

I. LEGAL STANDARDS

"The purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence." Harsco Corp. v. Zlotnicki, 779 F.2d 906, 909 (3d Cir. 1985) (citation omitted), cert. denied, 476 U.S. 1171, 106 S. Ct. 2895 (1986). "Because federal courts have a strong interest in the finality of judgments, motions for reconsideration should be granted sparingly." Continental Casualty Co. v. Diversified Indus., Inc., 884 F. Supp. 937, 943 (E.D. Pa. 1995) (citation omitted). However, courts will reconsider an issue "when there has been an intervening change in the controlling law, when new evidence has become available, or when there is a need to correct a clear error or prevent manifest injustice." NL Industries, Inc. v. Commercial Union Ins. Co., 65 F.3d 314, 324 n.8 (3d Cir. 1995) (citing 18 Charles A. Wright, Arthur R. Miller & Edward C. Cooper, *Federal Practice and Procedure: Jurisdiction*, § 4478 at 790).

With respect to certification of an issue for interlocutory appeal, 28 U.S.C.A. § 1292 states:

When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order. The Court of Appeals which would have jurisdiction of an appeal of such action may thereupon, in its discretion, permit an

appeal to be taken from such order, if application is made to it within ten days after the entry of the order: . . .

28 U.S.C.A. § 1292(b). This Court has held such certification is proper only where the moving party demonstrates that "exceptional circumstances justify a departure from the basic policy against piecemeal litigation and of postponing appellate review until after entry of a final judgment." Yeager's Fuel, Inc., v. Pennsylvania Power & Light Co., 162 F.R.D. 482, 489 (E.D. Pa. 1995) (citation omitted).

II. DISCUSSION

A. Motion to Dismiss

In the part of its Motion requesting reconsideration, 3M raises two points:

(1) 3M maintains this Court erred in rejecting its position that pricing practices are never illegal under the Sherman Act unless they result in below-cost pricing. 3M reiterates the arguments of its Motion to Dismiss, and quotes language from Supreme Court decisions supporting its position. See, e.g., Brook Group Ltd. v. Brown & Williamson Tobacco Corp., 509 U.S. 209, 221-22, 113 S. Ct. 2578, 2586-87 (1993); State Oil Co. v. Kahn, ____ U.S. ____, 118 S. Ct. 275, 282 (1997); Atlantic Richfield Co. v. USA Petroleum co., 495 U.S. 328, 339, 340-41, 110 S. Ct. 1844, 1892-93 (1990). As Plaintiff points out, none

of those cases addressed conduct by a monopolist, as is alleged here. This Court has concluded that SmithKline Corp. v. Eli Lilly & Co., 575 F.2d 1056 (3d Cir. 1978), which deals with a monopolist, is applicable here. See also Eastman Kodak Co. v. Image Technical Services, Inc., 504 U.S. 451, 488 112 S. Ct. 2072, 2093 (1992); Aspen Skiing Co. v. Aspen Highlands Skiing Corp., 472 U.S. 585, 610, 105 S. Ct. 2874, 2861 (1985). This Court did not find 3M's argument persuasive in its Motion to Dismiss and for reasons discussed previously, it does not now.

(2) 3M argues that, even if the allegations in the Complaint state a claim under Counts One and Two of the Complaint, the Court erred in denying 3M's Motion to Dismiss with respect to certain claims under Count Four of the Complaint (predatory conduct, de facto tying, monopoly leveraging, and exclusive dealing). 3M conceded that one claim under Count Four (exclusive dealing) stated a cause of action, but it did not concede that the others did. In its Memorandum on the Motion to Dismiss, the Court stated that the claims that were not withdrawn were to go forward:

With respect to the remaining allegations under Counts III and IV, especially the allegation of exclusive dealing, as well as to the allegations under Counts I and II, the Court believes that 3M underestimates its ability to proceed effectively on the basis of this [Amended] Complaint. While some of the labels LePage's uses for the allegedly illegal conduct may be a bit confusing, the Court concludes that the Complaint describes the conduct in sufficient detail to guide 3M's response at this stage of the litigation. 3M

appears to have acknowledged this when it answered the Complaint before it filed its Motion to Dismiss.

Slip Op. at 13-14. The Court reaffirms that conclusion here. 3M's now complains that the Court failed to refer in its Memorandum to all the claims that Plaintiff withdrew on the record at oral argument. However, this is not a sufficient ground for reconsideration. The Court need not repeat all such withdrawals in the Memorandum; it is sufficient that they are on the record.

While courts will reconsider an issue "to correct manifest errors of law or fact: or to allow newly discovered evidence to be presented," Defendant has presented no such circumstance here, and its Motion for Reconsideration will be denied. Harsco Corp., 779 F.2d at 909.

B. Motion for Certification

3M requests that if the Court does not grant its Motion for Reconsideration, it should certify for appeal the following question: "Whether the allegations of the First Amended Complaint, other than those alleging actual exclusive dealing by the defendant, state a claim upon which relief may be granted where the plaintiff has withdrawn any claim of below-cost pricing by the defendant." 3M argues here, as it did repeatedly in its Motion to Dismiss and at oral argument, that the Third Circuit's opinion in SmithKline has been superceded by the Supreme Court's

opinion in Brook Group. In its prior Memorandum, this Court concluded that SmithKline applies in the instant case. This Court does not conclude that there is at present "substantial ground for difference of opinion" as to the applicability of SmithKline to this case such that 3M's question should be certified for appeal. At present, there has been no showing of "exceptional circumstances [that] justify departure from the basic policy against piecemeal litigation and of postponing appellate review until after entry of final judgment." Yeager's Fuel, 162 F.R.D. at 489. Moreover, if the Third Circuit should wish to reconsider its position in SmithKline, it would be better able to do so on the basis of a completed record.