

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BURGER KING CORPORATION : CIVIL ACTION
 :
 v. :
 :
 NEW ENGLAND HOOD AND DUCT :
 CLEANING COMPANY, :
 TILLEY FIRE EQUIPMENT COMPANY, :
 INC. and :
 AIR-VENT DUCT CLEANING, INC. : NO. 98-3610

MEMORANDUM AND ORDER

BECHTLE, J. FEBRUARY , 2000

Presently before the court is plaintiff Burger King Corporation's ("Burger King") Motion for Reconsideration of the Court's Memorandum and Order of August 20, 1999 and defendant New England Hood and Duct Cleaning Company's ("New England") response thereto. For the reasons set forth below, said motion will be denied.

I. BACKGROUND

Burger King instituted the instant action seeking to recover damages sustained in a fire that occurred on February 8, 1998 at the Burger King store located in Broomall, Pennsylvania. On December 1, 1997, Burger King and New England executed a contract whereby, among other things, New England would provide hood and duct ventilation systems cleaning at the Broomall Burger King on a quarterly basis. The contract also required New England to perform fire suppression systems inspections at that store and to utilize an Ansul manufacturer-certified employee or agent to perform the inspections. New England hired Air-Vent Duct

Cleaning, Incorporated ("Air-Vent") to provide a "one-time" cleaning of the hood and duct systems at the Broomall Burger King. New England contracted with Tilley Fire Equipment Company, Inc. ("Tilley") to provide the fire suppression system inspection. Tilley sent an inspector to the Broomall Burger King to inspect the fire suppression system. That inspector was not Ansul certified. On February 8, 1998, the Broomall Burger King sustained extensive fire damage from a fire that, according to expert testimony presented at trial, originated at or near the hood and duct system. The fire suppression system did not fully extinguish the fire. Burger King filed the instant action to recover damages caused by the fire.

Burger King brought the action under both negligence and contract theories against New England. Additionally, Burger King asserted a claim of negligence against Tilley and Air-Vent. New England filed cross-claims against Tilley and Air-Vent for breach of contract and negligence. At trial, Burger King argued that New England's failure to clean the hood and duct system on a quarterly basis and failure to provide an Ansul certified inspector to inspect the fire suppression system at the Broomall Burger King constituted negligence that caused the fire. Additionally, Burger King asserted that New England breached their contract by not timely cleaning the hood and duct system and by failing to provide an Ansul certified inspector.

New England and Burger King stipulated that Burger King's damages from the fire totaled \$405,289.00. Prior to trial,

Burger King settled its claims against Tilley and Air-Vent for \$175,000.00. Following the three day jury trial, the jury assessed comparative negligence against all parties as follows: 70% for New England, 20% for Tilley and 10% for Burger King.

The instant motion relates to the apportionment of that total. On June 25, 1999, New England filed a motion to mold the verdict. By Order dated August 20, 1999, the Court entered judgment in favor of Burger King and against New England for \$283,702.30 plus delay damages. The amount of \$283,702.30 represented 70% of \$405,289.00, the stipulated damage amount. On September 1, 1999, Burger King filed a motion for reconsideration of the August 20, 1999 Order.

II. LEGAL STANDARD

Local Rule 7.1(g) of Civil Procedure for the Eastern District of Pennsylvania allows a party to make a motion for reconsideration. "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). "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). Courts will reconsider an issue only "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). Mere dissatisfaction with the Court's ruling is not a proper basis for reconsideration. Glendon Energy Co. v. Borough of Glendon, 836 F.Supp. 1109, 1122 (E.D. Pa. 1993)

III. DISCUSSION

Burger King moves for reconsideration on the ground that the August 20, 1999 Order is "clearly erroneous." Burger King asserts that, in addition to the \$175,000.00 settlement, it should receive the entire stipulated damage amount of \$405,289.00 from New England. New England argues that Burger King should not be able to collect the full stipulated damage amount from it because Burger King would thereby receive a windfall.

In its Order dated August 20, 1999, the court determined that Burger King's argument for the full stipulated damage amount must fail. The jury found that Burger King was contributorily negligent and that its negligence was a substantial factor in causing its loss. Thus, Burger King, like Tilley and New England, was found to be actively negligent. The court found that under Pennsylvania law, the verdict should be molded to reflect the negligence of each party and that no party should receive indemnification under the circumstances of this case.¹

¹ Under Pennsylvania law, "indemnity is available only from those who are primarily liable to those who are merely secondarily or vicariously liable." Pennine Resources, Inc. v.

(continued...)

Consequently, the court determined that the proper method for molding the verdict was to award damages based on the jury's findings of comparative fault under the negligence claims and not grant indemnification to any party. Accordingly, the court entered judgment in favor of Burger King and against New England in the amount of \$283,702.30, which represents 70% of \$405,289.00.

In its motion for reconsideration, Burger King contends that the court committed clear error by stating that Burger King is "effectively seeking indemnification" when it argues that it should receive the entire stipulated damage amount. Burger King asserts that it is entitled to the full amount of stipulated damages and that there should be no reduction pursuant to comparative negligence principles. Initially, the court notes that, with reference to Burger King, the concept of indemnification was used as an analogy. In its August 20, 1999 Order, the court observed that "[a]llthough Burger King does not couch its argument in terms of indemnification, by arguing that it should receive the entire stipulated damage amount of

¹(...continued)
Dorwart Andrew & Co., 639 F. Supp. 1071, 1075 (E.D. Pa. 1986) (citation omitted). Indemnity is "a right which enures to a person who, without active fault on his own part, has been compelled, by reason of some legal obligation, to pay damages occasioned by the initial negligence of another, and for which he himself is only secondarily liable." Id. In Pennsylvania, indemnity is not available if the indemnitee is actively negligent. Id. (citing DiPietro v. City of Philadelphia, 496 A.2d 407, 409-10 (Pa. Super. Ct. 1985)).

\$402,289.00, it is effectively seeking indemnification." This statement recognizes the fact that Burger King was actively negligent, and its negligence was a substantial factor in causing the fire. By recovering the full stipulated damages, Burger King would avoid liability for its own negligence.

As a practical matter, Burger King seeks to recover the entire \$402,289.00 stipulated damage amount in addition to the \$175,000.00 settlement. The court notes that under contract law, damages are awarded to make the parties whole, "to place the aggrieved in as good a position as would have occurred had the contract been performed." ATACS Corp. v. Trans World Communications, 155 F.3d 659, 669 (3d Cir. 1998). Here, Burger King stipulated that its damages totaled \$402,289.00. Additional recovery beyond \$402,289.00 would be a windfall. The \$402,289.00 stipulated damage amount less the \$175,000.00 settlement totals \$227,289.00. Thus, \$227,289.00 would make Burger King whole under contract law. Cf. Z & L Lumber Co. v. Nordquist, 502 A.2d 697, 701-702 (Pa. Super. Ct. 1985) (considering settlement figure when calculating contract damages); Caravan Prods. Co. v. Ritchie, 259 A.2d 223, 224 (N.J. 1969) (same). Under tort, comparative negligence principles apply. Because the jury found that Burger King was 10% negligent and Tilley was 20% negligent, Burger King would only be entitled to a judgment against New England in the amount of \$283,702.30, which represents 70% of the stipulated damages of \$405,289.00. If Burger King were to recover the entire stipulated damages amount of \$405,289.00 plus

the settlement amount of \$175,000.00, it would not only receive a windfall but would also avoid any liability for its own fault in causing the fire.²

Burger King's instant motion merely attempts to reargue the issues disposed of by the August 20, 1999 Order. The court finds that Burger King's arguments were fully resolved in that Order and declines to alter or amend it.

III. CONCLUSION

For the reasons set forth above, Burger King's motion for reconsideration will be denied.

An appropriate Order follows.

² The jury found that Burger King was contributorily negligent and that its negligence was a substantial factor in causing its loss.

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NEW ENGLAND HOOD AND DUCT	:	
CLEANING COMPANY,	:	
TILLEY FIRE EQUIPMENT COMPANY,	:	
INC. and	:	
AIR-VENT DUCT CLEANING, INC.	:	NO. 98-3610

ORDER

AND NOW, TO WIT, this day of February, 2000, upon consideration of plaintiff Burger King Corporation's Motion for Reconsideration of the Court's Memorandum and Order of August 20, 1999 and defendant New England Hood and Duct Cleaning Company's response thereto, IT IS ORDERED that said motion is DENIED.

LOUIS C. BECHTLE, J.