

Travelers Cas. & Surety Co. v Alfa Laval, Inc.

2016 NY Slip Op 30844(U)

May 4, 2016

Supreme Court, New York County

Docket Number: 650667/09-E-File

Judge: Debra A. James

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK : IAS PART 59

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TRAVELERS CASUALTY AND SURETY COMPANY
 (f/k/a The Aetna Casualty and Surety Company)
 and THE STANDARD FIRE INSURANCE COMPANY,

Plaintiffs,

Index No.

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-against-

ALFA LAVAL, INC. (f/k/a The Delaval Separator
 Company), DELAVAL INC., ACE PROPERTY AND
 CASUALTY INSURANCE COMPANY, AMERICAN
 SURETY COMPANY, NATIONAL UNION FIRE
 INSURANCE COMPANY OF PITTSBURGH, PA,
 ZURICH AMERICAN INSURANCE COMPANY,
 ONEBEACON INSURANCE COMPANY (f/k/a Ocean
 Accident & Guarantee Corporation Ltd.) and
 ABC COMPANIES 1-100 (fictitious names of
 corporations or other entities created by
 law),

Defendants.

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DEBRA A. JAMES, J.:

In motion seq. no. 016, plaintiffs Travelers Casualty and
 Surety Company and The Standard Fire Insurance Company
 (collectively "Travelers") move for partial summary judgment in
 favor of Travelers. Defendant ACE Property and Casualty
 Insurance Company ("ACE") opposes Travelers' motion to the extent
 it seeks summary judgment or declaratory relief against ACE.

Defendant OneBeacon America Insurance Company

("OneBeacon") cross-moves for partial summary judgment in its favor.

Defendant Alfa Laval Inc. ("Alfa"), joined by defendant DeLaval, Inc., opposes Travelers' motion and cross-moves for partial summary judgment in Alfa's favor.

Travelers brought this action against Alfa and Alfa's other insurers, including OneBeacon, seeking a judicial declaration absolving Travelers of the duty to defend and indemnify Alfa in connection with certain asbestos-related product liability claims purportedly covered under several liability policies and excess umbrella indemnity policies sold by Traveler's predecessor to Alfa's predecessor.

This court has entertained motions for summary judgment by various parties on three prior occasions (motions seq. nos. 005, 007 and 009) and issued two decisions. The first decision (mot seq. nos. 005 and 007, the "2011 decision," 37 Misc 3d 1230[A], affd as modified 100 AD3d 451 [1st Dept 2012]) adjudicated most of the issues raised by Travelers' instant motion for summary judgment. In the second decision (mot. seq. no. 009, the "2013 decision"), the court admonished against the making of successive motions for summary judgment, and in discrete decretal paragraphs, reaffirmed and reiterated the holdings of its 2011

decision.

Travelers made the instant motion for summary judgment after filing its note of issue, seeking to have this court issue a series of declarations which the court "should" make in order to streamline or even entirely eliminate, Travelers' evidentiary burden at trial. Based on the 2011 decision, the 2013 decision, inferences which Travelers argues flow from those decisions, and the same arguments (albeit supported by additional cases) which this court has already rejected twice, Travelers seeks the following pronouncements from this the court: (I) Sharples, Inc. ("Sharples"), a company Alfa acquired in 1988, after the last Travelers policy lapsed in 1980, is not a named insured under Travers' policies, and thus Traveler has no duty to defend or indemnify Alfa in any actions premised on Sharples' liability; (ii) an "injury-in-fact" coverage trigger should be used to determine whether Travelers' policies cover any given claim; (iii) if the "injury-in-fact" method is not used, then a *pro rata*, time-on-the-risk cost allocation method should be used, and since Travelers has no obligation to defend Alfa in its capacity as successor to Sharles, Travelers' share would be calculated based on (an arbitrary) 50% of the costs for claims where Alfa is sued both individually and as Sharple's successor; (iv) Travelers is entitled to recoupment or contribution for amounts it

overpaid, including offsets for insurers which have settled with Alfa, for periods of lost policies, and for the years Alfa did not purchase insurance coverage; and, (v) Alfa must pay deductibles under Travelers' policies.

With the few exceptions discussed below, all these matters are either undisputed or have already been decided by the court. Travelers' current motion for summary judgment is admittedly prompted by its desire to have the court ease Travelers' work at trial. Travelers' motion neither argues that the court overlooked applicable law nor offers evidence that was unavailable when prior motions for summary judgment were made before this court, the only bases for reargument or renewal (see Olszewski v Park Terrace Gardens, Inc., 18 AD3d 349, 350 [1st Dept 2005]). Indeed, Travelers' motion is aptly characterized as an untimely motion for reargument or clarification (see Bender v Madison Square Garden Corp., 247 AD2d 344 [1st Dept 1998]). Multiple motions for summary judgment in such situations are not to be countenanced (Powell v Trans-Auto Systems, Inc., 32 AD2d 650 [2d Dept 1969]). The court cannot be expected to rehash or restate its own rulings ad infinitum. In view of the foregoing, Travelers' motion must be denied.

With respect to OneBeacon's cross-motion for partial

summary judgment, the court notes that OneBeacon and Alfa have reached a settlement, pursuant to which they have discontinued their cross-claims against each other and OneBeacon has withdrawn its cross-motion to the extent it is directed at Alfa. In the remaining portion of its cross-motion, OneBeacon is primarily trying to protect itself from any declarations this court may issue in response to Travelers' instant motion for summary judgment. Given the court's denial of Travelers' motion, One Beacon's cross-motion has been rendered moot.

In response to Travelers' motion, Alfa cross-moves for its own set of judicial declarations that: (I) the methodology to be used in determining Travelers' indemnity obligation to Alfa is a pro rata, time-on-the-risk allocation; (ii) the time period for the allocation calculation begins with the underlying claimant's first exposure to an Alfa product (but no earlier than Alfa's first insurance policy period, January 1, 1942), and ends no later than when asbestos insurance coverage became commercially unavailable to Alfa (December 31, 1985); (iii) Travelers' allocated share of indemnity costs cannot be reduced by 50% merely because Alfa is named in an underlying action both individually and as successor to Sharples; (iv) Travelers must provide a complete defense to Alfa even in actions where Sharples

is also named as a defendant or Alfa is sued in a dual capacity; (v) Travelers is entitled to contribution for defense costs from Alfa's other insurers, but it cannot recoup such costs from Alfa, the policyholder, other than the costs attributable to insurers which have settled with Alfa; and, (vi) the only policies sold to Alfa by Travelers for which deductibles are potentially available are the four Travelers policies beginning on January 1, 1976, January 1, 1977, January 1, 1978 and June 1, 1979.

As was the case with the declarations sought by Travelers, many of these have already been issued by the court in both the 2011 decision and the 2013 decision. To the extent that these issues have not already been resolved, they pose questions of fact which the court may not decide on a motion for summary judgment, but which must await trial for resolution (see S.J. Capelin Associates, Inc. v Globe Manufacturing Corp., 34 NY2d 338, 341 [1974]; Rotuba Extruders, Inc. v Ceppos, 46 NY2d 223, 231 [1978]).

In its opposition to Travelers' motion, Alfa identifies only two issues as unresolved: the proper time period applicable to the allocation of indemnity costs and the amount of deductibles owed by Alfa. ACE correctly identifies the issue whether its policy was intended to exclude coverage for asbestos

claims as an unresolved factual question. The court finds all three questions must be resolved by a fact finder at trial.

Accordingly, it is hereby

ORDERED that the motion and cross-motions are denied in their entirety; it is further

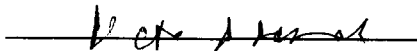
ORDERED that to conserve judicial resources, counsel for the remaining parties are directed to jointly compile a list of undisputed facts, which shall be presented to the trial assignment part judge or trial judge prior to the date set for jury selection; and it is further

ORDERED that the Trial Support Office (Room 158) shall restore this action to the trial calendar.

This decision constitutes the order of the court.

Dated: May 4, 2016

ENTER


J.S.C.