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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HELEN E. FREEDMAN PART 39
Justice

AGCO Corp.,

Plaintiff,

- v -

Northrop Grumman Space & Mission Sys. Corp et al.,

Defendants

INDEX NO. 604174/06

MOTION DATE

MOTION SEQ. NO. 005

MOTION CAL. NO.

The following papers, numbered 1 to _____ were read on this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☐ Yes ☒ No

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

The motions with sequence numbers 005 and 006 are consolidated for joint disposition.

Plaintiff AGCO brought this action for a declaratory judgment and contractual indemnification to determine which of the two groups of corporate defendants is obligated to indemnify AGCO for certain personal injury claims (the "Underlying Claims") brought by parties (the "Underlying Plaintiffs") who allege that they were injured by exposure to asbestos-containing components used on farm tractors, combines and balers which AGCO at one time produced. It is undisputed that, after a series of corporate acquisitions and sales, either (1) one or more of defendants Northrup Grumman Corporation ("Northrup Grumman") and it subsidiary Northrop Grumman Space Mission Systems Corporation ("NG Space")[1], *or* (2) one or more of

[1]Henceforth, Northrup Grumman and NG Space will be referred to collectively as the "NG Defendants").

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the affiliated defendants Lucas Varity Automotive Holding Company, TRW Automotive Inc., and TRW Automotive U.S. LLC[2] became contractually obligated to indemnify AGCO for the Underlying Claims. In separate motions, the NG Defendants and the TRW Defendants argue that the other group of defendants are liable and seek an order granting them summary judgment. For the reasons set forth below, both motions are denied.

Background – Although it is largely undisputed, the relevant history is somewhat convoluted. For about a forty-year period ending in the early 1990s, non-party Varity Corporation and certain of its affiliates and successors (collectively, "Varity") conducted the "MF Business", designing, manufacturing, and distributing the "Massey-Ferguson" brand of agricultural and industrial tractors and component parts.

In 1992 and 1994, Varity divested itself of the MF Business by selling it to AGCO. However, Varity retained some of the liability associated with the MF Business.

In 1996, Varity merged with non-party Lucas Industries plc to become LucasVarity plc ("LucasVarity"). Non-party TRW Inc. ("TRW") acquired LucasVarity in 1999, and in December 2002, Northrup Grumman acquired TRW and merged it into its subsidiary, defendant NG Space. By acquiring TRW, Northrup Grumman indirectly acquired LucasVarity and the MF Business.

The 2003 Transaction – In February 2003, Northrup Grumman sold certain of TRW's assets and obligations (the "Transferred Assets & Obligations") to BCP Acquisition Company L.L.C. ("BCP"), a subsidiary of The Blackstone Group ("Blackstone"), a private equity concern. Henceforth, the 2003 Transaction will be referred to as the TRW/Blackstone Sale.

The TRW/Blackstone Sale is governed by the Master Purchase Agreement dated November 18, 2002, and as amended on December 20, 2002 and February 28, 2003 (as amended, the "MPA."), among Northrup Grumman, BCP, TRW, and TRW Automotive Inc.

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[2]Henceforth, Lucas Varity Automotive Holding Company, TRW Automotive Inc., and TRW Automotive U.S. LLC will be referred to collectively as the "TRW Defendants").

The MPA Terms – The issue before this Court is whether, pursuant to the terms of MPA, Blackstone assumed liability for the Underlying Claims asserted against AGCO in connection with the MB Business. The entire question depends on a narrow matter of contract construction. Under section 2.1 of the MPA, the Transferred Assets & Obligations that BCP acquired included Northrup Grumman's "Automotive Assets," which are defined as "[a]ssets . . . which are used or held primarily in the Automotive Business . . . ." The "Automotive Business" means "the business of designing, manufacturing and selling . . . components and systems for *passenger cars, light trucks and commercial vehicles* . . . as such business are or have been conducted by TRW and certain of its [s]ubsidiaries and affiliates]. . . ." MPA § 12.1 (emphasis supplied).

When it acquired the Automotive Business, CP also assumed "Automotive Liabilities," which the MPA defines as "all [l]iabilities arising primarily from the conduct of the Automotive Business and the ownership of property utilized in the Automotive Business, whether arising before or after the [closing of the TRW/Blackstone Sale]." MPA §§ 1.3(a) & 12.1. The MPA further clarified that TRW would retain all liabilities that it had not transferred pursuant to the MPA (the "Retained Liabilities"), and would indemnify BCP for any claims in connection with Retained Liabilities.

Underlying Claims– Beginning in 1994, the Underlying Plaintiffs have sued AGCO and others for personal injury, primarily on the grounds that they were exposed to asbestos dust while maintaining brakes and clutches of Massey-Ferguson tractors.

AGCO commenced this action in 2006 against the NG Defendants and the TRW Defendants. They seek (1) a declaratory judgment that at least one of the five defendants, as the successor in interest to Varity, is liable for the Underlying Claims, and (2) contractual indemnification from the defendants pursuant to the MPA. The defendants acknowledge that either the Underlying Claims are "Automotive Liabilities" that that the TRW Defendants assumed as part of the TRW/Blackstone Sale, or that the Underlying Claims were "Exclusive

Liabilities" that the NG Defendants retained after the sale.

The threshold issues are whether the Underlying Claims constitute "Automotive Liabilities" arising from the "Automotive Business" under the MPA, and whether the MF Business constitutes part of the "Automotive Business." This inquiry raises the fundamental issue: is a Massey-Ferguson tractor a "commercial vehicle " as the term is used in the MPA's definition of "Automotive Business?"[3]

That question cannot be answered as a matter of law. The essential difficulty lies with MPA's failure to define a "commercial vehicle." Relying on extrinsic evidence, the two group of defendants marshal elaborate and cogent arguments that tractors either do or do not constitute commercial vehicles. The TRW Defendants argue that commercial vehicles are "widely recognized" to mean devices used on paved roads, as opposed to tractors and farm implements which are used in fields and farms; in further support, they site to two Delaware cases, the Delaware Motor Vehicles Code, and the United States Motor Carrier Safety Regulations which offer definitions of "commercial vehicles."

The NG Defendants argue the exact opposite. The rely on common dictionary definitions, and contend that the cases and statutory authority on which the TRW Defendants rely is inapposite. Moreover, the NG Defendants submit further evidence in which the TRW Defendants allegedly acknowledge that the MF Business constitutes "Automotive Business". These include a disclosure schedule to the MPA in which the TRW Defendants list a number of Underlying Claims as liabilities relating to their Automotive Business, and two side agreements between the parties.

When parties reduce their agreement to a clear, complete document, that writing will be

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[3]The definition only pertains to "passenger cars, light trucks and commercial vehicles. While the parties agree that a tractor is neither a passenger car nor a light truck, they dispute whether it is a "commercial vehicle."

enforced pursuant to the plain meaning of its terms and without resort to parole and extrinsic evidence. *See WWW Assoc. v. Giancontieri*, 77 N.Y.2d 157, 162 (1990). However, courts shall resort to the rules of construction to interpret ambiguous language in a contract. *See Dorman v. Cohen*, 66 A.D.2d 411 (1st Dept. 1979). Contractual language is ambiguous as a matter of law when, on the face of the writing and within its four corners, and without resorting to extrinsic evidence, the contract is reasonably susceptible to more than one interpretation. *Van Wagner Adv. Corp. v. S & M Enters.*, 67 N.Y.2d 186, 191 (1986). Once a court has determined that a provision is ambiguous, its meaning is a question of fact to be determined by the fact-finder. *See Sutton v. E. River Sav. Bank*, 55 N.Y.2d 550, 555 (182). If ambiguity exists, extrinsic evidence as to the parties' intent should be admitted and considered. *See 67 Wall St. v. Franklin Natl. Bank*, 37 N.Y.2d 245, 248-49 (1975). Such evidence can concern the surrounding facts and circumstances connected with the contract, and "conversations, negotiations and agreements made prior to or contemporaneous with" the execution of the ambiguous contract. *Id.* In addition, the parties can offer the oral testimony of persons who negotiated the contract terms, and contract drafts and other documents that were exchanged before the ambiguous contract was executed. *Van Wagner Adv. Corp.*, 67 N.Y.2d at 190. Other evidence of intent includes (1) earlier contractual dealings between the parties, *see Williams Press, Inc. v. State*, 37 N.Y.2d 434, 440 (1975); (2) custom and usage in the relevant industry, *see 407 61st St. Garage, Inc. v. Savoy Fifth Ave. Corp.*, 23 N.Y.275, 281 (1968); (3) relevant legislation that pertain to the ambiguous provision, *see S & S Media Inc. v. Vango Media Inc.*, 84 A.D.2d 356, 359-60 (1st Dept. 1982), (4) the terms of other contracts that the parties executed simultaneously with the ambiguous contract, *see Village Sav. Bank v. Caplan*, 87 A.D.2d 145, 149 (2d Dept. 1982); and (5) evidence as to the parties conduct after the contract was executed, *see id.* at 149.

In conclusion, the use of "commercial vehicles" in the MPA is ambiguous. Both the TRW Defendants' and the NG Defendants' constructions of the term are plausible. The

ambiguous language of the contract, when coupled with the defendants' conflicting evidence of intent, defeats both summary judgment motions

ORDERED that the motions are denied, and it is further

ORDERED that the parties shall proceed with relevant discovery as determined at the June 10, 2008 conference.

Dated: June 9, 2008

Helen E. Freedman, *J.S.C.*

Check one: ☐ **FINAL DISPOSITION** ☒ **NON-FINAL DISPOSITION**

Check if appropriate: ☐ **DO NOT POST**