

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
AMERICAN COMMERCIAL LINES LLC,

Plaintiff,

-against-

09 Civ. 7957 (LAK)

WATER QUALITY INSURANCE SYNDICATE,

Defendant.
----- x

MEMORANDUM AND ORDER

LEWIS A. KAPLAN, *District Judge*.

This action concerns a dispute between an insured, American Commercial Lines LLC (“ACL”), and its insurer, the Water Quality Insurance Syndicate (“WQIS”), about the extent to which a WQIS-issued insurance policy covers ACL’s investigation and defense costs related to a maritime accident and oil spill on the Mississippi River in July 2008. The parties disagree as to whether WQIS’s obligation to reimburse ACL’s investigation and defense costs ended when its payments under two other coverage clauses reached the policy limits for those coverages. The matter is before the Court on the parties’ cross-motions for partial judgment on the pleadings.¹

*Facts*²

The Accident

On July 23, 2008, an unmanned, non-self propelled vessel named Barge DM-932 (the

1

The parties have submitted affidavits in connection with their opposition and reply papers. The Court did not consider these affidavits in rendering this opinion and hereby excludes them. The affidavits would not have changed the result had they been considered.

2

The following facts were alleged in the complaint and admitted in the answer.

“Barge”) was involved in an accident on the Mississippi River near New Orleans.³ The Barge sank, and approximately 300,000 gallons of fuel oil spilled into the river.⁴ ACL, as owner of the Barge, has been sued as a result of the accident and oil spill.⁵ ACL promptly notified WQIS.⁶

The Insurance Policy

The Barge was insured under WQIS policy number 40-27083 (the “Policy”) at the time of the accident.⁷ The insuring provisions, which are found in Part I of the Policy, required WQIS to (1) indemnify ACL for “such amounts as [it] shall have become liable to pay and shall have paid for pollution response or damages” as owner or operator of the Barge, and (2) reimburse ACL for “certain other costs and expenses.”⁸ Those “other costs and expenses” included costs or expenses ACL incurred by reason of or with respect to:

- “[t]he Discharge or Substantial Threat of a Discharge of Oil” (“Coverage A”),
- “[t]he Discharge or Substantial Threat of a Discharge of Hazardous Substances” (“Coverage B”), and

3

Cpt. ¶¶ 8, 15.

4

Id. ¶¶ 8, 17, 18.

5

Id. ¶¶ 11, 22.

6

Id. ¶ 30.

7

Id. ¶¶ 8, 28.

8

Id. ¶ 24.

- “Investigation and Defense” (“Coverage C”).⁹

Coverage A covers six categories of liability, principally related to the Oil Pollution Act of 1990, for which WQIS must reimburse ACL.¹⁰ Coverage B covers three additional categories.¹¹ Coverage C provides that WQIS must reimburse ACL for “[c]osts and expenses incurred by [ACL] with prior consent of WQIS for investigation of, or defense against, any liabilities covered under COVERAGE A or B of PART I of the *Policy*.”¹² None of these three insuring clauses contains any relevant limits on WQIS’s reimbursement obligation.¹³

Part II, Article A, of the Policy contains limits on WQIS’s liability under the Policy:

- “1) LIMIT APPLICABLE TO COVERAGE A and B of PART I: The limit of liability under this Policy with respect to all indemnity provided under COVERAGE A and B of PART I shall be the amount stated on the Vessel Schedule. This limit shall apply to each Vessel with respect to each separate Occurrence
- “2) LIMIT APPLICABLE TO COVERAGE C of PART I: The amounts payable for costs and expenses incurred by [ACL] with the prior consent of WQIS for investigation of, or defense against, any liabilities covered under COVERAGE A and B of PART I *shall be in addition to the limits of liability*

9

Id.

10

Id.

11

Id.

12

Id. (emphasis in original).

13

The Policy provisions specifically exclude from coverage liabilities under specific provisions of the Oil Pollution Act of 1990 and the Comprehensive Environmental Response, Compensation and Liability Act. *See id.*

*stated in ARTICLE A (1) of PART II.”*¹⁴

WQIS’s payments under Coverage A have reached the policy limit for that coverage set out in the Vessel Schedule.¹⁵ The parties disagree as to whether WQIS nevertheless remains obligated to reimburse ACL under Coverage C for investigation and defense costs incurred by reason of the discharge of oil in the accident.

Discussion

A motion for judgment on the pleadings under Rule 12(c) is governed by the same standard applicable to dismissals pursuant to Fed. R. Civ. P. 12(b)(6).¹⁶ The Court therefore views the pleadings in the light most favorable to, and draws all reasonable inferences in favor of, the non-moving party.¹⁷ Judgment is appropriate if, based on the pleadings, the moving party is entitled to judgment as a matter of law.¹⁸

Under New York law,¹⁹ the terms of the insurance policy determine the insurer’s

14

Id. (emphasis added).

15

Id. ¶ 34. There is some dispute about when WQIS’s payments reached the \$5 million Coverage A limit. ACL contends that this occurred on August 28, 2008. *Id.* ¶ 33. WQIS argues that it exhausted its indemnity limits on or about August 26, 2008. Ans. ¶¶ 33, 42.

16

See Hayden v. Paterson, 594 F.3d 150, 160 (2d Cir. 2010) (citing *Johnson v. Rowley*, 569 F.3d 40, 43 (2d Cir. 2009)).

17

See id.; *Sheppard v. Beerman*, 18 F.3d 147, 150 (2d Cir. 1994); *Madonna v. United States*, 878 F.2d 62, 65 (2d Cir. 1989).

18

Burns v. Int’l Sec. Servs. v. Int’l Union, 47 F.3d 14, 15 (2d Cir. 1995).

19

The parties agree that New York law applies to the interpretation of the insurance policy. *See, e.g.*, Pl. Br. at 8; Def. Opp. Br. at 12-13. In addition, the insurance policy contains a

obligations. Insurance policies, like all other contracts, are “interpreted to give effect to the intent of the parties as expressed in the clear language of the contract.”²⁰

The Court’s initial obligation is to determine whether the contract is unambiguous with respect to the issue disputed by the parties.²¹ Ambiguity exists when a contract term “could suggest more than one meaning when viewed objectively by a reasonably intelligent person who has examined the entire integrated agreement” and who is aware of the customs and usages of the relevant trade.²² Otherwise clear language is not made ambiguous, however, “merely because the parties urge different interpretations in litigation” unless each interpretation is “reasonable.”²³ There is no ambiguity where one party’s interpretation of the contract “strains the language beyond its reasonable and ordinary meaning.”²⁴

If the text of the contract is unambiguous, its meaning is a question of law for the

choice of law provision which states that “the law applicable to the interpretation of this Policy . . . shall be federal maritime law or, in the absence of federal maritime law, the law of the State of New York, without regard for New York’s choice of law rules.” Cpt. ¶ 24; Ans. ¶ 24.

20

Morgan Stanley Group Inc. v. New England Ins. Co., 225 F.3d 270, 275 (2d Cir. 2000) (quoting *Vill. of Sylvan Beach v. Travelers Indem. Co.*, 55 F.3d 114, 115 (2d Cir. 1995)).

21

Law Debenture Trust Co. of New York v. Maverick Tube Corp., 595 F.3d 458, 465-66 (2d Cir. 2010); *Int’l Multifoods Corp. v. Comm. Union Ins. Co.*, 309 F.3d 76, 83 (2d Cir. 2002).

22

Law Debenture Trust Co., 595 F.3d at 466 (quoting *Int’l Multifoods*, 309 F.3d at 83).

23

Id. at 467.

24

Id.; see *Readco, Inc. v. Marine Midland Bank*, 81 F.3d 295, 300 (2d Cir. 1996) (“[W]here consideration of the contract as a whole will remove the ambiguity created by a particular clause, there is no ambiguity.”).

court.²⁵ If, on the other hand, the contract's terms are ambiguous, extrinsic evidence may be used to determine the parties' intent.²⁶ The meaning of an ambiguous contract when extrinsic evidence is introduced is a question of fact.²⁷

When the Policy is read as a whole, its language with respect to WQIS's obligation to pay ACL's investigation and defense costs is unambiguous. Coverage C obliges WQIS to reimburse ACL for "costs and expenses incurred by [ACL] with the prior consent of WQIS for investigation of, or defense against, any liabilities covered under COVERAGE A or B of PART I of the Policy."²⁸ This provision, on its face, contains no temporal or quantitative limit on WQIS's reimbursement obligation.

The Policy's only other provision relating to WQIS's Coverage C obligation is found in Part II, Article A(2). Far from limiting WQIS's reimbursement requirement, this provision expressly provides that the amounts payable by WQIS under Coverage C "shall be in addition to the limits" the Policy imposes on WQIS's Coverage A and B. This language makes clear that the parties did not intend to limit WQIS's obligations under Part I, Coverage C as they did for Part I, Coverage A and B.

WQIS argues that its obligation to make payments for investigation and defense costs under Coverage C has ended, as there no longer are any "liabilities covered" under Coverage A or

25

Postlewaite v. McGraw-Hill, 411 F.3d 63, 67 (2d Cir. 2005).

26

Int'l Multifoods, 309 F.3d at 83.

27

JA Apparel Corp. v. Abboud, 568 F.3d 390, 397 (2d Cir. 2009).

28

Cpt. ¶ 24.

B because its payments already have reached the limits set out in Part II, Article A(1). This interpretation is unreasonable for three reasons.

First, as noted above, the Policy explicitly provides that WQIS's obligation under Part I, Coverage C is "in addition to the limits of liability" stated in Part II, A(1). The plain meaning of this is that WQIS's Coverage C obligation does not terminate merely because WQIS's payments under Coverage A or B have reached the cap on such payments.

Second, the Policy text shows that the parties did not intend to limit WQIS's Part I, Coverage C obligation. The parties knew how to restrict WQIS's reimbursement obligations when they wanted to do so.²⁹ The Policy, however, is devoid of any such restrictions Coverage C. The fact that the Policy contains express language limiting the insurer's obligation in some instances undercuts any inference that the parties intended to do so where such language is absent.³⁰

Third, while the "limits on liability under th[e] Policy" in Part II, Article A(1) cap the maximum amount that WQIS may be obliged to pay under Coverage A or B for any particular incident, they do not limit the scope of the coverage provided under those provisions. The fact that WQIS has reached the payment limits does not change whether an incident is a "liability covered" by Coverage A and B. The phrase "liability covered under COVERAGE A or B of PART I of the Policy" in Part I, Coverage C plainly refers to ACL's potential grounds for financial responsibility, not WQIS's obligation to pay, as it contains no reference to the Part II, Article A(1) limits.

29

See, e.g., Part II, Article A(1).

30

See Law Debenture Trust Co., 595 F.3d at 467; *W.W.W. Assocs. Inc. v. Giancontieri*, 77 N.Y.2d 157, 163 (1990).

Conclusion

For the foregoing reasons, ACL's motion for partial judgment on the pleadings determining that WQIS's contractual obligation under the Policy to reimburse ACL for costs incurred and to be incurred by ACL in the investigation and defense of all claims asserted against ACL as a result of the subject oil spill continues until all such costs are reimbursed, regardless of whether other indemnity limits under the Policy have been reached [DI 9] is granted. WQIS's cross-motion for partial judgment on the pleadings and other relief [DI 13] is denied.

Dated: March 29, 2010



Lewis A. Kaplan
United States District Judge

(The manuscript signature above is not an image of the signature on the original document in the Court file.)