

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

WILLIAM H. MAHOOD : CIVIL ACTION
 :
 v. :
 :
 OMAHA PROPERTY AND CASUALTY : NO. 00-1994

MEMORANDUM AND ORDER

Norma L. Shapiro, S.J.

May , 2002

Plaintiff William H. Mahood moves for partial reconsideration of the Judgment in his favor and against defendant Omaha Property and Casualty ("Omaha") for \$9,721.15. See Mahood v. Omaha Property and Casualty, 174 F. Supp. 2d 284 (E.D. Pa. 2001). For the reasons set forth below, the motion will be denied.

Mahood sued Omaha for denial of coverage under his Standard Flood Insurance Policy ("SFIP") issued under the National Flood Insurance Act of 1968, 42 U.S.C. § 4001 et seq. Detailed findings of fact are set forth in this court's Memorandum and Order of August 30, 2001. See Mahood, 174 F. Supp. 2d at 285-89.

I. Standard of Review

"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: (1) there has been an intervening change in the controlling law; (2) new evidence has become available; or (3) there is a need to correct a clear error or prevent manifest injustice. NL Indus., Inc. v. Commercial Union Ins. Co., 65 F.3d 314, 324 n.8 (3d Cir. 1995). "A motion for reconsideration is . . . not properly grounded on a request that a court rethink a decision it has already made." Tobin v. General Elec. Co., No. 95-4003, 1998 WL 31875, at *2 (E.D. Pa. Jan. 27, 1998).

II. Discussion

Mahood does not cite an intervening change in law, nor does he point to new evidence. He argues for reconsideration on various grounds of alleged "clear error or manifest injustice in need of correction."

A. Factual Error

In Findings of Fact ¶ 42, this court found:

On or about January 13, 2000, Mahood signed and submitted to Omaha two proof of loss statements, one for the sum of \$72,332.39 (\$83,053.54 less depreciation and deductible), supported with documentation of the independent Simsol adjuster, and a second one claiming an additional sum of \$167,946.46 (\$250,000.00 less \$82,053.54).

Mahood, 174 F. Supp. 2d at 288. Omaha accepted the first proof of loss statement and reimbursed Mahood accordingly. Id. It rejected the second. Id. This court found Mahood failed to prove he was entitled to the additional \$167,946.46.

Mahood argues Finding of Fact ¶ 42 is erroneous and the Judgment unjust because Mahood did not submit documentation of the independent Simsol adjuster.¹ This argument for reconsideration is meritless; whether Mahood did or did not submit the Simsol papers had no bearing on his failure to prove he suffered an additional \$167,946.46 in flood damage.

Mahood's only evidence of additional damage was the flood loss estimate by David Ozeroff, on which he relied at trial and relies in his brief supporting the instant Motion. The Ozeroff estimate "included items not covered by the policy and was clearly excessive[.]" Mahood, 174 F. Supp. 2d at 292. Mahood argues the court should determine which parts of the inflated Ozeroff estimate were valid and increase the Judgment accordingly. But it is not the court's job to parse excessive

¹Mahood is correct that he did not submit the Simsol estimate into evidence. It became part of the record when Omaha used it to question the credibility of the loss estimate prepared for Mahood by David Ozeroff.

Regardless, this court did not find Mahood's first proof of loss statement was "submitted with" documentation from Simsol, Omaha's adjuster, but rather that it was "supported with" that documentation. The word "with" may be used, as in Finding of Fact ¶ 42, to "express[] agreement or accordance, esp. in opinion or statement." OXFORD ENGLISH DICTIONARY, 2D ED. (1989).

estimates of loss in order to divine a reasonable sum for deduction from the taxpayers' National Flood Insurance Fund. Rather, it is the plaintiff's burden to prove the amount of his insured loss. See 44 C.F.R. 61 App. A(2), Art. IX(J).

B. State Law Arguments

Mahood, arguing he need only demonstrate damages under his SFIP to a reasonable certainty, cites various cases from Pennsylvania state courts. But Mahood's flood insurance policy incorporates flood insurance regulations issued by the Federal Emergency Management Agency under the National Flood Insurance Act of 1968, as amended, 42 U.S.C. § 4001, et seq.; the regulations provide that federal common law, not state law, governs interpretation of the policy. See Linder & Assoc., Inc. v. Aetna Casualty and Surety Co., 166 F.3d 547, 550 (3d Cir. 1999) (federal common law governs claims arising under the National Flood Insurance Act; "neither the statutory nor decisional law of any particular state is applicable"); 3608 Sounds Ave. Condo. Ass'n v. South Carolina Ins. Co., 58 F. Supp. 2d 499, 502-3 (D.N.J. 1999) (same); 44 C.F.R. 61 App. A(1), Art. IX. Standard Flood Insurance Policies such as Mahood's are to be strictly construed under 42 U.S.C. § 4001, et seq. See Kennedy v. CNA Ins. Co., 969 F. Supp. 931, 934 (D.N.J. 1997), aff'd w/o opn., 156 F. 3d 1225 (3d Cir. 1999); 44 C.F.R. §§ 61.13(a), (d), (e) (requiring strict construction of SFIPs).

Strictly construing the SFIP, this court held it was Mahood's burden to prove the amount he was entitled to recover by showing there were completed repairs covered by the SFIP but not covered by Omaha's payment. Mahood, 174 F. Supp. 2d at 193. Mahood did not meet this burden at trial and his state law citations fail to show there was any error in this decision.

III. Conclusion

Mahood has not shown any grounds to reconsider the Judgment; his Motion for Reconsideration will be denied.²

An appropriate Order follows.

²In its brief in opposition to the Motion to Reconsider, Omaha argues Mahood's claim for recovery of depreciation costs was not properly before this court. Omaha does not raise this issue in any motion, so it need not be addressed.

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ORDER

AND NOW, this day of May, 2002, it is hereby **ORDERED**
that plaintiff's Motion for Partial Reconsideration [#42] is
DENIED.

Norma L. Shapiro, S.J.