in New Jersey; (4) Uniroyal's payment of certain premiums in Canada; (5) the location of several insurance brokers in Canada; and (6) the fact that Insurers are a syndicate of underwriters associated with Lloyd's of London, which is headquartered in London. Given the diversity of locations, the Court concluded that there is no overwhelming corporate nexus to overcome the Section 193 law of the site presumption.

6. The Court did not misapprehend the law in finding that Arkansas is an "all sums" jurisdiction. In *Murphy Oil USA, Inc. v. U.S. Fidelity & Guaranty Co.*,[3] the Arkansas Circuit Court stated that Arkansas is an "all sums" jurisdiction.

[3] 9 Mealey's Litig. Reports: Insurance, No. 19 (Ark. Cir. Ct. Feb. 21, 1995).

Defendants challenge the precedential value of this decision. Obviously, there is a spectrum of precedential value in legal determinations. The degree of deference accorded depends upon many factors, including, the court's jurisdiction, the stage of proceedings, the extent to which an issue was briefed and argued, and the formality of the opinion rendered. From the perspective of a trial court, no Delaware judge would take kindly to an Arkansas judge simply disregarding a Delaware ruling, regardless of the nature and stage of the proceedings. This Court will follow the "all sums" approach unless and until an Arkansas court decides otherwise.

7. The Court did not overlook facts in finding that Chemtura is not collaterally estopped from opposing the application of New York law in this dispute. The issues litigated in the prior actions are not identical to the issues presently before the Court concerning the Ohio and Arkansas sites. The previous litigation involved a choice-of-law inquiry relating to bodily injury claims. The instant case involves environmental coverage. The issues cannot be considered identical. Accordingly, the Court did not err in allowing Chemtura to pursue this determination.

8. The purpose of moving for reargument is to seek reconsideration of findings of fact, conclusions of law, or judgment of law.[4] Reargument usually will

[4] *Hessler, Inc. v. Farrell*, 260 A.2d 701, 702 (Del. 1969).

be denied unless the moving party demonstrates that the Court overlooked a precedent or legal principle that would have a controlling effect, or that it has misapprehended the law or the facts in a manner affecting the outcome of the decision.[5] "A motion for reargument should not be used merely to rehash the arguments already decided by the court."[6]

9. The Court has reviewed and considered the parties' written submissions and arguments. The Court did not overlook a controlling precedent or legal principle, or misapprehend the law or facts in a manner affecting the outcome of the decision.

THEREFORE, Defendants' Motion for Reargument is hereby **DENIED**.

IT IS SO ORDERED.

/s/
The Honorable Mary M. Johnston

[5] *Ferguson v. Vakili*, 2005 WL 628026, at *1 (Del. Super.).
[6] *Wilmington Trust Co. v. Nix*, 2002 WL 356371, at *1 (Del. Super.); *Whitsett v. Capital School Dist.*, 1999 WL 167836, at *1 (Del. Super.).